

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Agenda

Regular Meeting
March 17, 2009

Board Room
York Hall
6:00 p.m.

Call to Order.

Invocation.

Keith Waller, York County Youth Commission

Pledge of Allegiance to the Flag of the United States of America.

Roll Call.

HIGHWAY MATTERS. Discuss highway matters with Mr. Todd Halacy, Residency Administrator, Virginia Department of Transportation.

PRESENTATIONS.

- A **Introduction of New Members to York County Boards and Commissions.** Introduce and welcome the following newly appointed members to York County Boards and Commissions:

Corie Shaner Senior Center of York

- B **Employee Recognition Program.** Presentation of 20-year service pins and certificates to the following employees:

Timothy C. Cross County Administration—Planning
Jennifer T. Parks Financial & Management Services

- C **York County Youth Commission.** Receive quarterly report from Chairman Brendan Pritchard.

CITIZENS' COMMENT PERIOD.

*CAPITAL LETTERS INDICATE NO WRITTEN MATERIAL.

COUNTY ATTORNEY REPORTS AND REQUESTS.

COUNTY ADMINISTRATOR REPORTS AND REQUESTS.

MATTERS PRESENTED BY THE BOARD.

6:55 p.m. **RECESS**

7:00 p.m. **PUBLIC HEARINGS.**

- 1 Application Nos. ZT/ZM-119-08, ZT-122-09 and ST-14-09, York County Board of Supervisors. Consider adoption of proposed Ordinance No. 08-17(R) to amend certain sections of Chapter 24.1 (Zoning) and Chapter 20.5 (Subdivisions).
 - a. Memorandum from County Administrator.
 - b. Excerpts from Planning Commission minutes dated 5/28/08, 6/11/08, and 1/14/09.
 - c. Map of Naval Weapons Station property proposed for classification as RC-Resource Conversation.
 - d. Proposed Ordinance No. 08-17(R).
- 2 License Agreement—Donna Carrier-Tal. Consider adoption of proposed Resolution R09-36 to authorize the execution of a license agreement between the County of York and Donna Carrier-Tal.
 - a. Memorandum from County Attorney.
 - b. Proposed license agreement.
 - c. GIS map of property location.
 - d. Proposed Resolution R09-36.
- 3 Commercial Parking Prohibition—Cain Terrace and York Manor. Consider adoption of proposed Ordinance No. 09-3 to amend York County Section 15-48, Parking Prohibited or Restricted in Specific Places, to add the Cain Terrace and York Manor subdivisions to the list of specific areas where the parking of commercial, recreational, and passenger-carrying vehicles on public streets is prohibited.
 - a. Memorandum from County Administrator.
 - b. Residents' letter/petition.
 - c. Vicinity map.
 - d. Section 15-48, York County Code.
 - e. Proposed Ordinance No. 09-3.

UNFINISHED BUSINESS. None.

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CONSENT CALENDAR.

- 4 Approval of Minutes. Consider approval of the minutes of the February 17, 2009, Regular Meeting.
- a. Unapproved minutes of the February 17, 2009, Regular Meeting.
- 5 Endorsement of Fair Housing Principles. Consider adoption of proposed Resolution R09-22 to endorse the principles of fair housing as set forth in the Code of Virginia.
- a. Memorandum from County Administrator.
 - b. Fair Housing Handbook.
 - c. Proposed Resolution R09-22.
- 6 Housing Choice Voucher Program. Consider adoption of proposed Resolution R09-26 to authorize the County Administrator to take all actions necessary to accept funding and continue to implement the Housing Choice Voucher Program.
- a. Memorandum from County Administrator.
 - b. Proposed Resolution R09-26.
- 7 Emergency Home Repair Program. Consider adoption of proposed Resolution R09-27 to authorize the County Administrator to take all actions necessary to continue to implement the Emergency Home Repair Program and to accept and appropriate any grant funds awarded to the County by the Virginia Department of Housing and Community Development.
- a. Memorandum from County Administrator.
 - b. Proposed Resolution R09-27.
- 8 CDBG Application Request Barlow Road Community Project. Consider adoption of proposed Resolution R09-28 to authorize the County Administrator to submit the necessary documents for funding from the Virginia Department of Housing and Community Development, and to request and accept the funds for rehabilitation activities for the Barlow Road Housing Preservation Program.
- a. Memorandum from County Administrator
 - b. Proposed Resolution R09-28.
- 9 Addendum Two—Sports Complex Lease. Consider adoption of proposed Resolution R09-31 to authorize the County Administrator to execute proposed addendum two to the Agreement of Lease for construction and maintenance of a public park dated April 26, 2005, between the City of Newport News, Virginia, and the County of York relative to the calculation of rent to be paid by the County to the City.
- a. Memorandum from County Administrator.
 - b. Proposed addendum to Agreement of Lease.
 - c. Proposed Resolution R09-31.

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- 10 Purchase Authorization. Consider adoption of proposed Resolution R09-39 to authorize procurement arrangements for the purchase of fire and rescue apparatus and associated equipment, accepting and appropriating Virginia Rescue Squad assistance funds in the amount of \$112,522.50, and authorizing the County Administrator to do all things necessary to procure Lucas Resuscitation Devices and advanced life support airway equipment.
- a. Memorandum from County Administrator.
 - b. Proposed Resolution R09-39.

NEW BUSINESS.

- 11 York-Williamsburg 911 Dispatch Operations Consolidation. Consider adoption of proposed Resolution R09-38 to authorize the consolidation of the City of Williamsburg 9-1-1 Emergency Dispatch Center and authorize the County Administrator to do all things necessary to complete the consolidation and appropriate \$3,714,607 in operating and capital funds for the consolidation.
- a. Memorandum from County Administrator.
 - b. Memorandum of Understanding.
 - c. Proposed Resolution R09-38.

- 12 Proposed Closure of VDOT Williamsburg Residency and Equipment Shop. Consider adoption of proposed Resolution R09-40 to support the retention of the Virginia Department of Transportation Williamsburg Residency Office, Equipment Shop, and the functions and services provided by the Residency Administrator and staff of that office.
- a. Memorandum from County Administrator.
 - b. Proposed Resolution R09-40.

CLOSED MEETING.

FUTURE BUSINESS.

Adjournment.

Regular Meetings and Work Sessions of the Board of Supervisors air live on Cable TV Channel 46.

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An Adjourned Meeting of the York County Board of Supervisors will be held at 7:00 p.m., Thursday, March 19, 2009, in the Board Room, York Hall, for the purpose of conducting public hearings on the proposed Fiscal Year 2010 Budget and 2009 Tax Rates.

An Adjourned Meeting of the York County Board of Supervisors will be held at 6:00 p.m., Tuesday, March 24, 2009, in the East Room, York Hall, for the purpose of conducting a work session on the proposed Fiscal Year 2010 Budget.

An Adjourned Meeting of the York County Board of Supervisors is tentatively scheduled for 6:00 p.m., Tuesday, March 31, 2009, in the East Room, York Hall, for the purpose of conducting a work session on the proposed Fiscal Year 2010 Budget.

The next Regular Meeting of the York County Board of Supervisors will be held at 6:00 p.m., Tuesday, April 7, 2009, in the East Room, York Hall.

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COUNTY OF YORK

MEMORANDUM

DATE: March 3, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Application Nos. ZT/ZM-119-08, ZT-122-09 and ST-14-09, York County Board of Supervisors: Proposed Zoning Ordinance Amendments

At the January 20, 2009 meeting the Board conducted a public hearing on Application No. ZT/ZM-119-08 and, as a result of citizen comments, decided to table consideration of the application to allow further public review and discussion of the proposed amendments. The previous week, on January 14th, the Planning Commission conducted a public hearing on another set of proposed amendments (Application Nos. ZT-122-09 and ST-14-09) and decided to forward those applications to the Board with a recommendation for approval (with the exception of two elements that were held back by the Commission for further discussion at its March 11th meeting).

Subsequent to the January 20th meeting, we provided the Board with a proposal to break the amendments contained in the above-referenced applications into three categories. This proposal was discussed at the Board's February 21st retreat and it was agreed to establish the ad hoc discussion groups to review the residentially- and commercially-related amendments, as categorized by staff. Those discussion groups are in the process of being established.

The remaining proposed amendments have been advertised for public hearing at the March 17th meeting. The following summary information describes the proposed changes.

Chapter 20.5 – Subdivisions (Application No. ST-14-09)

Section 20.5-31.1 Terms of Validity

Revisions are proposed to incorporate mandatory provisions set out in 2008 State Code amendments pertaining to the term of validity for a Preliminary Plan (plat) associated with a development being undertaken in phases (new subsection (b)), and the term of validity for an approved Final Plat subsequent to recordation and conveyance of any portion of the subdivided property (new subsection (c)). Under the terms of proposed (but mandatory) subsection (b), a Preliminary Plan will remain valid for a period of five (5) years from the date of the latest recorded plat (for example, as the plat for each successive section in a multi-phase development is recorded, the 5-year period would adjust accordingly). Under the terms of

proposed (but mandatory) subsection (c), a recorded approved final subdivision plat will remain valid indefinitely once any portion of the property has been sold to a third party, until and to the extent it may be lawfully vacated, which is consistent with the County's past practice.

Chapter 24.1 - ZONING

Zoning Map Amendment

- Effective July 1, 2007, approximately 83 acres of Naval Weapons Station property was annexed into the County as part of the boundary line adjustment between Newport News and York County. This property has not been zoned by the County. Consistent with the treatment of the remainder of the Weapons Station property, it is recommended that this area be classified RC – Resource Conservation. This area is shown on the attached vicinity map. It should be noted that since this property is federally-owned and not subject to local zoning, the map amendment to establish a zoning classification has not had the urgency that it would if private property were involved.

Text Amendments

Section 24.1-103 – General Rules of Interpretation

- Subsection (k) is proposed to be modified to indicate that all metric references are eliminated. The metric references in the Zoning Ordinance are a hold-over from the early 1990s when there was widespread discussion about a national movement to the metric system. That has never materialized and for the past several years as sections of the Zoning Ordinance have been amended in the “housekeeping” processes, the metric dimensions have been deleted. This proposed general statement is intended to address any remaining references.
- Numerous technical documents and publications are referenced in the Zoning Ordinance (e.g., the Institute for Transportation Engineers Traffic Generation Manual). The Ordinance cites the latest versions of these manuals / publications. Proposed subsection (l) would establish a general rule calling for the latest version/edition of any named document to be effective.

Section 24.1-104 – Definitions

- *Home Occupation.* Proposed revision to make it clear that the home occupation must be conducted by and licensed to a permanent resident of the dwelling unit. This revision would memorialize a previous administrative ruling disapproving a property owner's proposal to license his business from a residential property but to have one of his employees occupy the residence. This arrangement was deemed to be inconsistent with the premise of a “home” occupation.
- *Lot line, front.* Proposed revision to clarify that a *front* lot line is any street right-of-way line, whether the street is public or private. In addition, rules for special

determinations that are set out in the General Regulations section and which address situations other than just “flag lots” are proposed to be referenced and the duplicative language in the definition is proposed to be deleted.

- *Lot line, rear.* Proposed revision to specifically reference the Article II provisions dealing with corner, through and flag lots.
- *Nightclub.* Based on discussion that occurred when the Board last considered a Special Use Permit for a proposed nightclub, revisions are recommended to clarify the characteristics that make an establishment a “nightclub” and to indicate that restaurants can have “background” entertainment without being designated as a “nightclub.” This revision is proposed in response to discussion that suggested the current provisions to be overly restrictive for restaurants.
- *Stable, Public.* Change to: *Stable, Commercial* - Proposed revision to match terminology used in Table of Land Uses and to delete the term *accessory use* from the definition.

Section 24.1-106. Zoning districts and maps

- *New subsection (c).* Proposed new clause to provide that any territory added to the York County jurisdictional limits shall be given an interim classification of RC-Resource Conservation until such time as the Board of Supervisors determines and establishes an appropriate classification through a formal rezoning application process. If this provision were already a part of the Ordinance, the map amendment dealing with the Naval Weapons Station property would be unnecessary.

Section 24.1-108. Filing fees

- Section (a)(3). This revision was originally proposed to allow a 100% refund of a filing fee if the written request for withdrawal is received in sufficient time to cancel the publication of the first legal notice for the required Planning Commission public hearing. Although some staff work will have occurred by that time, none of the major expenses associated with processing an application (adjacent letters/postage and newspaper ads) will have been incurred. After discussing this proposed amendment, the Planning Commission decided to recommend that a minimal \$50 “administrative fee” be retained by the County to help defray some of the application processing costs incurred even before ordering the publication of the first legal ad. The Commission’s recommendation has been incorporated into the draft language.

The remaining proposed fee revisions are as originally drafted. A 50% refund is proposed if the withdrawal occurs between the first ad publication and the Planning Commission meeting. The portion of the fee retained by the County in this circumstance would defray the costs of the Planning Commission ads already run or scheduled as well as postage and staff time costs incurred. A 25% refund is

proposed if withdrawal occurs within five (5) days after Planning Commission action since no legal ad expenses for the Board public hearing would have been incurred by that time. After that point in time, no refunds would be available.

- Section (b)(3). As of July 1, 2008, the Virginia Department of Transportation began implementing in the Hampton Roads District the traffic impact study requirements called for under the terms of Section 15.2-2222 of the Code of Virginia. Section 15.2-2222 – *Coordination of state and local transportation planning* – mandates that certain site plans be submitted for VDOT review and that they be accompanied by a traffic impact analysis. The provisions of Section 15.2-2222 allow VDOT to establish a review fee not to exceed \$1,000 for each study/plan submitted. The proposed language makes it clear that payment of this VDOT fee is a developer responsibility.

Section 24.1-109. Administration, enforcement and penalties

- Section (a) is proposed to be amended to add language tracking a 2008 State Code change that provides an additional investigative tool (an inspection warrant) for localities to use in the enforcement of zoning regulations pertaining to dwelling units. The ability to request the issuance of such a warrant could be helpful in investigating compliance with regulations pertaining, for example, to accessory apartment occupancy (are the occupants family members or guests or are they unauthorized renters?) and the conduct of home occupations (are there non-resident employees; is the operation conducted in accordance with required performance standards, etc.?). Also proposed is a separate paragraph tracking State Code provisions concerning procedures for investigating suspected violations of the limits on the maximum allowable number of unrelated individuals occupying a dwelling (the Zoning Ordinance allows up to four (4) unrelated individuals to live as a “family” in a single dwelling unit).
- Section (c)(1). Proposed revisions to reflect Code of Virginia changes concerning repeat violations; Under the revised terms, each succeeding 10-day period (rather than 30-days) can be considered and cited as a separate offense. Also, the minimum and maximum fine amounts for repeat violations are proposed to be increased to the levels allowed by the State Code:
 - *Criminal misdemeanor penalties*: fine of not less than \$100 or more than \$1,500 (up from not less than \$10 or more than \$1,000) for repeat violations;

A new paragraph reflecting the penalties allowed by the State Code for violation of the Zoning Ordinance definition of “family” (not more than 4 unrelated individuals living together in a single dwelling unit) is proposed to be added. As a result, violation of this provision would no longer be listed in the Civil Penalties section. The penalty for violation would be a fine of up to \$5,000 for failure to correct a cited violation and \$7,500 for any subsequent 10-day period of violation. Also proposed is new language to track a State Code provision protecting an

owner or managing agent of a property from fines if they are already in the process of legal action against their tenant concerning an overcrowding condition.

Subsection (c)(3)c. Civil Penalties: \$200 for the initial summons (up from \$100) and \$500 for each additional summons (up from \$250), \$5,000 maximum for a series of violations (up from \$3,000). also in accordance with 2008 State Code changes, language is included allowing a chronic civil penalty violation (one where penalties total \$5,000 or more) to be prosecuted as a criminal misdemeanor.

Section 24.1-114. Conditional zoning

- Section (b)(2). Proposed revision to allow the Board of Supervisors to accept amended proffers even after the board's public hearing has begun, provided that the amended proffers do not materially affect the overall proposal. This provision would allow an applicant to respond with new or revised proffers to concerns raised in the Board public hearing. For example, this opportunity could have been beneficial in connection with the recent Ebby's application if the revised proffers had not been signed before the final public hearing opened.

Section 24.1-115. Special Use Permits

- Section (b)(2). Proposed revision to allow a 100-day window for Planning Commission review and deliberations on Special Use Permit applications; This change would make the Commission's review timeframes for rezonings (already 100 days) and use permits the same and would ensure that the Commission has three (3) meetings available for deliberation on an application (i.e., if there is a need to table an application).

Section 24.1-117. Certain utilities and services exempt

- Section (a)(1). Proposed revision to add Public Transit Shelters to the list of facilities exempted from requirements such as setback from property lines, etc.
- Section (a)(3). Proposed revision to simply state the requirement for a Type 25 Buffer around pump stations, rather than referring to multiple sections that produce the same end result.

Section 24.1-200.1. Verification of access rights

- This new section is proposed to ensure that access rights (for both driveways and utilities) are verified and documented prior to the issuance of building permits for any property not fronting on a public right-of-way. This will help ensure that the County is not "caught in the middle" by having issued a building permit for a "land-locked" existing parcel (i.e., a lot of record) that cannot be legally accessed.

Section 24.1-201. Subdivision and consolidation of lots

- Section (b). Minor clarification to ensure that any dimensional requirements other than setbacks (e.g., transitional buffers, etc.) are also taken into consideration when determining the ability of principal or accessory structures to stand alone on adjoining lots under the same ownership. If those requirements cannot be met without relying on some or all of the area of both parcels, this section requires that the common property line be vacated.
- Section (c). This new section is proposed to memorialize the long-standing interpretation and practice that has allowed major individual tenant spaces in a shopping center to be subdivided so as to enable separate ownership. For example, the K-Mart building and a portion of the parking lot at the Village Square shopping center are on a separate lot that was created during the shopping center development process to accommodate the unique corporate demands of that particular company. The same type of arrangement is present at the Williamsburg Marketcenter for the Ukrops site/building. In both cases, the lot lines and separate ownership are transparent in terms of the shopping center configuration and operation. The proposed language would document the criteria under which these arrangements can be approved (e.g., lot lines must be coterminous with common building walls, landscape islands or driveway centerlines, etc).

Section 24.1-202. Lot frontage required

- Section (c)(3) is proposed to be amended to incorporate the *front lot line* determination guidance transferred from the Definitions section. This simply relocates an existing requirement from one section of the Ordinance to another.

Section 24.1-220. Requirements for corner lots

- Section (a) and (c) and Figure II-3 in Appendix A. Corner lots are required to have “front” yard setbacks on both street frontages (a clarification to this effect is proposed) and “rear” yards are to be determined at the time of Building Permit issuance based on the orientation of the principal building. The requirement to designate a “rear” yard is not currently reflected in the diagram in Figure II-3, which appears to indicate that both yards opposite the “front” yards could be “side” yards. The diagram needs to be revised and the renumbered subsection (b) is proposed to be amended to clarify the procedure for rear yard determinations.
- Section (b). Proposed revision to remove the Sight Triangle provisions from the Corner Lots section and insert them as a separate and distinct section (24.1-226); The rationale for this change is that “sight triangle” problems can occur not only on corner lots, but also at private driveway connections (clarification to this effect is proposed). As these provisions are currently formatted, it could be argued that the sight distance requirements apply only to private driveways located on corner lots, which was never the intent.

Section 24.1-225. Special yard regulations

- Section (e) Proposed clarifying language to reference the “sight triangle” provisions to ensure that fences are not construed to be exempt from those provisions.
- Section (f) A new subsection is proposed to provide for a case-by-case review and determination by the zoning administrator as to the front, side and rear lot lines and yards for non-standard lots, for lots that abut a water body and for lots that have no street frontage. This section replaces the special determination language that is recommended to be deleted from the definition of *front lot line*.

Section 24.1-226. Sight distance requirements at intersections

- Proposed new section to simply relocate the “sight triangle” provisions from the corner lot requirements (Section 24.1-220) and to add language to clarify that private driveway/street intersections are also subject to the visibility standards.

Section 24.1-231. Exemptions from height regulations.

- Section (a) Proposed revision to add electric substation components to the list of structures that may exceed district building height maximums. It should be noted, however, that substations proposed in residential districts require authorization by Special Use Permit so the Board will continue to have the opportunity to impose a use permit condition for a lower height limit if deemed necessary.
- Section (b) Proposed revision to clarify that the height exemptions that can be considered by the Board of Supervisors are for those situations listed in Section (a) only, and not for any situation in general. Exceptions to the height regulations other than those listed are considered “variance” requests under the purview of the Board of Zoning Appeals.

Section 24.1-233. Special height regulations for single-family detached dwellings in excess of thirty-five feet (35')

- New subsection (d) would provide a second option for those seeking permission to construct a single-family detached residential structure in excess of 35 feet (a maximum height of 40' is allowed in the RC, RR, R20 and R13 districts, subject to the special requirements in Section 24.1-233). The new provision would allow the installation of a residential sprinkler system as an alternative to the structure being within 600 feet of a fire hydrant. This arrangement has been approved by the Board of Zoning Appeals in at least one case and all concerned parties agreed that under the right circumstances (reasonable distance to a hydrant; good access; appropriate building design and features) it can provide a reasonable alternative measure of fire protection. Any proposal submitted under this subsection would be subject to review and approval by the Department of Fire and Life Safety.

Section 24.1-242. Landscaping standards.

- Minor revision to distinguish (by height) between 5 and 6 LCU values for evergreen or ornamental trees. The current chart is confusing in that it provides two different LCU values for 8-foot evergreens/ornamentals.

Sec. 24.1-251. General traffic management and analysis requirements.

- Section (b)(2)h. is proposed to be amended to document the consistent historical interpretation of this section as requiring consideration of the *overall* intersection function as opposed to each *individual* intersection approach/movement. Adding this language simply documents current practice.

Sec. 24.1-260. General site design standards.

- Two additional exemptions from the full-cutoff requirement are proposed. One would ensure that properly designed and directed architectural or landscape accent lighting is allowed. Quite often, such lighting is desired to “up-light” the architectural features of a building and, if properly designed, this can be accomplished without allowing light to “spill” onto adjacent properties or skyward. The other proposed exemption would cover streetlights on public or private streets provided the lights are installed in accordance with the Board’s Streetlight Installation Policy. Also, based on comments received concerning the draft, the Commission has recommended an additional provision to allow the Zoning Administrator to approve, on a case-by-case basis, colonial style fixtures classified as “cut-off” rather than “full cut-off” provided that the luminaire is fully recessed.
- To assist in the administration of the “3,000 or less lumens” exemption, a listing of the associated wattage ratings for various types of luminaires is proposed.

Sec. 24.1-261. Public service facility standards.

- This revision is recommended to reflect fire code regulations that require a 20-foot separation between dumpsters and non-residential structures.

Sec. 24.1-271. Accessory uses permitted in conjunction with residential uses.

- The introductory paragraph is proposed to be amended to clarify that uses not listed and not deemed “similar” are not authorized.
- A clarification is proposed in paragraph (j)(4) to ensure that the sight-triangle visibility standards are observed where fences are placed adjacent to driveway/street intersections.
- A new subsection (j)(7) is proposed to provide authority for the Zoning Administrator to approve fence heights up to eight feet (8’) on a residential

property when deemed necessary to provide screening from an adjacent non-residential use. For example, this provision would allow a residential property owner additional opportunities to protect their property from the adverse impacts (noise, headlight glare, etc.) of adjoining commercial uses that are not properly screened because they predate current Transitional Buffer and landscaping provisions.

- The “finished side out” provisions in subsection (j)(8) are proposed to be modified to better define what constitutes the “finished side” since this has been a matter of controversy in several situations over the past several years. The proposed method of determination is based on the placement of the fence boards/slats in relation to the structural support members.

Sec. 24.1-272. Accessory uses permitted in conjunction with commercial and industrial uses.

- Same changes relative to listed and similar uses.
- Same changes relative to the “finished side” of fences.
- A new sentence is proposed in section (a)(3) to provide authority for the Zoning Administrator to approve increased fence heights on a commercial or industrial property when determined appropriate and beneficial for providing screening and buffering to adjoining properties. For example, in some situations a fence height of eight (8) feet is not sufficient to provide adequate screening.

Sec. 24.1-273. Location, height, and size requirements.

- A revision is proposed in Subsection (b) to provide additional flexibility in the location of accessory structures in relation to principal structures having an “L” shape or other wings or additions extending from the rear façade. This adjustment is proposed to recognize the space constraints on some of the small lots that are typical of cluster/open space subdivisions while still preserving the spatial relationships on a lot where an accessory structure is located to the side of a principal structure (a new Appendix Figure II-7.1 is proposed to depict this requirement).
- Language is proposed in subsection (c) to address the measurement of setbacks for in-ground and above-ground pools. For example, this clarification would treat ground level walkways around a pool the same as any other ground level walkways on a lot – i.e., no setback would be required.

Sec. 24.1-281. General requirements for home occupations.

- An additional phrase is proposed in Subsection (a) to emphasize the requirement that a home occupation is something conducted by the resident owner/license holder of the business. This recommendation is intended to memorialize a Zoning

Administrator ruling that a business would not qualify as a “home occupation” simply by having one of its employees living in an absentee owner’s residence.

- The provision in Subsection (g) limiting parking associated with home occupations to not more than five (5) vehicles is proposed to be deleted. Currently, any home occupation requiring three (3) or more spaces must be authorized by a Board-approved Special Use Permit. Since the Board will be involved in evaluating the suitability of a site for 3 or more spaces, the 5-space limit seems somewhat arbitrary and unnecessary. Instead, the proposed language would allow the Board to evaluate the characteristics of a site for accommodating parking without disruption to neighbors and to set the maximum limit (even something above 5) as part of the approval process.

Sec. 24.1-283. Home occupations permitted by special use permit.

- Subsection (a) – minor revision for consistency with above-described parking proposal.
- A change is proposed in Subsection (e)(3) to clarify that in all cases where a non-resident employee has been authorized for a home occupation, the term of that authorization can be extended as a “minor modification” approved by resolution of the Board, rather than requiring a completely new Special Use Permit application process. However, the proposal would make eligibility for processing as a “minor modification” contingent on confirmation that adjoining property owners have no objection to the extension. If that could not be provided, the request would have to be processed as if it were an original application (i.e., public hearings by both the Planning Commission and Board).

Sec. 24.1-306. Table of land uses.

- Some months ago, staff received an inquiry from a resident interested in applying for a Special Use Permit to operate a Bed and Breakfast on a waterfront property which happens to be classified RC-Resource Conservation. In reviewing the Table of Land Uses, it was discovered that such uses currently are not allowed in the RC district, yet they are allowed in the other residential zoning districts. In staff’s opinion, it is likely that RC properties could be as well suited, if not better suited, for such a use and, therefore, it is recommended that the opportunity to apply for a Special Use Permit in the RC District be added.
- A representative of Lowe’s Home Centers, Inc. has requested that the Table of Land Uses be amended to list *Home Improvement Centers* as a permitted (P) use in the GB-General Business District. Currently, *Home Improvement Centers*, which are defined as establishments having more than 30,000 square feet of floor area, are permitted only in the EO-Economic Opportunity District. It is important to note that even if listed as a permitted use, any such establishment having 80,000 square or more of floor space would require authorization by special use permit (the “big-box” provisions).

Sec. 24.1-307. Prohibited uses.

- In recognition of several inquiries concerning adaptation of containerized cargo units for residential lot storage purposes (i.e., use as a storage shed on a residential property), it is recommended that a listing be added to the prohibited uses section. While some individuals interested in such uses have promised to add an architecturally attractive “skin” to hide the cargo unit, the County has no authority to require that to be done. Accordingly, a specific prohibition would be the safest course of action to preserve adjacent property values and neighborhood character. This proposed provision will memorialize the Zoning Administrator’s interpretation that cargo units cannot be converted to “storage sheds” and used for residential lot storage purposes.

Sections 24.1-321, 322, 323 and 324. Residential Districts

In the process of thoroughly discussing the single-family dwelling unit height limits and allowances (reference Section 233, discussed above) staff has noted the potentially confusing way that “maximum building height” is listed for single-family detached dwelling units in each of the sections dealing with residential zoning districts. In each of the dimensional standards tables in these sections, single-family detached building height is listed as a maximum of 40 feet, but with a somewhat inconspicuous footnote indicating that buildings exceeding 35 feet are subject to the special standards set out Section 24.1-233. Staff’s concern is that someone glancing at one of these charts might focus on the 40-foot entry and miss the footnote, perhaps proceeding with preparation of construction plans for a 40-foot structure without realizing that there are additional standards to be met. To avoid the possibility of such confusion, staff recommends that the entry in the dimensional charts be changed to *35 feet* while retaining and **bold** typing the footnote reference to Section 24.1-233 which provides and explains the opportunities and requirements to exceed the basic 35-foot standard.

Sec. 24.1-374. HRM-Historic resources management overlay district.

- The proposed revisions in the historic resources provisions are intended to:
 - Provide updated references to the State-managed data base that lists all potentially significant sites – both archaeological and architectural;
 - Provide updated references to the current Guidelines for proper execution of cultural resource studies;
 - Provide expanded descriptions of the procedures applicable to Phase I, II and III investigations;
 - Require that potentially significant sites be cordoned off with appropriate barrier fencing during site development/land clearing;
 - Require a certification statement from the preparer of the resource study attesting that the requisite Guidelines have been followed.

Sec. 24.1-375. TCM-Tourist corridor management overlay district.

- By virtue of other provisions in the TCM regulations that prohibit exposed bulbs for lighting, consistent past practice has been to prohibit exposed neon tubing on signs or as building accents. The proposed addition to Subsection (f)(9) documents that interpretation in more specific language.

Sec. 24.1-376. WMP-Watershed management and protection area overlay district.

- The amendments sponsored by the Board for review and recommendation included a proposal to delete the Jones Pond and Bethel Reservoir watersheds from the coverage of the WMP overlay since those facilities no longer serve as water supply reservoirs and since both would remain protected by the water quality and buffering provisions of the Chesapeake Bay Preservation Area regulations. During the Planning Commission's deliberations, several citizens spoke about this proposal and urged that the WMP overlay protection not be eliminated. The basic premise expressed by those speakers was that *any* former or potential future drinking water reservoir should be protected, particularly given the water supply issues on the Peninsula. The Board indicated its agreement with this recommendation at the October 7th work session. Nevertheless, a new map should be incorporated into the ordinance to reflect the Newport News/York County boundary line adjustment that occurred in 2007. This new map is dated September 12, 2008 and is labeled as Map III-2 in the Ordinance Appendices.
- Subsection (e)(4)a. was proposed to be amended to allow new septic systems within the 500-foot WMP buffer if the owner of the watershed (e.g., NNWW or City of Williamsburg) approves. Over the past several years, the Board of Zoning Appeals has considered and approved several applications for variances from this prohibition in order to allow development on an existing lot that has no reasonable probability of being served by public sewer. However, the BZA has never done so without the approval of the watershed owner. This proposed amendment would allow such decisions to be made through an administrative process (subject to the watershed owner's approval) but would not foreclose the opportunity for a property owner to apply to the BZA for a variance in the event the watershed owner declines to give its approval. At the October 7th work session the Board indicated its reluctance to allow septic systems in the required buffer areas unless there has been a detailed scientific evaluation of potential environmental impacts by the watershed owner. Given this discussion and guidance, and considering the relatively few times that such requests will likely be made, I believe that the current system should be retained (i.e., BZA action required) and that no changes in this section should be made. Therefore, the proposed language is shown with strike-throughs in the attached ordinance.

Sec. 24.1-377. Yorktown Historic District Overlay.

- Minor revisions are proposed to allow certain additional minor property changes / architectural additions or alterations to be reviewed and approved administratively and to clarify several situations that require action by the HYDC. These adjustments are consistent with actions and decisions made by the HYDC over the past several years.

Sec. 24.1-407. Accessory apartments

- Minor revision to eliminate some confusion caused by the general requirement to record the resolution granting Special Use Permit approval as well as the deed restriction required by Condition (k) of this section. The proposed change would allow both requirements to be addressed simultaneously in a single recordation action.

Sec. 24.1-419. Standards for forestry operations.

- Minor revision to correct a discrepancy by deleting the phrase *fifty percent (50%)* increase since an increase from 50 feet to 100 feet is actually a 100% increase.

Sec. 24.1-440. Standards for temporary sales of seasonal commodities.

- Based on the “season” for various types of produce, it is recommended that the maximum duration of a “temporary permit” be extended from 90 to 120 days.
- Experience has shown that “owner-enforced” property clean-up requirements are as effective as an applicant-posted surety, and also less of an economic burden on the seasonal commodity vendor. This proposed revision would allow that option.

Sec. 24.1-444. Standards for temporary construction trailers and offices.

- Minor revision to allow an applicant for a temporary permit to opt for a restriction on the issuance of the Certificate of Occupancy as an alternative to posting surety to guarantee the removal of the temporary trailer(s).

Sec. 24.1-446. Standards for temporary use of trailers for office or business purposes.

- Same as above

Sec. 24.1-481. Standards for shopping centers.

- A minor revision is proposed to allow “neighborhood shopping centers” to include as much as 15,000 square feet of floor area, provided that the community shopping center parking standards (4 spaces per 1,000 s.f) are observed (rather than the normal 3 spaces per 1,000). This change responds to and supports a

recent trend in the development of relatively small retail complexes. Allowing the “extra” square footage would allow this type of project to occur without “bumping” the development up to the more stringent minimum lot size (3 acres vs. 40,000 s.f.), lot width (230 feet vs. 170 feet), setback (90 feet vs. 75 feet), and minimum perimeter yard requirements (25 feet vs. 20 feet) associated with “community” shopping centers.

Sec. 24.1-495. Standards pertaining to the storage, handling, transport, and disposal of fly ash, etc.

- As was discussed at the Board’s October 2008 work session, since these amendments were sponsored for consideration concerns have come to light about potential environmental impacts associated with a golf course in Chesapeake where massive quantities of fly ash were used to create landforms as a “beneficial use.” Additionally, we have learned that the state officials are undertaking a complete review and evaluation of the current “beneficial use” regulations. Therefore, staff recommends that the proposed amendments to Section 24.1-495 be deferred at least until the state regulatory review is completed. Accordingly, the draft language is shown with strike-throughs on the attached proposed ordinance.

Sec. 24.1-498. Submission requirements.

- Homeowners associations are now required by State Code statute (section 55-514.1) to perform a periodic review and analysis of the capital facilities for which they are responsible (e.g., clubhouses, pools, etc.) and to determine the amount of reserves required to repair, replace and restore those facilities. This “reserve analysis” can be a daunting task for neighborhood volunteers, so it is proposed that the developer be required to assemble and turn over to the association certain basic information as to the value and estimated useful life of the capital facilities that will be owned and managed by the homeowners association. This will not eliminate the need for the HOA to perform the reserve analysis, but will at least provide a reasonable foundation for the eventual task.
- Occasionally, a development approval requires the establishment of restrictive covenants to govern some aspect of the project. Normally, the County’s review of HOA documents is confined to whether they meet the minimum procedural and organizational requirements set forth in the Zoning Ordinance. However, when there are proffers or requirements for the establishment of other specialized covenants, it is important that they be submitted for review and approval by the County. Proposed subsection (b)(4) would make those specialized covenants a part of the submission which the developer’s attorney must provide and certify.

Sec. 24.1-505. Review and approval procedures for site plans.

- Due to frequent past problems with construction site stormwater management and utility / building construction conflicts, the Department of Environmental and Development Services has instituted a policy requiring the completion of on-site stormwater and utility construction as a prerequisite to issuance of building permits. The effect of this policy is to make the issuance of the Land Disturbing Activity Permit associated with stormwater management improvements (rather than Building Permits) the “significant governmental act” that is the best measure for “vesting” a project that is in progress at the time of, and affected by, a change in zoning regulations (text or map). Subsection 24.1-505(i) is proposed to be revised to reflect this change.

Sec. 24.1-601. General provisions.

- Subsection 24.1-601(c) is proposed to be revised to allow the Zoning Administrator to authorize the use of the shopping center parking ratio standards for a grouping of attached tenant spaces that function effectively as a “shopping center” but which does not meet the otherwise applicable area and dimensional standards for shopping centers. This allowance would recognize the opportunities for “shared” parking demand among the attached uses and would allow impervious surface area to be minimized, which is consistent with environmental protection objectives.

Sec. 24.1-702. General sign regulations.

- A minor change is proposed in subsection (a) to allow “V”-shaped signs to have faces angled for better visibility while still being considered an allowable “double-faced” sign.
- Subsection (b) is proposed to be revised to clarify that the 240 square foot aggregate wall sign limit applies individually to the tenant spaces within a row of attached spaces and not to the aggregate sign area of all tenant spaces (e.g., in a shopping center, each tenant could have as much as 240 square feet of wall signage depending on the width of that particular tenant space).
- Subsection (c) is proposed to be revised to allow sign height to be increased when the adjacent roadway is elevated above the site’s finished grade. The Homewood Suites Hotel property on Bypass Road is an example of a site where the ground elevation drops off sharply from the road surface. The extra height allowed for that sign was authorized through a variance application approved by the Board of Zoning Appeals. The proposed revisions would provide an administratively approvable opportunity for an increase in sign height.
- Subsection (f) is proposed to be amended to allow sign permits to be issued upon site plan approval or, where a site plan is not required, upon issuance of a Zoning Certificate. The current wording makes a Business License the prerequisite. With the often long lead-time required for ordering and fabricating signage, and since

Business License issuance typically occurs toward the end of construction rather than the beginning, this requirement has sometimes been troublesome for businesses wanting to have all permits in hand before placing a sign fabrication order. The proposed approach would accomplish the same County objective – i.e., making sure that a permit is not issued until the activity / use has been through the applicable approval process (i.e., site plan and/or zoning certification) but would better accommodate signage ordering, fabrication and installation scheduling.

Sec. 24.1-704. Temporary signs.

- Revisions are proposed in Subsection (b) to:
 - specify a maximum size for grand opening banners – proposed to be 32 square feet;
 - clarify that a change in ownership or major interior or exterior remodeling can be deemed eligible for a “new business” or “grand opening” banners; and,
 - to authorize “now hiring” / “help wanted” signs for a temporary 60-day term.

Sec. 24.1-706. Off-premises directional signs.

- Language to implement the real estate community’s request that the current prohibition of the placement of “open house” signs in public street rights-of-way be rescinded was included for consideration and discussion; however, neither staff nor the Planning Commission recommended a change since placing such signs in the right-of-way would remain a violation of VDOT regulations. The Board indicated concurrence with this position at the October 2008 work session and, accordingly, the draft language is shown with strike-throughs in the attached proposed ordinance.
- As an alternative to allowing such signs in the right-of-way, a new subsection 24.1-706(b)(8) is proposed to be added to exempt open house signs from the 10-foot setback requirement when placed on private property, thus allowing them to be placed closer to the roadway for greater visibility.

Sec. 24.1-707. Exempt signs.

- The introductory paragraph in Section 707 indicates that all Exempt Signs must meet all General sign regulations which would include, for example, the requirement for a 10-foot setback from any property line. However, for certain types of signs (e.g., 6-square foot real estate signs) this setback is unnecessary and, realistically, would be a burden to enforce. The proposed revision inserts a phrase that provides relief from any specifically noted General standards.
- It is fairly common for more than one contractor to be working on a construction site and the current restriction allowing only one temporary construction sign for the purpose of identifying contractors has been criticized as being too restrictive.

Accordingly, a revision is proposed to allow as many as three (3) construction signs per site.

- Language is proposed in several sections to provide an exemption from the 10-foot setback requirement (real estate signs, political signs, on-premises directional signs, garage sale signs, no trespassing signs).
- Subsection (m) is proposed to be clarified to better explain the intent that signs oriented inward to a ballpark / athletic field are considered exempt.
- Subsection (r) is proposed to be revised to eliminate the one-sign limit for on-site directional boards that are oriented to major vehicular and pedestrian ways in office, business or industrial complexes.

Sec. 24.1-708. Special standards for community identification signs.

- A new paragraph is proposed in order to recognize and allow the common practice and desire to frame an entrance with identification signage on both sides of the street.

Section 24.1-801. Nonconforming uses

- A minor deletion is proposed in subsection (a) since it does not apply to “reconstruction.”
- In accordance with a recent State Code amendment, a change is proposed to provide a 4-year re-establishment/re-construction period for nonconforming uses or structures damaged or destroyed by a cause for which a federal disaster declaration has been issued. Additional language is proposed to further clarify that owner-initiated demolition and rebuilding of a structure housing a nonconforming use is not permitted unless the need for demolition is the result of a natural disaster or other cause beyond the control of the owner. This language memorializes what has been a consistent interpretation over years of Zoning Ordinance administration and the rationale for this position is that since nonconforming uses are those that are no longer allowed on the property as zoned, they should be gradually phased out as buildings reach the limits of their useful life.
- Proposed revisions also better conform the ordinance language to State Code language (re: need to comply with Building Code and Floodplain regulations)

Section 24.1-802. Nonconforming structures

Subsection (b) is proposed to be revised to be consistent with terminology (“repaired, rebuilt or replaced”) used in the State Code and to include the 4-year natural disaster timeframe for rebuilding. Also proposed is the same language mentioned above to further clarify that owner-initiated demolition and rebuilding

of a nonconforming structure is not permitted unless the need for demolition is the result of a natural disaster or other cause beyond the control of the owner. This language memorializes what has been a consistent interpretation over years of Zoning Ordinance administration and the rationale for this position is that since nonconforming structures are those that do not meet the current dimensional standards, they should be gradually phased out as buildings reach the limits of their useful life.

A new subsection (d) is proposed to be added to reflect 2008 State Code changes. This section would set requirements for distinguishing between “illegal” and “nonconforming” buildings. This provision supplements the traditional way of defining a nonconforming structure (i.e., one that was constructed in accordance with all applicable zoning regulations in effect at the time of its construction) by extending such status even to those buildings that were constructed contrary to existing zoning regulations but with benefit of a Building Permit, or those where the owner has paid taxes on the building for more than 15 years but cannot document that a Building Permit/C.O. was issued. While such situations are rare, this provision would allow, for example, a building constructed pursuant to a Building Permit and issued a Certificate of Occupancy - but 20 years later found to be in conflict with a setback dimension required at that time - to be considered *nonconforming* rather than *illegal*. With respect to those buildings where the Building Permit/Certificate of Occupancy cannot be documented but taxes have been paid for more than 15 years, the State Code provisions would allow the *nonconforming* rather than *illegal* status to be conditioned on the building being brought into compliance with the Uniform Statewide Building Code and staff would strongly recommend that such a condition (which is the only non-mandatory aspect of the State Code provisions) be required. The practical effect of new subsection (d) would be to avoid the need for requests to the Board of Zoning Appeals to “legalize” a setback encroachment that may have existed for years, only to be discovered upon preparation of a survey plat in conjunction with a pending real estate closing.

Sec. 24.1-805. Validity of previously-issued permits and approvals.

- Revisions are proposed in Subsection (c) to clarify that nonconforming Special Use Permit uses can be enlarged/expanded only in accordance with the Nonconforming Use expansion provisions.
- Subsection (d) is proposed to be modified to clarify and simplify the requirements for subdivisions that are in progress when a zoning change that affects lot size, lot width or setbacks occurs. The change would allow the creation of lots that meet the pre-existing area and width requirements and construction on any such “nonconforming” lot could occur subject to the normal administrative adjustment options set out in Section 24.1-804.

Section 24.1-901 Powers and duties

A new subsection (b)(4) is proposed to be added to track language added to the State Code in 2008 to define how a property is to be classified upon the issuance of a variance (i.e., *conforming*) and to also clarify the rights and procedures applicable to expansion of a structure for which a variance has been issued.

Section 24.1-903 Procedures

In accordance with 2008 State Code amendments, subsection (b) is proposed to be revised to add violation of the maximum occupancy limits of a residential dwelling unit to the list of “temporary/short-term” land use violations for which the appeal period after a notice is issued will be 10 days, rather than 30 days.

Appendix A

Figure I-2 Lot Lines / Yard Setbacks

- This figure is proposed to be revised to delete an incorrect label referring to “setback” and to label the “side” lot line.

Figure II-3 Corner Lots Versus Interior Lots

- This figure is proposed to be revised to reflect the provisions of Section 24.1-220 which provide for a case-by-case determination of the rear and side yard on a corner lot.

Figure II-4 Sight Triangles

- This figure is proposed to be revised to make it clear that sight distance triangles apply at street intersections and at driveway/street intersections.

Figure II-7.1 Accessory Building Setback

- This new figure is proposed to depict the revised accessory building location standards set out in Section 24.1-273(b). The proposed revisions provide more flexibility in locating accessory structures in relation to principal buildings that have multi-plane rear facades.

Map III-1 Environmental Management Areas

- The former Environmental Management Overlay District regulations have been deleted from the Zoning Ordinance and are now contained in Chapter 23.2 – Chesapeake Bay Preservation Areas. Therefore, Map III-1 needs to be deleted.

Map III-2 Watershed Management and Protection Area

- As discussed previously, the Commission has recommended that WMP coverage not be deleted for the Jones Pond and Bethel Reservoir watersheds. Although these areas no longer serve as drinking water reservoirs, the Commission agreed with comments offered by several speakers that a conservative approach should be followed given the scarcity of water supply resources. Nevertheless, a new map is proposed in order to reflect the Newport News/York county boundary line adjustment that occurred in 2007.

Appendix B

Letter of Credit form

- The proposed revisions modify the forms to correct outdated names and references and to revise the location criteria for issuing banks to specify Hampton Roads or Richmond rather than naming individual localities.

Recommendation

I concur with the Planning Commission's recommendations on these amendments and believe that they are consistent with good zoning practice. The proposed changes will help clarify the intent and applicability of certain provisions and will address various questions and concerns that have been raised since the last comprehensive set of amendments was considered. These proposals represent about 75% of the list of amendments proposed in the referenced applications. In accordance with the Board's discussion, the remaining proposals will be referred to the ad hoc discussion groups for further review prior to scheduling them for any further formal consideration/action.

I recommend adoption of proposed Ordinance No. 08-17(R).

Carter/3337:jmc

Attachments

- Planning Commission Minutes – May 28 and June 11, 2008 and January 14, 2009 meetings
- Map of Naval Weapons Station property proposed for classification as RC-Resource Conservation
- Proposed Ordinance No. 08-17(R)

MINUTES
YORK COUNTY PLANNING COMMISSION
Work Session
York Hall East Room, 301 Main Street
May 28, 2008

MEMBERS
Christopher A. Abel
Nicholas F. Barba
Anne C. H. Conner
John R. Davis
Alexander T. Hamilton
Alfred E. Ptasznik, Jr.
John W. Staton

CALL TO ORDER

Chair Nicholas F. Barba called the work session to order at 6:30 PM.

ROLL CALL

The roll was called and all members were present with the exception of Mr. Davis and Ms. Conner. Staff members present were J. Mark Carter, Timothy C. Cross, Amy Parker, Earl Anderson, and James E. Barnett, Jr., County Attorney.

INTRODUCTION

Chair Barba stated the purpose of the work session was to discuss Application No. ZT/ZM-119-08, York County Board of Supervisors, to consider amendments to several sections of the York County Zoning Ordinance (Chapter 24.1, York County Code).

DISCUSSION

Mr. Carter reviewed each proposed change to sections of the Zoning Ordinance and offered to answer any questions.

Zoning Map – Establish an RC-Resource Conservation zoning classification for the approximately 83 acres of U.S. Naval Weapons Station property that was annexed into York County as part of a boundary line adjustment between the City of Newport News and York County which became effective July 1, 2007. Said property is located in the vicinity of the Naval Weapons Station entrance on Route 143 (Jefferson Avenue).

103, General rules of interpretation – delete all references to metric dimensions; provide for use of latest editions of referenced technical standards manuals.

104, Definitions

Home occupation – clarify that home occupation must be operated by and licensed to the resident.

Lot line, front – clarify that front lot line includes private street right-of-way lines.

Lot line, rear – reference corner, through and flag lot provisions.

Nightclub – exempt background entertainment in restaurants.

Stable, public – change term to Stable, commercial.

Mr. Ptasznik asked if dancing would be allowed in restaurants with background entertainment. **Mr. Carter** replied that if a restaurant requested to have a dance floor, it would need to apply for a Special Use Permit as that would classify as a nightclub.

Mr. Hamilton asked if the stable definition change also applied to the accessory uses. **Mr. Carter** said there are separate provisions in the ordinance that allows horse keeping as an accessory use in conjunction with a residential use.

106, Zoning districts and maps – add provision to establish RC-Resource Conservation as automatic initial zoning classification for any territory added to County's jurisdictional limits.

Mr. Abel asked for clarification that new property shifted into the jurisdictional boundaries of York County would automatically be zoned Resource Conservation (RC). **Mr. Carter** stated that was correct.

108, Filing fees – Establish \$50 fees for Administrative Modifications and for certain zoning certification requests; Revise refund procedures for withdrawn applications; Require developer payment of any review fee established by VDOT for traffic analysis review.

Mr. Carter added that because of the cost and time involved in providing additional information for zoning certification requests, the proposal to establish a \$50 fee would defray the cost involved to compile information for requests that seek more detailed information.

Mr. Ptasznik suggested that application fees minus a \$50 administrative processing fee should be reimbursed if an applicant withdraws an application before the first legal notice is run to help defray administrative costs. The Commission agreed that the language should be changed to include Mr. Ptasznik's suggestion.

Mr. Barba asked what the costs were for public hearing legal ads. **Mr. Cross** replied that the last ad, which referenced the proposed text amendments, cost over \$6,000 and ads for one or two applications could cost anywhere from \$250 to \$400.

109, Administration, enforcement, and penalties – revise citation procedures and penalty amounts per State Code provisions and maximums.

Mr. Ptasznik asked if the collection of fines is enforced through the court system. **Mr. Carter** replied that criminal penalties are enforced through the court system and civil penalties are summons typically issued through Zoning and Code Enforcement.

Mr. Ptasznik asked for clarification of what a homeowners' association would do if a lien was put on a property for code violations and what to do if a resident does not cut their grass. **Mr. Barnett** replied that once a judgment is documented by the court, it becomes a lien on the real estate in question and that homeowners' associations have provisions in their covenants to record a lien without needing a judgment from the court and that once violation letters are sent to the property owner with a reference to allow a 30-day appeal to the Board of Zoning, the county could rectify the violation (i.e., cutting the grass) and charge the fee to the homeowner.

Discussion continued about the difference between a code violation from the County and a violation within a homeowners association and the penalties associated with them.

114, Conditional zoning – allow proffer submission during Board public hearing on an application.

115, Special use permits – increase allowable Planning Commission review time to 100 days.

117, Certain utilities and facilities exempt – add Public Transit Shelters; require 25-foot buffer around pump stations.

200.1, Verification of access rights (new section) - require access rights to be verified prior to building permits on property without public street frontage.

Mr. Abel asked if this new section to the Zoning Ordinance to verify access rights was to avoid a parcel from becoming landlocked. **Mr. Carter** indicated that it was.

201, Subdivision and consolidation of lots – clarify to require attention to all dimensional requirements; establish provisions for subdivision of shopping center parcels.

Mr. Carter added that this proposed new section was to memorialize the long-standing interpretation and practice that allowed a shopping center to be subdivided to allow a major tenant to have separate ownership of its building and lot.

Mr. Barba asked if most large retail establishments want to own their own property. **Mr. Carter** replied that the only ones that have been insistent on owning their own property were Kmart at the Village Square shopping center, Ukrop's at the Williamsburg Marketcenter and Target at the Marquis development.

202, Lot frontage required – establish additional limitations on the creation of “flag lots.”

220, Requirements for corner lots – clarify rear yard determination process; relocate “sight triangle” provision to new section 226.

225, Special yard requirements – clarify “sight triangle” requirements; establish yard determination procedure for non-standard lots.

231, Exemptions from height regulations – Add electric substations to list of exceptions; distinguish eligibility for Board of Supervisors exception process vs. Board of Zoning Appeals variance.

233, Special height regulations for single family detached dwellings – allow residential sprinkler system as alternative to proximity to fire hydrants.

233.1, Special height regulations (new section) – allow single-family residential building height increases when “super-elevating” above flood hazard elevation.

Mr. Carter said that the Peninsula Housing and Builders Association had requested a change to the definition of building height in waterfront areas in the Zoning Ordinance to allow the height to be measured to the mid-point between the eaves and the ridge to allow for more building height instead of to the peak as it has been done. He said the County’s current method of measuring has been used for over 20 years and, in staff’s opinion, is much easier to understand and administer.

Mr. Abel asked what the maximum height if a foundation was 20 feet. **Mr. Carter** said the total height of the structure could only be 45 feet.

Discussion continued regarding height regulations and how other localities define building height and how building height is measured. **Mr. Staton** said as long as the guidelines are clear, there should not be any problems with interpreting the Zoning Ordinance guidelines.

242, Landscaping standards – correct discrepancy in landscape credit unit chart.

243, Transitional buffers – clarify buffer requirements for situations where property with nonconforming residential structure is being redeveloped for commercial use.

Mr. Staton asked if the transitional buffers also apply to property zoned Limited Industrial (IL). **Mr. Carter** clarified that it would apply to any location where a transitional buffer is required.

245, Greenbelts – exclude parallel utility easements greater than 20 feet wide from qualifying Greenbelt width.

251, Traffic management and analysis – clarify intersection Level of Service classification procedure.

260, General site design standards – exempt architectural/landscape lighting and certain streetlights from full-cutoff requirements; establish full-cutoff exemptions based on wattage ratings of different types of luminaires; establish light intensity maximum limits at perimeter property lines of development sites.

Mr. Carter referred to an email from a local engineer/site design consultant who encouraged the County to revisit the IES full-cutoff criteria as a blanket requirement for decorative project lighting. Mr. Carter said that if the standard is limited to a colonial style light fixture with fully enclosed, horizontally mounted lamps with flat glass lenses, the policy should not be compromised. He

added that the proposed maximum lighting standards at property lines are consistent with standards that have been included as conditions for Special Use Permit approvals and are proposed to be applied as a general standard.

261, Public service facility standards – require 20-foot separation between trash dumpsters and commercial buildings.

271, Residential accessory uses – require sight-triangle compliance at private driveway/street intersections; allow approval of 8-foot fence for screening purposes on residential property; define “finished side” of fences.

Discussion continued regarding the “finished side out” provisions that are proposed to be modified to better define what constitutes the correct placement of the fencing relative to structural support members. **Mr. Carter** said that the Zoning Administrator can also approve alternatives in extenuating circumstances.

272, Commercial and industrial accessory uses – define “finished side”; allow approval of increased fence height for screening purposes.

273, Location, height and size requirements – increase locational options for accessory structures in rear yards; specify setback measurement criteria for in-ground and above-ground pools.

281, General requirements for home occupations – clarify that home occupation is a business conducted by the occupant of a residence; provide for Board of Supervisors approval of parking requirements/limits for home occupations requiring special use permits.

Mr. Barba asked if the parking limit of five (5) cars for home occupations would no longer be required. **Mr. Carter** clarified that the Board of Supervisors would have the ability to establish a limit based on each individual application.

283, Home occupations by special use permit – allow Board of Supervisors to approve extension of on-site employee authorization as a “minor modification.”

306, Table of land uses – amend Table of Land Uses to allow: Bed and Breakfast by Special Use Permit in RC – Resource Conservation; require Special Use Permit for helipads in IL and IG Districts; require Special Use Permit for soil stockpiling operations.

307, Prohibited uses – list containerized cargo unit storage, except as specifically authorized, as a Prohibited Use.

Mr. Abel asked what provisions are there for PODS. **Mr. Carter** replied that the current provisions allow a resident to have a POD on personal property for sixteen (16) days.

374, HRM-Historic Resources Management Overlay district – add reference to State-managed resource database; update references to resource study guidelines; revise description of Phase I, II

and III study requirements; require protection of resource sites during construction; require certification of resource study preparation procedures.

375, TCM – Tourist Corridor Management Overlay District – prohibit neon tubing in signs or as building accents.

376, WMP- Watershed Management and Protection Area overlay – remove Jones Pond and Bethel Reservoir watersheds; allow new septic systems if owner of watershed approves.

Mr. Carter reminded the Commission of a public hearing comment at the May 14 meeting where a citizen recommended that the Jones Pond and Bethel Reservoir watersheds continue to be protected by the Watershed Management and Protection Area overlay. Mr. Carter added that Environmental and Development Services staff has been consulted and they opined that the Chesapeake Bay Management provisions provide adequate protection to those areas.

377, Yorktown Historic District overlay – expand the list of minor modifications allowed with administrative approval and clarify certain items requiring HYDC approval.

402, Open space (cluster) development – require conventional subdivision setback dimensions for lots on the perimeter of a cluster development; require 45-foot perimeter separation area to remain undisturbed except for stormwater facility as approved by abutting property owners.

Mr. Carter said the added language would prevent future problems regarding setbacks for cluster developments and referred to the Running Man Section 10B development where a 45-foot perimeter separation area along the perimeter of the project now has no trees and a linear BMP running through it. **Mr. Ptasznik** added that when the development was proposed, the buffer was to remain and no additional BMP would be needed to handle the proposed development. He said that the property was clear cut and a concrete BMP was added.

Discussion continued regarding buffer requirements for proposed developments in the County and **Mr. Carter** added that under the proposed language if a developer wants to use their perimeter area for a BMP that approval would have to be given from the adjoining property owners.

407, Standards for Accessory apartments – clarify requirements for recording conditions/restrictions.

419, Standards for forestry – correct an inaccuracy in buffer width description.

440, Standards for temporary sale of seasonal commodities – increase allowable term from 90 to 120 days; provide exemption to surety-posting requirement.

444 and 446, Standards for temporary office, construction, business trailers – provide exemption to surety-posting requirement.

481, Standards for shopping centers – allow “neighborhood” shopping center to include up to 15,000 square feet of floor area if community shopping center parking standards are met.

490.1, Soil stockpiling - establish special use permit performance standards for soil stockpiling operations.

495, Standards for storage, handling and disposal of fly ash – establish an exemption from special use permit review for “beneficial reuse” of fly ash pursuant to state definitions and requirements.

498, Submission requirements – require developer to provide homeowners association with certain cost and lifecycle information related to HOA-owned facilities; require proffer-related covenants to be reviewed / approved by County.

505, Review and approval procedures for site plans – define the “vesting” threshold as the issuance of Land Disturbing Activity Permit rather than Building Permits.

601, General provisions (off-street parking) – establish provision allowing zoning administrator to authorize the use of “shopping center” parking ratios for certain other types of retail centers.

604, Calculation of required parking – provide authority for zoning administrator to require parking to be constructed in “reserve” area when needed to meet demand.

702, General sign regulations – modify design standard for V-shaped signs; clarify wall sign standards for tenant spaces in shopping center; allow sign height increases based on elevation of adjoining roadway; allow sign permit issuance upon site plan approval, rather than business license.

704, Temporary signs – allow “grand opening” signs for changes in ownership of businesses; allow “now-hiring” signs for 60-day term.

706, Off-premises directions signs – allow off-premises real estate open house signs in rights-of-way signs.

Mr. Carter noted the real estate community’s request to rescind the current prohibition of the placement of “open house” signs in the VDOT right-of-way, which staff does not recommend a change as it would detract from the efforts to enhance the appearance of the County’s roads and because VDOT does not allow them. He said that staff has suggested the requirements for open house signs to be placed away from the 10-foot setback requirement on private property be changed to assist with better visibility. The Commission agreed that the current County restrictions prohibiting real estate open house signs in rights-of-way should be retained.

707, Exempt signs – allow exceptions to general sign standards; increase construction signage allowance to 3 signs per site; clarify ballpark sign provisions; increase allowances for on-site directional boards.

708, Community identification signs – allow signs on each side of entrance.

710, Prohibited signs – modify to allow electronic changeable message signs with message change frequency as often as every four seconds.

Mr. Carter referred to a request by the owner of the Kiln Creek Shopping Center that revisions be added to allow for the electronic message board to change every four (4) seconds instead of the current limitation to once every 24 hours. He noted that staff does not recommend approval of the requested change because of traffic safety and aesthetic concerns.

Mr. Abel inquired about the rate of change for the video signs on Interstate 64 near the Hampton Roads Bridge Tunnel. **Mr. Carter** responded that the changeable message billboards similar to a television screen change as often as every four (4) seconds which is the standard used by VDOT and also the requested rate of change by the owner of Kiln Creek Shopping Center.

Mr. Barba opined that if every tenant in the Kiln Creek Shopping Center had a message for a 24-hour period, it would be more valuable than changing every four (4) seconds.

Mr. Hamilton asked if other businesses would be able to request a changeable message sign if this proposal were approved.

Mr. Carter noted that if this special signage allowance is provided, staff recommends that it be limited to only large shopping centers that are not in the TCM-Tourist Corridor Management overlay district.

More discussion followed regarding the implementation of what the message/image frequency should be and what business centers would be allowed to have those types of signs.

The Commission consensus was to propose the changeable message/image frequency of every 30 minutes and to only allow large shopping centers (community, specialty) to have the changeable message signs as long as they are not in the TCM-Tourist Corridor Management Overlay district.

801/802, Nonconforming uses / nonconforming structures – modify, per state code, to allow 4-year re-establishment period in the event of damage/destruction associated with federally declared disaster; clarify applicability of Floodplain Management requirements.

805, Validity of previously-issued permits – reference administrative setback adjustment provisions for subdivisions in the review/approval process when lot size or lot width amendments occur.

Appendix Figures: I-2 and II-3 – clarify terminology and side/rear yard designations; II-4, add reference to private drives; II-7.1(new) – accessory structure locations; III-2 – revised Watershed Management/Protection Overlay map;

Letter of Credit forms – correct out-of-date information.

By consensus the members agreed with the modifications to the proposed amendments and agreed to take a vote at the next meeting to consider adoption of proposed Resolution No. PC-08-15(R).

As requested at the May 14 Planning Commission meeting, **Mr. Abel** inquired about the status of the Marquis development and how the County can avoid similar problems in the future with phased development. **Mr. Carter** replied that when a development is approved through Special Use Permit or site plan procedures, there is no requirement that the project be built but, if it is built, there are requirements that need to be met regarding layout and architectural design. He said that any new developer taking over the Marquis development will be required to build what has already been approved unless a change to the conditions of approval is requested and approved by the Board of Supervisors.

Mr. Abel asked if changes regarding sequencing could be looked at to ask a developer to change the way the phasing is done to build the “attractive” portion of the project first. **Mr. Carter** replied that he was not aware of any prohibition on conditions for sequencing construction in a certain way.

Some discussion followed regarding the sequencing aspect of large developments. **Mr. Carter** clarified that the County could not choose or limit the retailers that occupy a commercial property zoned/authorized for retail use.

ADJOURNMENT

There being no other items of discussion, Chair Barba adjourned the work session at 8:47 p.m.

SUBMITTED:

JoAnn R. Witt, Secretary

APPROVED:

Nicholas F. Barba, Chair

DATE: _____

Application No. ZT/ZM-119-08, York County Board of Supervisors:
Consider text amendments to several sections of the York County Zoning Ordinance (Chapter 24.1, York County Code) [*Tabled at the May 14 Planning Commission Meeting*].

Mr. Carter noted the Commission's proposed revisions that were discussed at the May 28 work session. Specifically, these included changes to Section 24.1-108, Filing Fees, Section 24.1-260, General site design standards, Section 24.1-710, Prohibited signs, and other sections addressed by the general public such as building height for waterfront properties, the removal of Jones Pond and Bethel Reservoir from the Watershed Management and Protection Area (WMP) overlay district and the regulations for off-premises directional real estate open house signs. He added that staff's recommendation is that the Commission forward the proposed amendments as revised to the Board of Supervisors with a recommendation of approval through the adoption of proposed Resolution No. PC08-15(R).

Chair Barba reopened the public hearing.

Donald Phillips, 200 Dogwood Court, said that Jones Pond and the Bethel Reservoir had been public water sources in the past and could be potential sources of water in the future for consumption as well as emergency services. He opined that the protection from the Chesapeake Bay Preservation Area regulations would not offer as much protection as do the Watershed Management and Protection Area provisions and asked the Commission to deny the proposed request to remove them. He also asked that the proposed administrative approval for septic systems near watersheds be removed.

Allen Twedt, 11230 Smoketree Drive, Richmond, spoke on behalf of the owner (Kiln Creek Associates) of the Kiln Creek Shopping Center. He addressed the Commission regarding electronic changeable message signs, stating that there are numerous scientific studies by Penn State, the Federal Highway Administration, and others that have consistently proven that a reasonable change interval for electronic changeable message boards is somewhere between 6 and 8 seconds for large billboards and less for smaller signs along commercial corridors. He said that in 1993 he approached VDOT, which used to prohibit such signs, and convinced them to change the regulations. He opined that the Zoning Ordinance should conform to code state and federal requirements. Mr. Twedt opined that a thirty-minute change interval is not appropriate and that any interval over ten-seconds would actually have a negative effect.

Mark Short, 596 Blount Point Road, Newport News, introduced himself as the attorney representing the owner (Kiln Creek Associates) of the Kiln Creek Shopping Center. He said that the four-second change interval was requested in order to correspond with the interval permissible under state and federal regulations. He noted that the Kiln Creek Shopping Center has thirty one (31) tenants and he opined that with a 30-minute change frequency they would not all be accommodated within an 8-hour workday. He noted the permitted change intervals in the City of Newport News and Gloucester County are 3 seconds and 4 seconds respectively. He agreed with the recommendation that a message board be fixed with no flashing letters or animation but did not agree with the Commission's recommendation for a 30-minute change interval. He said that studies

have already been done by VDOT regarding safety and asked that the change interval be reduced.

Mr. Kelly Place, 213 Waller Mill Road, said that with current drought concerns it would not be in the County's best interest to remove Jones Pond and the Bethel Reservoir from the WMP overlay district. He noted that both had high drinking water quality. He provided the Commission with a disk copy of "*Protecting the Source, Conserving Forests to Protect Water*" and "*Land Conservation and the Future of America's Drinking Water*" from the American Water Works Association. He asked that the Commission deny the proposal to remove these water sources from the WMP overlay district and opined that a decision to remove them should be reviewed by the Department of Environmental Quality (DEQ) and the Environmental Protection Agency (EPA).

Chair Barba asked if there were others who wished to speak. Hearing none, he closed the public hearing.

Ms. Conner asked if any protections to Jones Pond and the Bethel Reservoir would be lost if they were removed from the WMP overlay district. **Mr. Carter** replied that that some water quality analysis protections would cease as well as the prohibition of allowing bulk fuel storage in the buffer area but that the County's Department of Environmental and Development Services staff have been consulted and believe that the Chesapeake Bay Preservation Area regulations will provide ample water quality protection, particularly given the federal land ownership around the water bodies and the extent of existing development already in place..

After much discussion among the Commissioners regarding the proposal to remove Jones Pond and the Bethel Reservoir from the WMP overlay district, the Commission came to a consensus to recommend keeping them in the WMP overlay district.

The Commission began discussion about an acceptable rate of change for electronic changeable message boards as well as letter size and what a reasonable recommendation could be to promote businesses and to not cause safety concerns.

Mr. Carter reminded the Commission that concerns expressed during the work session were driver distraction and noted that there was a strong possibility that a rate of change measured in seconds, rather than minutes, could cause a safety hazard as drivers look for the sign to change. He recommended that the Commission choose a change interval on the order of minutes rather than seconds and said it would be impossible and unwise to try to accommodate every shopping center based on the number of tenants it had.

Discussion continued regarding the change interval for electronic changeable message signs. Chair Barba opined that a 15-minute change interval appeared to be a reasonable compromise, which Mr. Short had indicated would be acceptable in his letter to the Commission. **Mr. Ptasznik** disagreed, opining that it should be around ten seconds and certainly no more than a minute.

Ms. Conner said that she would accept the 15-minute interval as a compromise but added that she believes such decisions should be based on empirical research and not on anecdotal evidence and suppositions.

Mr. Abel moved adoption of Resolution No. PC08-15(R) as revised to keep Jones Pond and the Bethel Reservoir in the Watershed Management and Protection Area overlay district, to allowable changeable message signs with a change frequency of no less than 15 minutes and no limitations on letter height.

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. ZT/ZM-119-08 TO AMEND THE YORK COUNTY ZONING MAP TO CLASSIFY AS RC-RESOURCE CONSERVATION CERTAIN PROPERTY ANNEXED INTO THE COUNTY'S JURISDICTIONAL BOUNDARIES AND TO AMEND CHAPTER 24.1, ZONING, YORK COUNTY CODE, TO REVISE VARIOUS SECTIONS OF THE ZONING ORDINANCE TEXT TO ENSURE CONSISTENCY WITH OTHER SECTIONS OF THE YORK COUNTY CODE, TO CORRECT CERTAIN REFERENCES AND CONFORM PROVISIONS TO THE CODE OF VIRGINIA, AND TO CONSIDER REVISED REGULATIONS PERTAINING TO: ARTICLE I - IN GENERAL; ARTICLE 11 - GENERAL REGULATIONS; ARTICLE III - DISTRICTS; ARTICLE IV - PERFORMANCE STANDARDS FOR USES; ARTICLE V - SITE PLANS; ARTICLE VI - OFF-STREET PARKING AND LOADING; ARTICLE VII - SIGNS; ARTICLE VIII - NONCONFORMING USES; APPENDIX A - DIAGRAMS, TABLES AND FIGURES; AND, APPENDIX B - SAMPLE AGREEMENTS.

WHEREAS, this application has been sponsored by the Board of Supervisors to allow consideration of amendments to certain sections and provisions that are in need of clarification and adjustment; and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 11th day of June, 2008, that Application No. ZT/ZM-119-08 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to amend the York County Zoning Map and Text as shown and described in the report to the Planning Commission dated May 29, 2008 as revised to keep Jones Pond and the Bethel Reservoir in the Watershed Management and Protection Area overlay district, to allow community, regional, and specialty shopping centers to have electronic changeable message signs with a change frequency of no less than 15 minutes and no limitations on letter height.

On roll call the motion was approved (6:0)

Yea: (6) Ptasznik, Abel, Conner, Davis, Hamilton, Barba
Nay: (0)

Application Nos. ST-14-09 and ZT-122-09, York County Board of Supervisors and ZT-123-09, York County Planning Commission: Consider amendments to the following sections of the York County Subdivision Ordinance (Chapter 20.5) and the York County Zoning Ordinance (Chapter 24.1), York County Code):

Chapter 20.5 – Subdivisions

- **31.1. Terms of validity** – add mandatory provisions per 2008 State Code changes concerning term of validity (5 years) for an approved Preliminary Plan for a phased subdivision and for final subdivision plats.

Chapter 24.1 - Zoning

- **109, Administration, enforcement, and penalties** – increase maximum criminal penalty and civil fine amounts per 2008 State Code provisions; Add language per 2008 State Code amendments to provide a procedure by which the zoning administrator may request inspection warrants to assist in enforcement proceedings involving or occurring within dwelling units.
- **233, Special height regulations for single family detached dwellings** – add to the provisions allowing height increases to 40 feet specific design standards for access drives to support emergency services vehicles and for building accessibility. Add provisions allowing automatic fire sprinkler systems as an alternative to the requirement that the increased height structure be within 600 feet of a fire hydrant.
- **233.1, Special height regulations for single family dwellings in 100-year flood hazard zones (new section)** – allow single-family residential building height to be increased to a maximum of 45 feet when “super-elevating” above flood hazard elevation. Allow one foot of additional single-family dwelling building height for every one foot of first floor elevation above the normal 100-year flood hazard elevation, up to a maximum of 45 feet and subject to a one for one increase in building setback, the inclusion of an automatic sprinkler system, adherence to access drive design standards, and location of the structure within 600 feet of a fire hydrant.
- **306, Table of land uses** – amend Table of Land Uses, Category 10 (Commercial/Retail) to allow: Home improvement centers in the GB-General Business district.
- **321, 322, 323 and 324 Residential districts** –insert reference to procedures for exceeding the 35 foot building height limit.
- **327, Yorktown Village Activity District** – revise the sequence for processing applications to provide for review and approval of the land use application by the Board of Supervisors before, rather than after, the review of architecture by the Historic Yorktown Design Committee.
- **801/802, Nonconforming uses / nonconforming structures** – clarify to indicate that owner initiated demolition/rebuilding of nonconforming uses and structures must conform to current requirements except when the work is needed as a result of damage from a natural disaster or other cause beyond the owner’s control; add language enabled by 2008 State Code changes to distinguish between “illegal” and “nonconforming” buildings, thus allowing structures with some nonconformity to be legalized without need for a variance if constructed in accordance with a building permit, or where the nonconformity has existed for a period of at least 15 years with taxes having been paid on the structure.

- **901, Powers and duties** – add language tracking 2008 State Code changes stating that properties for which variances have been issued shall thereafter be deemed “conforming” as to any use permitted by the variance.
- **903, Procedures** – add language enabled by 2008 State Code changes to allow violations of residential dwelling unit occupancy limits to be cited as frequently as every 10 days.

J. Mark Carter, Assistant County Administrator, summarized the staff report to the Commission dated December 26, 2008, in which the staff recommended that the Commission forward the proposed amendments to the Board of Supervisors with a recommendation of approval subject to the conditions contained in proposed Resolution No. PC09-3

Mr. Fisher, commented that the proposal to change the building height notation in the tables of dimensional standards for residential zoning districts might cause rather than alleviate confusion for property owners and architects designing new homes. He said that whether the maximum building height is listed as 35 or 40 feet in the final document, the exceptions and/or conditions would need to be very clearly noted to avoid confusion. **Mr. Carter** replied that a prominent footnote in the Ordinance could alleviate that concern.

Mr. Fisher, commented that the proposal to require certain nonconforming structures to be brought into conformance with the Statewide Building Code could be cost-prohibitive to the owner and causes him some concern.

Mr. Fisher, again referencing Section 24.1-233.1, asked if the Peninsula Housing and Builders Association (PHBA) had expressed any objections to the proposed requirement for single-family detached homes taller than forty (40') feet in a flood zone to be equipped with automatic fire sprinkler systems. **Mr. Carter** noted that Robert Duckett, Director of Public Affairs for the PHBA was present and would be able to address that question and he stated that all of the proposed changes were discussed with Mr. Duckett in a meeting with the Fire Chief and it was his understanding that no concerns were expressed.

Mr. Fisher asked if homes that are not within 600 feet of a fire hydrant would have adequate water pressure for an automatic fire sprinkler system and opined that existing water mains may not be large enough to accommodate the required water pressure. He asked if automatic fire sprinkler systems were a requirement of the Building Officials and Code Administrators International Inc. (BOCA) or something the Fire Chief considers to be desirable. **Mr. Carter** responded that the fire sprinklers are not required by the BOCA code but are highly recommended by the Fire Department for structures that are forty (40) feet or higher. He noted that it was a safety feature for occupants in those dwellings as well as for those responding to a possible incident. **Mr. Fisher** asked if other localities had a similar requirement. **Mr. Carter** responded that he did not know.

Mr. Abel, asked why the existing review process for development in Yorktown was set up the way it was, with proposed developments going through architectural review before the use itself is considered by the Board of Supervisors. **Mr. Carter** indicated that the basic thought was that the Board of Supervisors should be making the last decision on a matter. He noted, however, that there may not have been enough consideration at the time of the fact that not many uses are allowed as a matter of right in historic Yorktown and that the specific zoning parameters such as building setbacks be set on a case-by-case basis by the Board. He noted that without those parameters having been set, it may be impossible to develop the final architectural proposal for a project.

Mr. Abel asked what the next step would be if the Historic Yorktown Design Committee (HYDC) were to deny an application that had already been approved by the Board of Supervisors. **Mr. Carter** responded that the decision of the HYDC could be appealed to the Board of Supervisors as specified by the Zoning Ordinance. Mr. Carter explained that unless an appeal is filed, a project that is denied by the HYDC under the proposed amendments cannot be built.

Chair Hamilton opened the public hearing.

Gary Freeman, 120 Ballard Street, said that he supports the Yorktown Design Guidelines, although the citizens had strong reservations at the time. He opined that the current process is good because it allows the citizens to be involved early in the process. He expressed concern that the voice of the citizens in the Yorktown village would be diluted if Board of Supervisors review were to precede architectural review as proposed, and he asked that the sequencing of the processes not be changed.

David Brown, 213 Nelson Street, opposed the proposed change in the sequencing of review processes for projects in Yorktown. He said the original process was set up to give Yorktown village residents a voice in the procedure as most residents did not originally support having architectural review guidelines. He said that changing the procedure would give the Board of Supervisors final authority over development in the village. Mr. Brown stated that if the Board of Supervisors were to deny an application then the process would end there without any input from the HYDC, and that if the Board were to approve an application, the authority of the HYDC would be reduced. He said that the citizens in the Yorktown village should have first review of an application since they would be the ones affected by a proposal.

Mr. Abel asked Mr. Brown how long ago the residents in the community became aware of the proposal to change the review process and asked if the Yorktown residents would benefit from having this section of the proposed amendments tabled. **Mr. Brown** replied that he became aware of it the previous Saturday and that it would be beneficial to table the proposed changes to allow for other residents to be involved.

Ira Krams, 105 Church Street, expressed his opposition to the changes in the review process. He said the Historic Yorktown Design Guidelines are a result of the hard work and input from the Yorktown residents and noted that after four (4) years, the guidelines are working as they were meant to. He said the proposal to change the review process should be denied.

Beverly Krams, stated that she resides at 105 Church Street, and owns the property at 107 Church Street. She said she was surprised to see the Notice of Public Hearing in the January 9 edition of the Daily Press for proposed changes to the architectural review process. Stating that she served for a time on the committee that drafted the Yorktown Design Guidelines, she opined that the process was intended to give Yorktown residents the first opportunity to provide meaningful input into proposals that affect the property owners in the village. She added that the Yorktown village has a unique zoning classification and is held to a higher standard to protect the historic village. Ms. Krams opined noted two recent proposals that went before the Design Committee were handled just as they should have been and that the current review process works just as it was intended to. She asked that the proposed change be denied or at least tabled to allow the residents to speak with their elected representatives.

George Bennett, 119 Smith Street, asked that the proposal to change the HYDC review process be tabled or denied, and he recommended that the Design Committee be enlarged from three (3)

to five (5) members to prevent decisions from being made by as few as two people in the event that a committee member is not able to attend the meeting.

Robert Duckett, 302 Sommerville Lane, Director of Public Affairs for the Peninsula Housing and Builders Association, thanked the County staff for its flexibility and consideration regarding changes to the special height regulations for single family dwellings in the 100-year floodplain. He said flexibility would allow custom homes to have a nicer architectural appearance with a pitched roof. He also asked that costly indoor fire sprinkler systems be required only for such homes that are not within 600 feet of a fire hydrant.

Chair Hamilton asked if there were others who wished to speak. Hearing none, he closed the public hearing.

Mr. Abel said that aside from the proposed YVA district amendments, he did not have any objections to the proposed text amendments. He said the proposal to change sequencing of the approval processes is an emotional issue for the residents of Yorktown village. He noted that the Commission had heard from four residents who oppose the change but had not heard from any of the Design Committee members. He also expressed concern about the compressed period between advertising and conducting the public hearing, and he recommended that the Commission take action on the rest of the text amendments while tabling the YVA amendments to a future meeting to allow for additional public comment. He then asked if the section could be removed from the package of text amendments.

Mr. Barnett stated that there was nothing prohibiting the Commission from deferring action on any component of the package of text amendments.

Ms. Conner believed that the proposed change to the architectural review process might not be beneficial to the Yorktown residents and that other citizens should be given the opportunity to speak on the proposal, and she agreed that it should be tabled.

Mr. Ptasznik stated that while he does not see a problem with the proposed changes to the YVA provision, he agreed that they should be tabled to allow for additional review, consideration, and public comment. He also opined that the proposed requirement for automatic fire sprinkler systems in homes that are over 35 feet and more than 600 feet from a fire hydrant was probably a good idea.

Mr. Barba indicated that further review of the proposed sequencing changes for the Historic Yorktown Design Committee would be beneficial and agreed with tabling that section while moving forward with the other proposed text amendments.

Mr. Fisher agreed with the recommendation to table the proposal to change the sequencing to allow for more citizen input. With regard to the indoor residential sprinkler systems, he opined that they should not be required in homes that are over forty (40) feet in height in a flood zone as long as there is a fire hydrant within 600 feet.

Mr. Carter suggested that if the Commission desires, it can also table the proposed amendments related to sprinkler systems to allow time to meet with the Fire Chief or have him attend a meeting to address these concerns.

Mr. Fisher recommended tabling the proposed amendments to Sections 24.1-233.1 and Section 24.1-327, YVA-Yorktown village activity district.

Discussion ensued regarding the procedures for tabling these two sections. Mr. Carter noted that since there are no applications scheduled for the February Planning Commission meeting, the Commission could cancel that meeting and continue the public hearing on the two sections to the March 11 meeting, which would allow for at least a full month to notify and have discussions with Yorktown residents on the proposed YVA amendments. .

Mr. Abel made a motion to reopen the public hearing.

Mr. Abel made a motion to continue the public hearing on the following sections of the proposed text amendments to the March 11, 2009 Planning Commission meeting at 7:00PM at York Hall, 301 Main Street, Yorktown:

- **24.1-327, Yorktown Village Activity District** – revise the sequence for processing applications to provide for review and approval of the land use application by the Board of Supervisors before, rather than after, the review of architecture by the Historic Yorktown Design Committee.
- **24.1-233.1, Special height regulations for single family dwellings in 100-year flood hazard zones (new section)** – allow single-family residential building height to be increased to a maximum of 45 feet when “super-elevating” above flood hazard elevation. Allow one foot of additional single-family dwelling building height for every one foot of first floor elevation above the normal 100-year flood hazard elevation, up to a maximum of 45 feet and subject to a one for one increase in building setback, the inclusion of an automatic sprinkler system, adherence to access drive design standards, and location of the structure within 600 feet of a fire hydrant.

On roll call the motion was approved (6:0)

Yea: (6) Ptasznik, Conner, Abel, Fisher, Barba, Hamilton
Nay: (0)

Mr. Abel moved adoption of Resolution No. PC09-3(R)

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATIONS TO AMEND CHAPTER 20.5, SUBDIVISIONS, YORK COUNTY CODE, TO INCORPORATE STATE CODE CHANGES CONCERNING THE TERM OF VALIDITY FOR PRELIMINARY PLANS AND FINAL PLATS AND TO AMEND CHAPTER 24.1, ZONING, TO INCORPORATE STATE CODE CHANGES PERTAINING TO ENFORCEMENT AND PENALTIES, ILLEGAL AND NONCONFORMING BUILDINGS, AND THE EFFECT OF VARIANCES; TO CLARIFY, REVISE, AND SUPPLEMENT THE PROVISIONS ALLOWING INCREASES IN SINGLE-FAMILY DWELLING UNIT HEIGHTS; TO REVISE THE TABLE OF LAND USES TO LIST HOME IMPROVEMENT CENTERS AS A PERMITTED USE IN THE GB DISTRICT; TO CHANGE THE SEQUENCE FOR LAND USE AND ARCHITECTURAL REVIEW IN THE YVA-YORKTOWN VILLAGE ACTIVITY DISTRICT, AND TO CLARIFY AND SUPPLEMENT THE PROVISIONS DEALING WITH NONCONFORMING USES AND STRUCTURES

WHEREAS, it has come to the attention of the Board of Supervisors and the Planning Commission that certain sections of Chapters 20.5 and 24.1 of the York County Code are in need of clarification and adjustment; and

WHEREAS, the Board has sponsored Application Nos. ST-14-09 and ZT-122-09 and the Planning Commission has sponsored Application No. ZT-123-09 to allow these proposed changes to be formally considered; and

WHEREAS, the applications have been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on the proposed amendments;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 14th day of January, 2009, that it does hereby forward Application Nos. ST-14-09, ZT-122-09, and ZT-123-09 to the York County Board of Supervisors with a recommendation for approval of the following amendments to Chapters 20.5 and 24.1 of the York County Code:

Subdivision Ordinance Amendments

Sec. 20.5-31.1 Terms of Validity

- (a) Notwithstanding the provisions of Sections 20.5-28(d) and 29(d), if at the end of three (3) years from the date of approval of a preliminary plan a subdivider has not submitted a final subdivision plat, or has not diligently pursued approval of a submitted final plat, then the agent may, upon ninety (90) days written notice by certified mail to the subdivider, revoke the preliminary plan approval. Diligent pursuit of approval of the final subdivision plat shall mean that the subdivider has incurred extensive obligations and substantial expenses relating to the submitted final subdivision plat or modifications thereto. The agent's written notice shall cite the specific facts upon which the revocation is based. In any event, when a final subdivision plat has been timely submitted but not approved, the maximum term of validity for the associated preliminary plans shall be five (5) years, except as may be provided below.
- ~~(b) Once an approved final subdivision plat for all or a portion of the property of a multiple phase development is recorded pursuant to Code of Virginia § 15.2-2261, the underlying preliminary plat shall remain valid for a period of five (5) years from the date of the latest recorded plat of subdivision for the property.~~
- ~~(c) An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), shall remain valid for an indefinite period of time unless and until any portion of the property is subject to a vacation action as set forth in Code of Virginia §§ 15.2-2270 through 15.2-2278.~~
- ~~(bd) Following the expiration or revocation of any preliminary plat pursuant to the preceding subsections (a) above, any subdivision plan considered for the subject property shall be submitted and processed in accordance with all applicable procedures for new submissions.~~

Zoning Ordinance Amendments

Sec. 24.1-109. Administration, enforcement, and penalties.

- (a) The zoning administrator or designated agent is hereby authorized, on behalf of the board, to administer and enforce this chapter. Such authority shall include the ability to make official interpretations of this chapter and the zoning maps as described in section 24.1-110 and to order, in writing, the remedy of any condition found in violation of this chapter, and the ability to bring legal action to ensure compliance with its provisions, including injunction, abatement, or other appropriate action or proceeding.

The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and, if such sworn testimony establishes probable cause that a zoning ordinance violation within a dwelling unit has occurred, may request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling unit for the purpose of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant pursuant to this section.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of any provision of this chapter that limits occupancy in a residential dwelling unit, which is subject to a civil penalty as prescribed in subsection (c) below, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the county attorney petition the judge of the general district court for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

- (b) All departments, officials and employees of the county which are vested with duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits for uses, buildings or purposes only when they are consistent with the provisions of this chapter. Any such permits, if issued in conflict with the provisions of this article, shall be null and void.
- (c) *Penalties.* Violating, causing, or permitting the violation of, or otherwise disregarding any of the provisions of this chapter by any person, firm or corporation, whether as principal, agent, owner, lessee, employee or other similar position shall be unlawful and is subject to the following:
- (1) Criminal sanctions. Upon conviction, any such violation shall be a misdemeanor punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00). If the violation is uncorrected at the time of the conviction, the court may order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time

period shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ~~ten (10) thirty (30)~~ day period shall constitute a separate misdemeanor offense for each ~~ten (10) thirty (30)~~ day period punishable by a fine of not less than ~~one hundred (\$100) ten-dollars (\$10.00)~~ nor more than one thousand ~~five hundred~~ dollars (~~\$1,500 \$1,000.00~~).

Any conviction resulting from a violation of the provisions regulating the number of unrelated persons living as a "family" in a residential dwelling shall be punishable by a fine of up to \$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to ~~\$2,000~~ \$5,000, and any subsequent failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to \$7,500 ~~\$2,500~~. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated individuals in a residential dwelling unit shall not be punishable by a jail term. (reference Section 15.2-2286.A.5., COV)

- (2) *Injunctive relief* Any violation or attempted violation of this chapter may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceedings for relief.
- (3) *Civil fines:*
 - a. Any person summoned or issued a ticket for a violation of this chapter listed in subsection (b) below may make an appearance in person or in writing by mail to the county treasurer prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established in this section for the offense charged, in lieu of criminal sanctions. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. If a person charged with scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law.
 - b. A civil penalty is hereby established for a violation of any offense listed below in the amount of ~~two one~~ hundred dollars (~~\$200.00~~~~100.00~~) for any one (1) violation for the initial summons and ~~five two~~ hundred ~~fifty~~ (~~\$500.00~~~~250.00~~) for each additional summons:
 1. Constructing, placing, erecting, installing, ~~or~~ maintaining, operating, or establishing an accessory structure or use in violation of section 24.1-270 et seq.
 2. Constructing, placing, erecting or displaying a sign in violation of section 24.1-700 et seq.

3. Erecting, altering, or changing use or occupancy of any building, structure, or premises without first obtaining a zoning certificate or certificate of zoning compliance in violation of section 24.1-107.
 4. Failure to perpetuate and maintain all landscaping, screening, and fencing materials required by this chapter in violation of section 24.1-242.
 5. Operating, conducting or maintaining a home occupation in violation of Article II – Division 8, Home Occupations.
 - ~~6. Occupying, or permitting to be occupied, a single-family dwelling by more than four (4) unrelated individuals in violation of the definition of "Family" in section 24.1-104.~~
 67. Failure to observe the requirements for keeping sight triangles, as described in section 24.1-220(b), free of obstructions.
- c. Each day during which a violation is found to exist shall be a separate offense. However, in no event shall specified violations arising from the same set of operative facts be charged more frequently than once in a ten (10) day period and in no event shall a series of such violations result in civil penalties which exceed a total of more than ~~five~~three thousand dollars (~~\$5,000.00~~\$3,000.00). When such civil penalties total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.
- d. No provisions herein shall be construed to allow the imposition of civil penalties for:
1. enforcement of the Uniform Statewide Building Code;
 2. activities related to land development;
 3. violations of the erosion and sediment control ordinance;
 4. violations relating to the posting of signs on public property or public rights-of-way; or
 5. violations resulting in injury to any person or persons.

Sec. 24.1-233. Special height regulations for single-family detached dwellings in excess of thirty-five feet (35').

Pursuant to the Residential District regulations set out in Article III, Division 2, of this Chapter, ~~For single-family detached~~ dwelling units may be constructed to a height of 40 feet, provided however, that for any structure in excess of thirty-five feet (35') in height, the following requirements apply:

- (a) Exterior access to both the roof and the uppermost occupied story shall be no higher than thirty feet (30'). The building and site shall be designed and maintained to ensure there

are no obstructions that would impede or prevent access by ground ladders or aerial ladder devices to the uppermost story or roof area.

- (b) Building plans and a site layout plan shall be submitted for review and approval by the Department of Fire and Life Safety fire chief to ensure appropriate accessibility around the structure for firefighting/rescue operations by fire and rescue personnel and apparatus and vehicles where appropriate. for effective fire containment and control of the building.The minimum site design requirements shall be:

- (1) the structure shall be served by an access drive not less than fourteen feet (14') in width with two-foot (2') compacted/treated shoulders capable of supporting fire and rescue apparatus and vehicles.
- (2) the access drive shall be an all-weather surface engineered and certified to adequately accommodate the weight of large fire and rescue apparatus up to 80,000 pounds.
- (3) the access drive(s) shall be maintained with an unobstructed horizontal clearance of twenty feet (20') and unobstructed vertical clearance of thirteen feet six inches (13'6").
- (4) the access drive shall extend to at least the front of the building or one side (as determined by the Department of Fire and Life Safety) and shall include an apparatus parking/operations area pad at least twenty feet (20') in width. The exact location and length shall be determined during the site layout plan review process. Turnarounds may also be required based on the site layout plan review.
- (5) the site shall be designed such that the entire perimeter of the structure shall be within 150' of the access drive.
- (6) Where fire hydrants are located along access drives the width of the drive shall be increased to twenty four feet (24') for a distance of twenty feet (20') on either side of the fire hydrant.

Where the subject structure is located on a lot fronting on a public road and the entire structure is within 150 feet of the paved surface of such road, the access drive described above will not be required as long as the Department of Fire and Life Safety determines access to be adequate.

- (c) No such structure or portion thereof shall be further than six hundred feet (600') from a fire hydrant.
- (d) In situations where the 600-foot fire hydrant distance requirement cannot be met, the applicant may choose to install an automatic residential fire sprinkler system, approved by the Department of Fire and Life Safety and in conformance with applicable National Fire Protection Association standards (or an approved equivalent). Such system shall be designed to protect all living spaces and other spaces deemed necessary by virtue of the building design. This option shall be available only to those properties served by a public water supply and located within 1,200 feet of a fire hydrant (provided that the structure does not require more than one fire hydrant for adequate fire flows), and provided that

the structure, including garage/attic/concealed spaces, is protected by a monitored fire detection and alarm system.

Section 24.1-306. Table of land uses

P=PERMITTED USE S=PERMITTED SPECIAL USE PERMIT BY USES	RESIDENTIAL DISTRICTS						COMMERCIAL AND INDUSTRIAL DISTRICTS						
	RC	RR	R2 0	R1 3	R7	RM F	NB	LB	GB	WC I	EO	IL	IG
	CATEGORY 10 - COMMERCIAL / RETAIL												
1. Antiques/Reproductions, Art Gallery							P	P	P	P	P		
2. Wearing Apparel Store							P	P	P		P		
3. Appliance Sales									P		P		
4. Auction House								P	P		S		
5. Convenience Store							S	S	S		S		
6. Grocery Store							P		P		P		
7. Book, Magazine, Card Shop							P	P	P		P		
8. Camera Shop, One-Hour Photo Service							P	P	P		P		P
9. Florist							P	P	P		P		P
10. Gifts, Souvenirs Shop								P	P		P		
11. Hardware, Paint Store								P	P		P	P	P
12. Hobby, Craft Shop								P	P		P		
13. Household Furnishings, Furniture									P		P		
14. Jewelry Store								P	P		P		
15. Lumberyard, Building Materials									S			P	P
16. Music, Records, Video Tapes								P	P		P		
17. Drug Store							S	S	P		P		
18. Radio and TV Sales								S	P		P		
19. Sporting Goods Store								P	P		P		
20. Firearms Sales and Service								S	S		S		
21. Tobacco Store								P	P		P		
22. Toy Store								S	P		P		
23. Gourmet Items/Health Foods/Candy/ Specialty Foods/Bakery							P	P	P		P		

Shops													
24. ABC Store							P	P		P			
25. Bait, Tackle/Marine Supplies Including Incidental Grocery Sales								P	P	P	S	S	
26. Office Equipment & Supplies							P	P		P	P	P	
27. Pet Store						S	P	P		P			
28. Bike Store, Including Rental/Repair						P	P	P		P		P	
29. Piece Goods, Sewing Supplies						P	P	P		P			
30. Optical Goods, Health Aids or Appliances							P	P		P		P	
31. Fish, Seafood Store								P	P	P			
32. Department, Variety, Discount Store								P		P			
33. Auto Parts, Accessories (new parts)							P	P		P			
34. Second Hand, Used Merchandise Retailers (household items, etc.)								P	P				
a) without outside display/storage							S	S					
b) with outside display/storage													
35. Storage shed and utility building sales/display									S		P	P	
36. Home Improvement Center								P		P			

¹See Section 24.1-466(g) for special provisions applicable to developments with 80,000 or more square feet of gross floor area.

Sec. 24.1-321. RC-Resource conservation district.

- (a) *Statement of intent.* The RC district is the least intense zoning classification and is intended primarily for those areas of the county designated for military or conservation uses in the comprehensive plan. This designation is also appropriate for lands designated for low density residential development which are not served by public utilities, are located within areas of particular environmental sensitivity as identified in the natural areas inventory, or have unusual development constraints caused by previous

development or the presence of steep slopes, wetlands, or other environmental constraints.

- (b) Dimensional standards. Each lot created or used shall be subject to the following dimensional standards:

RC-RESOURCE CONSERVATION DISTRICT

Use Classification	Minimum Lot Requirements		Minimum Yard Requirements			Maximum Building Height ⁽¹⁾
	Area	Width	Front	Side	Rear	
Single-Family Detached Dwellings	5 ac 2 ha	300' 90m	50' 15m	50' 15m	50' 15m	35 40' 12m
All Other Permitted & Special Uses	5 ac 2 ha	300' 90m	50' 15m	50' 15m	50' 15m	35' 10.5m

⁽¹⁾ For dwelling units in excess of thirty-five feet (35') [10.5m] in height, refer to Section 24.1-233.

Minimum district size: none

NOTE:
 Residential open space subdivision techniques may be used in this district
 Performance standards and special use permit requirements or conditions may increase yard and lot requirements. See article IV.

Sec. 24.1-322. RR-Rural residential district.

- (a) *Statement of intent.* The RR district is intended to provide opportunities primarily for single-family residential development generally having a maximum density of one dwelling unit per acre. Low density development is appropriate in areas where public services and facilities are limited and/or physical or environmental constraints are prevalent.
- (b) *Dimensional standards.* Each lot created or used shall be subject to the following dimensional standards:

RR-RURAL RESIDENTIAL DISTRICT

Use Classification	Minimum Lot Requirements ⁽¹⁾		Minimum Yard Requirements			Maximum Building Height ⁽²⁾
	Area	Width	Front	Side	Rear	
Single-Family Detached Dwellings	1 ac 4000 m ²	150' 45m	50' 15m	20' 6m	50' 15m	35 40' 12m
All Other Permitted & Special Uses	1 ac 4000 m ²	150' 45m	50' 15m	20' 6m	50' 15m	35' 10.5M

⁽¹⁾ These minimum lot requirements apply where both public water and public sewer are available. For lots not served by public water and public sewer, refer to Section 24.1-204.

⁽²⁾ For dwelling units in excess of thirty-five feet (35') [10.5m] in height, refer to Section 24.1-233.

Minimum district size: none

NOTE:
 Residential open space subdivision techniques may be used in this district.
 Performance standards and special use permit requirements or conditions may increase yard and lot requirements. See article IV.

Sec. 24.1-323. R20-Medium density single-family residential district.

(a) *Statement of intent.* The intent of the R20 district is to provide opportunities for medium density single-family residential development. Its intended application is for areas designated medium density by the comprehensive plan where public utilities are available.

(b) Dimensional standards. Each lot created or used shall be subject to the following dimensional standards:

R20-SINGLE-FAMILY RESIDENTIAL DISTRICT

Use Classification	Minimum Lot Requirements ⁽¹⁾		Minimum Yard Requirements			Maximum Building Height ⁽²⁾
	Area	Width	Front	Side	Rear	
Single-Family Detached Dwellings	20,000 sq. ft. 1850m ²	100' 30m	40' 12m	15' 4.5m	30' 9m	35' 12m
All Other Permitted & Special Uses	20,000 sq. ft. 1850m ²	100' 30m	40' 12m	15' 4.5m	30' 9m	35' 10.5m

⁽¹⁾ These minimum lot requirements apply where both public water and public sewer are available. For lots not served by public water and public sewer, refer to Section 24.1-204.

⁽²⁾ For dwelling units in excess of thirty-five feet (35') [10.5m] in height, refer to Section 24.1-233.

Minimum district size: none

NOTE:
 Residential open space subdivision techniques may be used in this district
 Performance standards and special use permit requirements or conditions may increase yard and lot requirements. See article IV.

Sec. 24.1-324. R13-High density single-family residential district

(a) *Statement of intent.* The R13 district is intended to provide opportunities for single-family residential development generally having a maximum density of 3.0 dwelling

units per acre. High density single-family detached development can be expected to generate substantial demands on public services facilities and should be located where adequate public services, transportation facilities and commercial centers are available.

- (b) *Dimensional standards.* Each lot created or used shall be subject to the following dimensional standards:

R13-SINGLE-FAMILY RESIDENTIAL DISTRICT

Use Classification	Minimum Lot Requirements ⁽¹⁾		Minimum Yard Requirements			Maximum Building Height ⁽³⁾
	Area	Width	Front	Side ⁽²⁾	Rear	
Single-Family Detached Dwellings	13,500 sq. ft. 1,250m ²	90' 27m	30' 9m	12.5' 3.75 m	25' 7.5 m	35' 12m
All Other Permitted & Special Uses	13,500 sq. ft. 1,250m ²	90' 27m	30' 9m	12.5' 3.75 m	25' 7.5 m	35' 10.5m

(1) These minimum lot requirements apply where both public water and public sewer are available. For lots not served by public water and/or public sewer, refer to Section 24.1-204.

(2) Side yard may be adjusted to fit lots provided that no side yard shall be less than ten feet (10') [3m] and that the total of the two side yards on the same lot is no less than twenty-five feet (25') [7.5m].

(3) For dwelling units in excess of thirty-five feet (35') [10.5m] in height, refer to Section 24.1-233.

Minimum district size: none.

NOTE:
 Residential open space subdivision techniques may be used in this district
 Performance standards and special use permit requirements or conditions may increase yard and lot requirements-See Article IV

Sec. 24.1-801. Nonconforming uses.

- (a) *Enlargement or extension.* A nonconforming use shall not be enlarged, extended, ~~reconstructed,~~ or structurally altered except in conformance with the provisions of this section.
- (1) Structural additions, either attached or detached, may be made to single-family detached residences located in non-residential districts provided that such additions comply with all applicable setback and yard requirements for the district in which located and that the minimum open space provisions for said district are observed.

- (2) No other nonconforming uses shall be enlarged or extended in any way except and unless the board shall authorize such enlargement or expansion through the issuance of a special exception which shall be processed and administered in the same way as are special use permits, provided, however, in addition to the standards set out in article I, the board shall consider whether the character of the existing use will be preserved in the event of the proposed enlargement. All owners of property located within five hundred feet (500') [150m] of the subject parcel, whether abutting or not, shall be sent notice of public hearings pertaining to the request. In no case shall the nonconforming use be permitted to expand by more than fifty percent (50%) of its size measured in building floor area on the date that it became nonconforming.
- (b) *Discontinuance.* In the event a nonconforming use ceases for any reason for a period of more than two (2) consecutive years, such nonconforming use shall not be reestablished. For purposes of this section, the term "discontinued" shall mean a cessation of a use or of any portion of a use, regardless of any intent by the user or owner to reestablish the use in the future. Discontinuance shall not be synonymous with abandonment and this shall be construed to incorporate both time and place, such that if the nonconforming use ceases in a particular structure or location for more than two (2) years even though it continues elsewhere on the same lot or parcel, the nonconforming use may not be reestablished in the structure or location where it was discontinued.
- (c) *Damage or destruction.* In the event a ~~A~~ nonconforming use, or the structure(s) associated with that nonconforming use, which is damaged or destroyed by a natural disaster or other cause beyond the control of the owner, such use and associated structure(s) may be reestablished or reconstructed within two (2) years of the date of such damage or destruction provided, however, that such reestablishment or reconstruction shall not have the effect of enlarging or extending the nonconforming use or associated structure(s), unless in conformance with the provisions of section 24.1-801(a) above. However, if the nonconforming use is in an area under a federal disaster declaration and the damage or destruction is a direct result of the conditions that gave rise to the declaration, then the allowable timeframe for reestablishment or reconstruction shall be four (4) years. For a use which is dependent upon occupancy of a destroyed or damaged structure, the use shall be deemed to be reestablished upon the issuance of a building permit for the structure, provided the completion of the structure is thereafter diligently pursued. In the event the use does not involve a structure, the actual operation and conduct of the use shall be the measure of reestablishment. After two (2) years, or four (4) years if applicable, of the damage or destruction, all nonconforming use rights shall be lost.

Reconstruction of structures pursuant to the above provisions shall be in compliance with the terms of the Virginia Uniform Statewide Building Code and all applicable terms of the Floodplain Management Overlay District regulations (section 24.1-373 of this chapter) and in a manner that eliminates or reduces nonconforming features to the extent possible. The reconstruction of any nonconforming structures shall be in accordance with the terms of section 24.1-802.

Nothing in this section shall be construed to prohibit normal and ordinary repairs and maintenance for a structure housing a nonconforming use. However, owner-initiated demolition and rebuilding/reconstruction of all or any structural portion of a building housing such use, shall- not be permitted unless the need for demolition is the result of a natural disaster or other cause beyond the control of the owner.

_____ Nothing in this section shall be construed to prevent the removal of a valid nonconforming manufactured housing unit from property and its replacement with another comparable manufactured housing unit in accordance with section 24.1-802(c).

- (d) *Changes in use.* A nonconforming use may at any time, upon approval of a site plan submitted in accordance with article V of this chapter, be changed to a conforming use or to a use which is more nearly conforming with the regulations of the district in which it is located.
- (e) *Movement.* Except as provided in section 24.1-801(a) above, no nonconforming use shall be moved in whole or in part on the same lot or parcel or to any other lot or parcel which is not properly zoned to permit such use.
- (f) *Construction.* Except as provided in section 24.1-801(a) above, no additional structures which do not conform to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

(Ord. No. 02-16, 9/17/02)

Sec. 24.1-802. Nonconforming structures.

- (a) *Enlargement or alteration.* No structure which is nonconforming by reason of a conflict with the setback, yard, height or similar regulations of the district in which located may be enlarged, extended, ~~reconstructed~~, structurally altered or moved in any way which increases its nonconformance with the applicable setback, yard, height or similar regulations of the district in which located. Except as may be provided in article II relative to front yards in built-up areas, any addition to nonconforming structures shall comply in all respects with the applicable setback, yard, height or similar regulations of the district in which located.
- (b) *Damage or destruction.* A nonconforming structure which is damaged or destroyed by a natural disaster or other cause beyond the control of the owner may be repaired, rebuilt or replaced ~~reconstructed~~ to its original nonconforming condition at the location of its original foundation, or to a condition and at a location on the lot which is conforming or more nearly conforming provided that such repair, rebuilding or replacement ~~reconstruction~~ occurs within two (2) years of such damage or destruction and provided that a site plan submitted in accordance with article V of this chapter is approved. However, if the nonconforming building or structure is in an area under a federal disaster declaration and the damage or destruction is a direct result of the conditions that gave rise to the disaster declaration, then the allowable timeframe for reestablishment or reconstruction shall be four (4) years. Repair, rebuilding or replacement ~~Reconstruction~~ of structures shall be in compliance with the terms of the Virginia Uniform Statewide Building Code and all applicable terms of the Floodplain Management Overlay District regulations (section 24.1-373 of this chapter) and in a manner that eliminates or reduces nonconforming features to the extent possible. Reconstruction shall be deemed to have occurred upon the issuance of a building permit for the structure, provided that completion is thereafter diligently pursued. If a building permit has not been issued for ~~Should such reconstruction not occur~~ within two (2) years, or four (4) years if applicable, of the damage or destruction, then, or in the event the damage or destruction, regardless of its extent, was initiated or caused by the owner of

~~the structure,~~ such structure may be reconstructed only in full accordance with all normally applicable ~~the~~ provisions of this chapter.

Nothing in this section shall be deemed to prohibit normal and ordinary repairs and maintenance for a nonconforming structure. However, owner-initiated demolition and rebuilding/reconstruction of all or any structural portion of a nonconforming structure, shall not be permitted unless the need for demolition is the result of a natural disaster or other cause beyond the control of the owner.

- (c) *Special provisions for manufactured housing units.* Nothing in this section shall be construed to prevent the removal of a valid nonconforming manufactured home from a mobile home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code, provided that the degree of nonconformity with any yard or setback requirements applicable to the district in which located does not increase. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. If the nonconforming mobile or manufactured home is located on a property not within a mobile home park, it may be replaced with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code and provided that any nonconformity with yard or setback requirements does not increase. Such replacement unit shall retain the valid nonconforming status of the home.
- (d) Other provisions of this Chapter notwithstanding, when the owner of a building which would normally be considered not to meet the criteria for a legally existing nonconforming structure can document that such building was permitted by a Building Permit issued by York County and that the building was constructed in accordance with the Building Permit and was issued a Certificate of Occupancy by the County, such building shall be deemed nonconforming but not illegal. In addition, where the owner of a building which would normally be considered not to meet the criteria to be a legally existing nonconforming structure has paid taxes to the County for such building for a period in excess of fifteen (15) years such building shall be deemed to be nonconforming, but not illegal, provided that it is brought into compliance with the Uniform Statewide Building Code.

(Ord. No. 02-16, 9/17/02)(Ord. No. 03-31, 8/5/03)

ARTICLE IX. APPEALS

Sec. 24.1-901. Powers and duties.

The board of zoning appeals shall have all the powers and duties as prescribed in section 15.2-2309, Code of Virginia, and as set forth below:

- (a) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or any amendment thereto or any modification of zoning requirements pursuant to section 24.1-902. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision.

- (b) To authorize upon appeal or original application in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this chapter shall be observed and substantial justice done as follows:
- (1) When a property owner can show that the owner's property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property, or where the board of zoning appeals is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter.
 - (2) No such variance shall be authorized by the board of zoning appeals unless it finds:
 - a. That the strict application of the provisions of this chapter would produce undue hardship;
 - b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
 - d. That the condition or situation of the property concerned or the intended use of the property is not of such a general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.
 - (3) In accordance with section 15.2-2309, Code of Virginia, in authorizing a variance, the board of zoning appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a performance guarantee to ensure that the conditions imposed are being and will continue to be complied with.
 - (4) Notwithstanding any other provision of law, any deviation from the normally applicable regulations of this chapter that is approved by the authorization of a variance shall thereafter be considered a conforming feature of the property. However, any construction authorized by such variance shall be allowed to expand further only to the extent that such expansion conforms with all applicable requirements of this chapter. Any expansion proposed within an area of the site or part of the structure which does not conform to all applicable zoning

standards shall be permitted only if authorized by approval of another variance request.

- (c) To hear and decide applications for interpretation of the zoning map where there is any uncertainty as to the location of a district boundary.
- (d) None of the provisions of this section shall be construed as granting the board of zoning appeals the power to reclassify property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the board of supervisors.
(Ord. No. 01-20(R), 10/16/01; Ord. No. 05-34(R), 12/20/05)

Sec. 24.1-903. Procedures.

- (a) *Variances and interpretations of the zoning map.* Applications for variances as described in section 24.1-901, may be made by any property owner, tenant, government official, department, board or bureau. Such application, and accompanying maps, plans or other information, shall be made to the secretary of the board of zoning appeals who shall place the item on the docket to be acted on by the board of zoning appeals after public notice and hearing as required by section 15.1-431, Code of Virginia.
- (b) *Appeals of administrative decisions.* An appeal to the board of zoning appeals may be made by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator or from any other requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter. Such appeal shall be made within thirty (30) days after the decision appealed from by filing with the secretary of the board of zoning appeals an application and a notice of appeal specifying the grounds thereof; provided, however, that any appeal from a notice of violation involving temporary or seasonal commercial uses (reference section 24.1-306, Category 8), parking of commercial trucks in residential zoning districts (reference section 24.1-271) maximum occupancy limitations of a residential dwelling unit, or other situations which in the opinion of the Zoning Administrator constitute a series of similar short-term, recurring violations shall be made within ten (10) days. The secretary shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the appealed action was taken. An appeal shall stay all proceedings in furtherance of the appealed action unless the zoning administrator certifies to the board of zoning appeals that, by reason of facts stated in such certificate, a stay would, in the administrator's opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board of zoning appeals or by a court of record, on application and on notice to the administrator for good cause shown.
- (c) *Process.* The board of zoning appeals shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest, and, except when the applicant concurs in a further delay, decide the same within sixty (60) days of the first regularly scheduled meeting for which the matter is on the docket. In exercising its powers, the board of zoning appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, or may remand the issue to the zoning administrator for further consideration in which case a specific time for such further consideration shall be stipulated. The concurring vote of a majority of the membership of the board of zoning

appeals shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to effect any variance from this chapter. The board of zoning appeals shall keep minutes of its proceedings and other official actions which shall be filed with the zoning administrator and shall be public records. The chair of the board of zoning appeals, or the acting chair, may administer oaths and compel the attendance of witnesses.

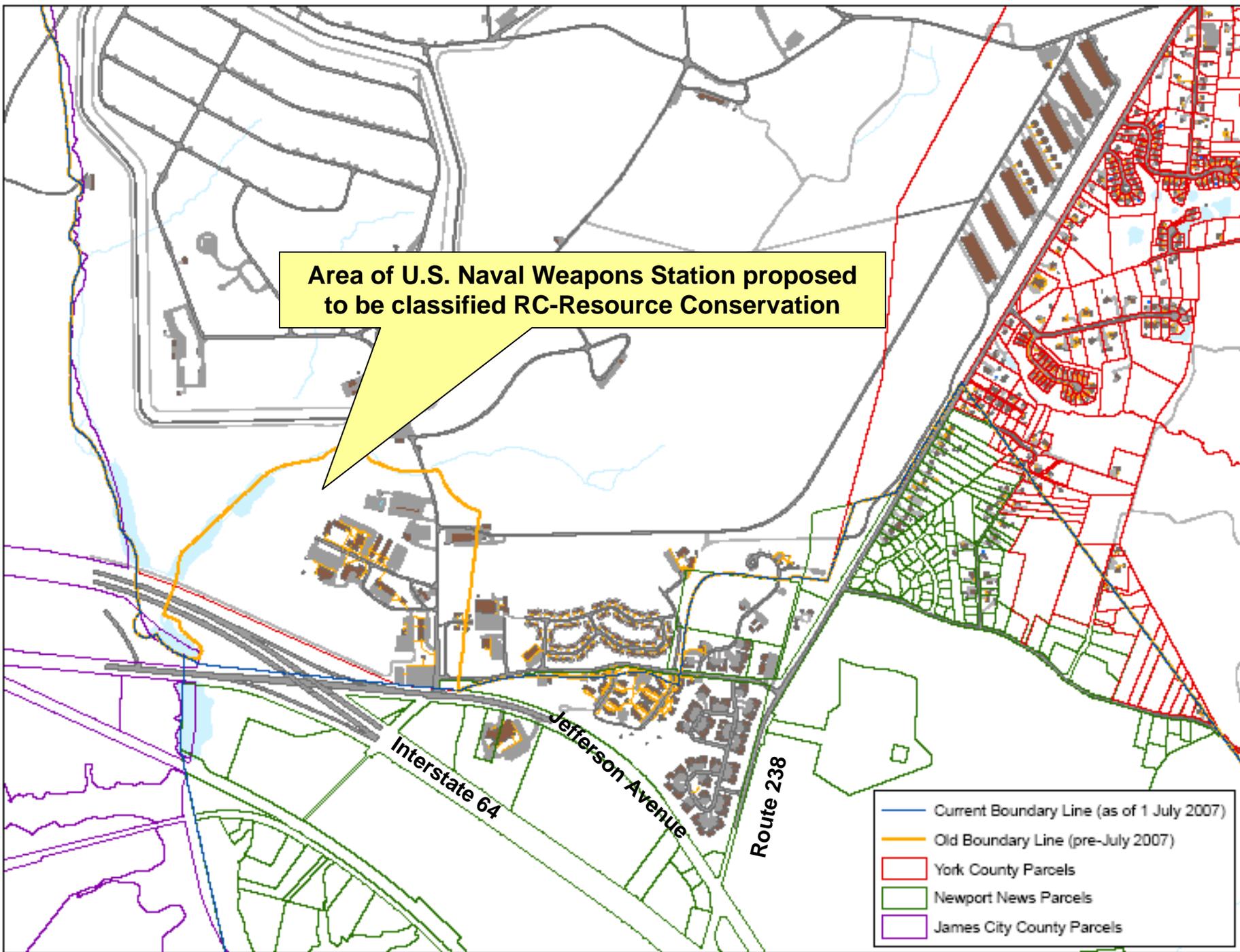
(d) Reconsideration. When the board of zoning appeals has acted on an application or appeal, substantially the same application or appeal shall not be considered by the board of zoning appeals within one (1) year of the date of action, except by unanimous vote of the membership of the board of zoning appeals.

On roll call the motion was approved (6:0)

Yea: (6) Ptasznik, Conner, Abel, Fisher, Barba, Hamilton
Nay: (0)

Area of U.S. Naval Weapons Station proposed to be classified RC-Resource Conservation

- Current Boundary Line (as of 1 July 2007)
- Old Boundary Line (pre-July 2007)
- ▭ York County Parcels
- ▭ Newport News Parcels
- ▭ James City County Parcels



BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 20098:

Present

Vote

Thomas G. Shepperd, Jr., Chairman
Walter C. Zaremba, Vice Chairman
Sheila S. Noll
Donald E. Wiggins
George S. Hrichak

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE TO AMEND CHAPTER 20.5, SUBDIVISIONS, YORK COUNTY CODE TO INCORPORATE STATE CODE CHANGES CONCERNING PRELIMINARY PLAN VALIDITY, AND CHAPTER 24.1, ZONING, YORK COUNTY CODE, TO AMEND THE ZONING MAP TO ESTABLISH A RC-RESOURCE CONSERVATION CLASSIFICATION FOR 83 ACRES OF NAVAL WEAPONS STATION PROPERTY ADJUSTED INTO THE COUNTY'S JURISDICTION IN JULY 2007, TO REVISE VARIOUS SECTIONS OF THE ZONING ORDINANCE TEXT TO ENSURE CONSISTENCY WITH OTHER SECTIONS OF THE YORK COUNTY CODE, TO CORRECT CERTAIN REFERENCES AND CONFORM PROVISIONS TO THE CODE OF VIRGINIA, AND TO CONSIDER REVISED REGULATIONS PERTAINING TO: ARTICLE I - IN GENERAL; ARTICLE 11 - GENERAL REGULATIONS; ARTICLE III - DISTRICTS; ARTICLE IV - PERFORMANCE STANDARDS FOR USES; ARTICLE V - SITE PLANS; ARTICLE VI - OFF-STREET PARKING AND LOADING; ARTICLE VII - SIGNS; ARTICLE VIII - NONCONFORMING USES; APPENDIX A - DIAGRAMS, TABLES AND FIGURES; AND, APPENDIX B - SAMPLE AGREEMENTS.

WHEREAS, ~~Chapter 24.1, Zoning, of the York County Code was adopted on June 28, 1995, and~~ it has come to the attention of the Board of Supervisors that certain sections and provisions of Chapter 20.5, Subdivisions, and Chapter 24.1, Zoning, of the York County Code are in need of clarification and adjustment; and

WHEREAS, ~~this application has been sponsored by the York County Board of Supervisors~~ has sponsored Application Nos. ZT/ZM-119-08, ZT-122-09, and ST-14-09 in the interest of good zoning and land use practice to allow consideration of proposed text amendments intended to address certain issues and considerations; and

WHEREAS, said applications have ~~has~~ been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on ~~these~~these applications and has recommended approval of the proposed amendments, with various modifications; and

WHEREAS, the Board has conducted a duly advertised public hearing and has carefully considered the public comments with respect to ~~these~~these applications and the recommendations of the Planning Commission and County Administrator;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the ___ day of _____, 20098, that Application No. ZT/ZM-119-08, ZT-122-09, and ST-114-09 be, and they are~~it is~~ hereby, approved to amend the York County Zoning Ordinance as follows:

Subdivision Ordinance Text Amendment

Sec. 20.5-31.1 Terms of Validity

- (a) Notwithstanding the provisions of Sections 20.5-28(d) and 29(d), if at the end of three (3) years from the date of approval of a preliminary plan a subdivider has not submitted a final subdivision plat, or has not diligently pursued approval of a submitted final plat, then the agent may, upon ninety (90) days written notice by certified mail to the subdivider, revoke the preliminary plan approval. Diligent pursuit of approval of the final subdivision plat shall mean that the subdivider has incurred extensive obligations and substantial expenses relating to the submitted final subdivision plat or modifications thereto. The agent's written notice shall cite the specific facts upon which the revocation is based. In any event, when a final subdivision plat has been timely submitted but not approved, the maximum term of validity for the associated preliminary plans shall be five (5) years, except as may be provided below.
- (b) Once an approved final subdivision plat for all or a portion of the property of a multiple phase development is recorded pursuant to Code of Virginia § 15.2-2261, the underlying preliminary plat shall remain valid for a period of five (5) years from the date of the latest recorded plat of subdivision for the property.
- (c) An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), shall remain valid for an indefinite period of time unless and until any portion of the property is subject to a vacation action as set forth in Code of Virginia §§ 15.2-2270 through 15.2-2278.
- (d) Following the expiration or revocation of any preliminary plat pursuant to (a) above the preceding subsections, any subdivision plan considered for the subject property shall be submitted and processed in accordance with all applicable procedures for new submissions.

Zoning Ordinance Map Amendment

- Establish a RC-Resource Conservation classification for approximately 83 acres of Naval Weapons Station property annexed into the County as of July 1, 2007.

Zoning Ordinance Text Amendments

Amend various sections to read as follows:

Sec. 24.1-103. General rules of interpretation.

For the purpose of this chapter, certain words and terms shall be interpreted as follows:

- (a) Words used in the present tense include the future tense; words in the singular number include the plural, and the plural number includes the singular unless the obvious construction and context of the wording indicates otherwise;
- (b) The word "shall" is a mandatory requirement; the words "may" and "should" are permissive requirements;
- (c) The word "lot" includes the words plot, parcel, premises, site.
- (d) The word "includes" does not limit a term to the specified examples, but is intended to extend the term's meaning to all other instances or circumstances of like kind, character, or class;
- (e) The phrase "used for" includes the phrases arranged for, designed for, intended for, maintained for and occupied for;
- (f) The terms "land use" and "use of land" shall be deemed also to include building use and use of building;
- (g) The word "adjacent" means nearby and not necessarily contiguous; the words abutting or contiguous mean touching and sharing a common point or line;
- (h) The word "person" includes individuals, partnerships, corporations, clubs or associations;
- (i) Any reference to "this ordinance" or "this chapter" shall mean the zoning ordinance.
- (j) References to sections of the Code of Virginia or the York County Code are applicable as of the effective date of this chapter. Subsequent changes to those sections, including renumbering, shall be deemed to be incorporated herein, *mutatis mutandis*.
- (k) Any references to Metric (SI) units shall be disregarded and are provided herein and do not represent exact conversions from English units shall be used and shall control for all dimensional requirements in this chapter... ~~Because of this, plans may be prepared in either English or SI units, but may not be mixed on the same plan.~~
- (l) References to supplementary documents, publications or regulatory materials shall be deemed to include any subsequent amendments, re-printings, updates or replacement volumes.

Section 24.1-104. Definitions

Home occupation. An accessory use of a dwelling unit by the occupant of the dwelling for or with the intent of gainful employment involving the provision of goods and services.

Lot line, front. Any street or right-of-way line, whether public or private, which forms the boundary of a lot or such other property boundary as determined to be a "front lot line" by the zoning administrator pursuant to the terms of

~~article II, General Regulations, of this chapter. , in the case of flag lots where such a lot does not abut a street other than by its driveway or "staff," that lot line which is parallel or most nearly parallel to the street line and is not the rear lot line. Where lots are arranged to abut common parking areas, water or open space, as may be the case in townhouse or planned development situations, the front lot line shall be determined by the zoning administrator based on the orientation of the principal building.~~

~~Lot line, rear.~~ The lot line or lines opposite and most distant from and most nearly parallel to the front lot line; or in the case of triangular or otherwise irregularly shaped lots, a line ten feet (10') in length entirely within the lot, parallel to and at a maximum distance from the front lot line. The rear lot line on corner, through and flag lots shall be such line as determined in accordance with the procedures set forth in article II of this chapter.

~~Nightclub.~~ An establishment that offers alcoholic beverages for on-premises consumption, which is open for business after 11:00 p.m., at a bar or tables and which also includes an area where patrons can dance to live or recorded music, or a stage or floor area from which live bands or solo artists perform music or entertainment. ~~floor and/or periodic live or recorded music or entertainment and which is open for business after 11:00 p.m.~~ This term shall also include restaurants and commercial reception halls if they are open for business after 11:00 p.m., serve alcoholic beverages at a bar or at tables, and have a dance floor or performance area as described above. The term shall not include a restaurant in which live, non-amplified musical performances are offered as background entertainment for dining patrons, provided the restaurant does not have a dance floor. ~~and/or live or recorded music or entertainment.~~

~~Stable, commercial public.~~ An facility consisting of fenced enclosures and / or accessory buildings in which horses are kept as a for commercial use/venture, including boarding, hire, and sale.

Sec. 24.1-106. Zoning districts and maps.

- (a) The territory of the county shall be divided into the classes of zoning districts provided for in article III of this chapter. The zoning district locations and boundaries for the county shall be as shown on the map or maps entitled "Zoning Map of York County, Virginia dated June 28, 1995" and as amended from time to time in accordance with the procedures contained in this article, which, together with all explanatory matter thereon, are hereby adopted by reference and declared to be a part of this chapter.
- (b) A reproducible copy of said maps, attested by the zoning administrator, shall be filed in the office of the zoning administrator or in such location as may be deemed appropriate by the zoning administrator.
- Said maps, together with any duly adopted amendments thereto, shall be conclusive as to the current zoning classification of the territory of the county.
- Said maps shall not be altered except in conformance with the procedures for amendment as established herein.
- (c) In the event any land area is annexed or adjusted into the jurisdictional boundaries of York County, such land shall automatically be classified RC-Resource Conservation until such time as that classification may be changed through a specific rezoning action approved by the board of supervisors in accordance with all applicable procedures.

Sec. 24.1-108. Filing fees.

- (a) *Application fees.*

- (3) Application fees shall not be refundable in the case of appeals to the board of zoning appeals. In the case of withdrawal of applications for zoning amendments, use permits or planned development approval, exemptions or exceptions, refunds of application fees shall be according to the following schedule:

- a. ~~Written request received in sufficient time to cancel prior to ordering the publication of the first legal notice for the commission public hearing: one hundred fifty percent (10050%) of fee, minus a \$50 administrative processing fee, is refundable.~~
- b. ~~Written request received after the first legal notice has been published but prior to the first meeting of the planning commission at which the request will be considered: fifty percent (50%) of the fee refundable.~~
- b. ~~Written request received within five working (5) days after the date of at least two (2) working days prior to the date scheduled for final action by the commission: twenty-five percent (25%) of fee refundable.~~
- c. ~~Written request received more less than five two (52) working days after prior to the date of final action by the commission: No refund.~~

All requests for withdrawal must be in writing, signed by the applicant, and be submitted to the zoning administrator.

- (4) The above described fees shall be waived for any application submitted by any board, commission, agency or department of the county.

(b) *Site plan review fees.*

- (1) Filing fees shall be paid at the time a site plan is first presented for formal review and shall be in accordance with the following schedule:
 - a. Single-family attached or multi-family residential proposals shall pay a filing fee of one hundred fifty dollars (\$150.00) plus fifteen dollars (\$15.00) per dwelling unit (maximum fee two thousand five hundred dollars (\$2,500.00)) plus forty-five cents (\$0.45) per one thousand (1,000) square feet of total disturbed area.
 - b. Commercial, industrial, institutional and other types of uses and activities subject to site plan approval shall pay a filing fee of one hundred fifty dollars (\$150.00) plus three dollars (\$3.00) per one thousand (1,000) square feet of gross floor area of all structures (maximum fee two thousand five hundred dollars (\$2,500.00)) plus forty-five cents (\$0.45) per one thousand (1,000) square feet of total disturbed area.
- (2) Amendments to approved site plans shall pay a filing fee of one hundred dollars (\$100.00) unless the zoning administrator waives the fee because the need for the amendment arises from an error or oversight by a federal, state, or local agency.
- (3) In addition to the review fees set forth above, the applicant / developer shall be responsible for payment of any Traffic Impact Analysis review fees as may be established by the Virginia Department of transportation pursuant to its implementation of the requirements of Section 15.2-2222.1 of the Code of Virginia.

Sec. 24.1-109. Administration, enforcement, and penalties.

- (a) The zoning administrator or designated agent is hereby authorized, on behalf of the board, to administer and enforce this chapter. Such authority shall include the ability to make official interpretations of this chapter and the zoning maps as described in section 24.1-110 and to order, in writing, the remedy of any condition found in violation of this chapter, and the ability to bring legal action to ensure compliance with its provisions, including injunction, abatement, or other appropriate action or proceeding.

The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and, if such sworn testimony establishes probable cause that a zoning ordinance violation within a dwelling unit has occurred, may request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling unit for the purpose of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant pursuant to this section.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of any provision of this chapter that limits occupancy in a residential dwelling unit,

which is subject to a civil penalty as prescribed in subsection (c) below, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the county attorney petition the judge of the general district court for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

- (b) All departments, officials and employees of the county which are vested with duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits for uses, buildings or purposes only when they are consistent with the provisions of this chapter. Any such permits, if issued in conflict with the provisions of this article, shall be null and void.
- (c) *Penalties.* Violating, causing, or permitting the violation of, or otherwise disregarding any of the provisions of this chapter by any person, firm or corporation, whether as principal, agent, owner, lessee, employee or other similar position shall be unlawful and is subject to the following:
- (1) Criminal sanctions. Upon conviction, any such violation shall be a misdemeanor punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00). If the violation is uncorrected at the time of the conviction, the court may order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ~~ten (10)~~^{thirty (30)} day period shall constitute a separate misdemeanor offense for each ~~ten (10)~~^{thirty (30)} day period punishable by a fine of not less than ~~one hundred (\$100.00)~~^{ten dollars (\$10.00)} nor more than one thousand ~~five hundred dollars (\$1,500.00)~~^(\$1,000.00).

Any conviction resulting from a violation of the provisions regulating the number of unrelated persons living as a "family" in a residential dwelling shall be punishable by a fine of up to \$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to ~~\$2,000~~ \$5,000, and any subsequent failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to ~~\$2,500~~ \$7,500. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated individuals in a residential dwelling unit shall not be punishable by a jail term. (reference Section 15.2-2286.A.5., COV)

- (2) *Injunctive relief.* Any violation or attempted violation of this chapter may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceedings for relief.
- (3) *Civil fines:*
- a. Any person summoned or issued a ticket for a violation of this chapter listed in subsection (b) below may make an appearance in person or in writing by mail to the county treasurer prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established in this section for the offense charged, in lieu of criminal sanctions. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. If a person charged with scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law.
- b. A civil penalty is hereby established for a violation of any offense listed below in the amount of ~~two one hundred dollars (\$200.00)~~^(\$100.00) for any one (1) violation for the initial summons and ~~five two hundred fifty (\$500.00)~~^(\$250.00) for each additional summons:

1. Constructing, placing, erecting, installing, ~~or~~ maintaining, operating, or ~~an~~ establishing an accessory structure or use in violation of section 24.1-270 et seq.
 2. Constructing, placing, erecting or displaying a sign in violation of section 24.1-700 et seq.
 3. Erecting, altering, or changing use or occupancy of any building, structure, or premises without first obtaining a zoning certificate or certificate of zoning compliance in violation of section 24.1-107.
 4. Failure to perpetuate and maintain all landscaping, screening, and fencing materials required by this chapter in violation of section 24.1-242.
 5. Operating, conducting or maintaining a home occupation in violation of Article II – Division 8, Home Occupations.
 - ~~6. Occupying, or permitting to be occupied, a single family dwelling by more than four (4) unrelated individuals in violation of the definition of "Family" in section 24.1-104.~~
 67. Failure to observe the requirements for keeping sight triangles, as described in section 24.1-220(b), free of obstructions.
- c. Each day during which a violation is found to exist shall be a separate offense. However, in no event shall specified violations arising from the same set of operative facts be charged more frequently than once in a ten (10) day period and in no event shall a series of such violations result in civil penalties which exceed a total of more than ~~five three thousand dollars (\$5,000.00), (\$3,000.00),).~~ When such civil penalties total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.
- d. No provisions herein shall be construed to allow the imposition of civil penalties for:
1. enforcement of the Uniform Statewide Building Code;
 2. activities related to land development;
 3. violations of the erosion and sediment control ordinance;
 4. violations relating to the posting of signs on public property or public rights-of-way; or
 5. violations resulting in injury to any person or persons.

Sec. 24.1-114. Conditional zoning.

(b) *Proffer of conditions.*

- (1) The owner or owners of property for which an application is being made for an amendment to the zoning map may, as part of the application, voluntarily proffer, in writing, reasonable conditions which shall be in addition to the regulations of the zoning district classification sought by the application.
- (2) Conditions so proffered may be made prior to the public hearing before the commission. Alternatively, or in addition, in consideration of comments expressed during the commission deliberations on an application, the property owner(s) may, prior to the final public hearing conducted by the board, choose to proffer original conditions or revised conditions. In addition, the board may accept amended proffers during the course of its public hearing on the application provided that the amended proffers do not materially affect the overall proposal.

Sec. 24.1-115. Special use permits.

(b) *Procedure for issuing special use permits.*

- (1) Application for the establishment of special uses shall be submitted to the zoning administrator and, upon determination that such application contains all necessary elements, shall be deemed received by the board and referred to the commission for its review and recommendation.
- (2) The commission shall, within one hundred (100) ninety (90) days after the first meeting of the commission after such referral, report to the board its recommendation as to the approval or disapproval of such application and any recommendation for establishment of conditions, in addition to those set forth in this article, deemed necessary to protect the public interest and welfare. Failure of the commission to report within one hundred (100) ninety (90) days shall be deemed a recommendation of approval.

Sec. 24.1-117. Certain utilities and services exempt.

(a) Except as specifically noted below, certain utilities and services shall be exempt from the other regulations of this chapter. Specifically, the following facilities and equipment shall be so exempted:

- (1) Traffic signals, fire hydrants, alarm or emergency devices, telephone booths and pedestals, public transit shelters, mailboxes and similar devices and structures;
- (2) Wires, poles, pipes, meters and similar facilities which provide service connections between primary distribution lines or mains and individual residential, commercial or industrial customers, or which are an integral and accessory part of a subdivision or development;
- (3) Sewage pump and lift stations, water storage and pumping facilities, communication switching and relay facilities, and similar utilities when approved by the zoning administrator as a necessary and integral component of a public utility system. Such facilities shall be subject to the terms of article V and the buffering/screening provisions of section 24.1-262(e) surrounded by a Type 25 Buffer, as defined in this chapter.
- (4) Railroad tracks, signals, bridges and similar facilities and equipment located on a railroad right-of-way, and maintenance and repair work on such facilities and equipment.

(b) Any utility substation, treatment plant, generating plant, or similar facility which is not within the normal scope of distribution facilities referred to above shall be authorized only by special use permit.

Sec. 24.1-200.1 Verification of Access Rights

Prior to issuance of any building permit or other permit for use of a parcel of land subject to the terms of this chapter, the property owner or applicant shall be required to verify that there is a legal right of access to the parcel from a public right-of-way, either by virtue of direct frontage/access or by virtue of an access easement or other legally enforceable rights of access. The same type of verification shall be required with respect to access to public water and sewer service, if the property is required to be served by such utilities.

Sec. 24.1-201. Subdivision and consolidation of lots.

- (a) Each lot created subsequent to the adoption or amendment of this chapter shall comply with all area and dimensional regulations, as amended, for the district in which located and with all applicable provisions of the subdivision ordinance. Lots shall not be created in such a manner as to cause any existing structures to be in conflict with setback and yard requirements of the district in which located.

- (b) Where a development is proposed to encompass and be situated on multiple existing lots under the same ownership, the lot lines separating said lots shall be vacated through the preparation and recordation of a survey plat, prepared in accordance with all applicable procedures and requirements. The recordation of such plat shall be a prerequisite for the issuance of land disturbing permits and/or building permits for the proposed development project. In the event the development proposed can stand alone on each of the lots without a principal use/accessory use dependency and in compliance with all applicable setback and other dimensional requirements, then vacation of the lot lines shall not be required.
- (c) Other provisions of this chapter relating to side and rear setbacks notwithstanding, an individual lot encompassing one or more of the attached tenant spaces in a retail or office center may be created provided that:
- (1) The lot meets the minimum area and width requirements for the district in which located;
 - (2) The remainder of the parent tract meets the minimum area and width requirements for the district in which located;
 - (3) The proposed lot lines shall be coterminous with a common wall separating individual tenant spaces, or with a landscape island running parallel to the lot line(s), or with the centerline of a driveway, parking lot drive-aisle, or -shall be otherwise located logically and appropriately in relation to entrance drives, the parking lot layout and other similar features of the property, as determined by the zoning administrator and subdivision agent;
 - (4) Appropriate cross-easements shall be established to allow the development to function in an integrated and coordinated manner in terms of parking, circulation, management, maintenance and operations;
 - (5) Binding agreements or restrictions shall be established requiring the structures on the parcels created in this manner to remain in the approved configuration relative to property lines and to observe the same configuration if ever destroyed and rebuilt; and
 - (6) There shall be no additional freestanding signage allowed for the retail or office center as a whole as a result of such parcel configurations. For purposes of signage, the retail or office center shall continue to be deemed to constitute a single parcel.
 - (7) There shall be no additional driveway connections to the adjoining public road(s) allowed for the retail or office center as a whole as a result of such parcel configurations. For purposes of driveway connections, the retail or office center shall continue to be deemed to constitute a single parcel.

Sec. 24.1-202. Lot frontage required.

- (c) Other provisions of this chapter notwithstanding, flag lots may be permitted but only in accordance with the following requirements and all applicable requirements of the subdivision ordinance. Nothing in this section shall be construed to recognize flag lots as a generally available design technique to be used as a matter of right by any person subdividing land :
- (1) Flag lots may be utilized to prevent unnecessary or undesirable accesses to collector or arterial roads; or
 - (2) Flag lots may be utilized to recognize unique physical or environmental characteristics of a parent tract which preclude efficient and logical subdivision in accordance with normally applicable frontage requirements.
 - (3) The following limitations shall apply to flag lots:

- a. One lot, or a maximum of five percent (5%) of the total lots in a subdivision, whichever is greater, may be flag lots. This limitation shall be cumulative for subdivisions consisting of more than one (1) section. The zoning administrator may waive this limitation upon finding that authorizing the use of additional flag lots would preserve environmentally sensitive land or have a direct positive impact on designated environmental management or Chesapeake Bay Preservation areas.
- b. Flag lots shall not be permitted whenever the effect would be to increase the number of lots with direct access to a major collector or arterial street.
- c. That portion of a flag lot comprising the "staff" shall not be counted for the purpose of determining minimum lot area compliance.
- d. The minimum width of the "staff" portion of a flag lot shall be twenty feet (20').
- e. Unless otherwise specified by the zoning administrator, the front lot line of a flag lot shall be the lot line which is closest and most nearly parallel to the street to which the "staff" portion of the flag lot connects.

Sec. 24.1-220. Requirements for corner lots.

In the case of corner lots, all yards abutting a street shall be considered front yards and a minimum building setback of thirty feet (30') ~~[9m]~~ from a public street right-of-way shall be maintained unless a larger setback is otherwise required. Other special requirements applicable to corner lots are as follows:

- (a) The minimum width requirement for each frontage of any corner lot hereafter created shall be equal to the normally required lot width plus the difference between the required front and side yard dimensions for the district in which located provided, however, that the maximum width required as a result of application of this provision shall be one hundred fifty feet (150')~~[45m]~~. (See Figure II-3 in Appendix A)
- ~~(b) Sight triangles shall be required at all street intersections and site entrances. Sight triangles shall include the area on each corner of a street or entrance that is bounded on two (2) sides by lines running along the pavement edges of the intersecting streets between the sight points and the point of intersection, and on the third side by a straight connecting line (hypotenuse) connecting the two sight points (see Figure II-4 in Appendix A). The sight point location shall be determined as follows based on the roadway classification:~~

Street Classification	Distance of Sight Point from Point of Intersection	
	—Feet	—Meters
Access Street	20	6
Subcollector	20	6
Minor Collector	30	9
Major Collector	40	12
Minor Arterial	50	15
Major Arterial	60	18

~~(1) Signs, plantings, structures or other obstructions which obscure or impede sight lines between three feet (3') [1m] and six feet (6') [2m] in height above grade shall be prohibited within the sight triangle.~~

~~(2) The sight triangle shall be clearly shown and its purposes noted on all plats and plans.~~

~~(be) *Rear Yard* - The zoning administrator shall determine the required rear yard for a corner lot at the time of building permit application based on the existing or proposed orientation of the principal building and taking into consideration the orientation of buildings on adjoining properties. (See Figure II-31-2 in Appendix A)~~

Sec. 24.1-225. Special yard regulations.

The following special yard regulations shall apply to the development of property:

- (a) Awnings and bay windows which are not more than ten feet (10') [3m]-wide may extend three feet (3') [4m] into a required yard.
- (b) The ordinary projections of eaves, gutters, uncovered stoops, uncovered landings, chimneys and flues may extend into a required yard.
- (c) Mechanical or HVAC equipment may be located in a required side or rear yard, or in required front or side yards if screened from view from public streets and adjacent properties.
- (d) Retaining walls determined to be necessary by accepted engineering practice for earth or building stabilization shall be exempt from yard and setback requirements.
- (e) Fences shall be subject to the specific requirements as set forth in division 7 of this article and to the sight triangle requirements set forth in section 24.1-2206. Fences shall not be subject to yard or setback requirements applicable to buildings.
- ~~(f) For those lots that do not conform to a typical rectangular shape, lots that have no street frontage, or that abut a water body, and which are not covered by any of the special rules set forth in the preceding sections, the zoning administrator shall establish the location of the front, side and rear lots lines and the associated yards after evaluating the configuration of the property, the character and orientation of surrounding existing or potential land uses, the point(s) of access to the property, the existing or proposed building orientation, and such other factors as deemed appropriate.~~

Sec. 24.1-226. Sight distance requirements at intersections

Sight triangles shall be required at all street intersections and site entrances. Sight triangles shall include the area on each corner of a street or entrance that is bounded on two (2) sides by lines running along the pavement edges of the intersecting streets or streets/driveways between the sight points and the point of intersection, and on the third side by a straight line (hypotenuse) connecting the two sight points (see Figure II-4 in Appendix A). The sight point location shall be determined as follows based on the roadway classification:

<u>Street Classification</u>	<u>Distance of Sight Point from Point of Intersection with Another Street or with a Site Entrance</u>	
	<u>Feet</u>	
<u>Access Street</u>	20	
<u>Subcollector</u>	20	
<u>Minor Collector</u>	30	
<u>Major Collector</u>	40	
<u>Minor Arterial</u>	50	
<u>Major Arterial</u>	60	

- (1) Signs, plantings, structures or other obstructions which obscure or impede sight lines between three feet (3') and six feet (6') in height above grade shall be prohibited within the sight triangle.
- (2) The sight triangle shall be clearly shown and its purposes noted on all plats and plans.

Sec. 24.1-231. Exemptions from height regulations.

- (a) The zoning administrator may grant administrative exemptions to the district height regulations to permit reasonable increases in height for the following situations:
 - (1) Church spires, belfries, cupolas, monuments, chimneys, water towers, fire towers, cooling towers, electric substation components, radio and television antennas may be permitted to exceed the height stipulated in the district regulations by no more than twenty-five percent (25%) if attached to a building, or to a maximum of one hundred feet (100') ~~{30m}~~ if free-standing. This shall not apply to dish antennas, signs and flagpoles, or other similar structures. The zoning administrator shall determine whether a proposed height increase is reasonable and serves a function beyond merely drawing attention to the structure.
 - (2) Parapet walls or similar structures may exceed the maximum height limit by not more than eight feet (8'). Such walls or structures shall not be used as, for, or to support signs. Pitched roofs on structures located in commercial and industrial zoning districts may exceed the maximum height limit by up to twenty-five percent (25%) provided that the zoning administrator determines that the actual number of building floors with habitable space is no greater than would be allowed with a flat roofed structure and provided further that the fire chief has reviewed and approved the proposed structure and site design to ensure

appropriate accessibility for effective fire containment and control, including specifically the location of fire lanes to facilitate the positioning of fire-fighting apparatus and equipment during an emergency response.

- (3) Except as noted above, no accessory building or structure shall exceed the maximum height limitation established for the district or the height of the structure to which it is accessory, whichever is less, provided, however, that buildings which are accessory to a single-story building may be constructed to a maximum height not exceeding 1.25 times the height of the principal building. In cases where this is permitted, the accessory building shall be separated from the principal building by a distance of at least twenty feet (20').
- (4) Buildings and structures used in conjunction with a bona fide agricultural use in an RC or RR district shall be exempt from the height limits specified for those districts. This exemption shall not apply to buildings constructed in conjunction with horsekeeping activities as a residential accessory use.
- (b) The board, after conducting a duly advertised public hearing, may authorize exemptions to the height regulations which exceed those which may be authorized administratively, as provided in subsection (a) above. In granting exemptions, the board may impose reasonable conditions. No exemption shall be granted which violates the terms of the airport safety management overlay district.

Sec. 24.1-233. Special height regulations for single-family detached dwellings in excess of thirty-five feet (35')[10.5m].

Pursuant to the Residential District regulations set out in Article III, Division 2, of this Chapter, For single-family detached dwelling units may be constructed to a height of 40 feet, provided however, that for any structure in excess of thirty-five feet (35')[10.5m] in height, the following requirements apply:

- (a) Exterior access to both the roof and the uppermost occupied story shall be no higher than thirty feet (30')[9m].
- (b) Building plans shall be submitted for review and approval by the fire chief to ensure appropriate accessibility for effective fire containment and control of the building.
- (c) No such structure or portion thereof shall be further than six hundred feet (600')[180m] from a fire hydrant.
- (d) In situations where the fire hydrant distance requirement cannot be met, the applicant may choose to install an automatic residential fire sprinkler system, approved by the Department of Fire and Life Safety and in conformance with applicable National Fire Protection Association standards. Such system shall be designed to protect all living spaces, garage areas and other spaces deemed necessary by virtue of the building design and, in addition, the building shall be equipped with appropriate fire/smoke detection devices in accordance with the terms of the Building Code. This option shall be available only to those properties served by a public water supply.

Sec. 24.1-242. Landscaping standards.

(h) *Numerical standards:*

(2) Landscaping credits shall be awarded/earned based on the values established in the following table:

Landscape Credit Unit (LCU) Values			
New Planting	Deciduous (Minimum Caliper)	Evergreen or Ornamental (Minimum Height)	LCU value
Trees	3 inches	10 feet	9
	2.5 inches	9 feet	6
	2 inches	8 feet	5
	1.5 inches	6 feet	3
Shrub	18 inches height or spread		2
Ornamental Grasses or Perennial Beds	1 gallon size		1
Existing Tree	Minimum Caliper		LCU value
	Mature	> 13 inches	15
	Large	11 to 13 inches	12
	Medium	6 to 10 inches	8
	Small	3 to 5 inches	5

Sec. 24.1-251. General traffic management and analysis requirements.

(b) *Special standards and requirements.*

(2) The submitted traffic impact analysis shall, unless otherwise approved by the zoning administrator in writing, contain the following information and analysis:

h. *Traffic improvements.* The recommended roadway and traffic network improvements based on the design hour in the design year shall be shown on a scaled plan sheet with appropriate narrative. Such improvements shall be designed to yield a minimum level of service of "C" as defined by the 1994 Highway Capacity Manual as it may from time to time be amended, supplemented, or revised. Where the existing conditions provide a current level of service (LOS) of less than "C," the improvements shall be designed to at least maintain the current volume to capacity ratio as determined by the methods contained in the 1994 Highway Capacity Manual without further degradation through the design year plus two (2) years. For intersections, the LOS "C" standard shall be met on an average of all movements basis. The developer shall be responsible for implementing the improvements proposed by the traffic study,

subject to approval by the Virginia Department of Transportation. A detailed construction cost estimate of the required improvements shall be provided.

Sec. 24.1-260. General site design standards.

- (g) Except as exempted below, all outdoor lighting in excess of 3,000 initial lumens associated with land use and development proposals, whether new uses or changes and modifications in existing uses, shall be designed, installed and maintained to prevent unreasonable or objectionable glare onto adjacent rights-of-way and properties and shall incorporate the use of "full cut-off" luminaires/fixtures. The lighting standards established by the Illuminating Engineering Society of North America (IESNA) shall be used to determine the appropriate lighting fixture and luminaires for such uses. High-pressure sodium or metal halide lights shall be the preferred type of exterior site lighting. The use of Mercury vapor lights shall be discouraged in any exterior lighting applications, with the exception of under-canopy lighting for gasoline pump islands, bank or other drive-thru or drive-in facilities.

The following outdoor lighting applications shall be exempt from these requirements:

- (1) Construction, agricultural, emergency or holiday decorative lighting of a temporary nature.
- (2) Lighting of the United States of America, Commonwealth of Virginia, or York County flags and other non-commercial flags.
- (3) Security lighting controlled by sensors which provide illumination for fifteen (15) minutes or less.
- (4) The replacement of an inoperable lamp or component which is in a luminaire that was installed prior to the effective date of this section.
- (5) The replacement of a failed or damaged luminaire which is one of a matching group serving a common function.
- (6) Fixtures used for architectural or landscape accent lighting (façade, features, trees, etc.), when such lighting is aimed or directed so as to preclude light projection beyond the immediate objects intended to be illuminated. If the surrounding area contains residential uses that could be adversely impacted by such lighting, the Zoning Administrator may require that such lighting be extinguished between the hours of midnight and dawn.
- (7) Streetlights illuminating public rights-of-way, or private streets which the zoning administrator determines to be consistent in illumination characteristics with those allowed and specified under the board of supervisors' street light installation policy.

In addition to the above-noted exemptions, the Zoning Administrator may approve a modification of the full cut-off luminaire requirements in ~~either of~~ the following circumstances:

- Upon finding that alternatives proposed by the owner would satisfy the purposes of these outdoor lighting regulations at least to an equivalent degree; or
- Upon finding that the outdoor luminaire or system of outdoor luminaires required for a baseball, softball, football, soccer or other athletic field cannot reasonably comply with the standard and provide sufficient illumination of the field for its safe use.
- Upon a finding that the proposed luminaire is a decorative colonial-style "cut-off optics" fixture in which the lamp is fully recessed into the upper housing.

For the purposes of administering these provisions, lamps of less than or equal to the following rated wattages shall be deemed to emit 3,000 or less initial lumens and, therefore, shall be exempt from the full cut-off requirement:

- Incandescent lamp: 160 watts
- Quartz halogen lamp: 160 watts
- Florescent lamp: 35 watts

- Mercury vapor lamp: 75 watts
- Metal halide lamp: 40 watts
- High-pressure sodium lamp: 45 watts
- Low-pressure sodium lamp: 25 watts

Lamps having greater wattages than those listed above also may be exempted by the zoning administrator upon presentation of documentation from the lamp manufacturer, or other source deemed appropriate by the zoning administrator, that the lamp emits 3,000 or less initial lumens.

Sec. 24.1-261. Public service facility standards.

- (a) *Refuse and recyclables collection.* Dumpsters, or an alternate method of collection for recyclables and for nonrecyclable refuse approved by the zoning administrator, shall be required for mobile home parks and for multi-family, commercial and industrial developments. The following standards shall apply:
- (1) Dumpsters or other approved collection receptacles shall be located on a site so that service vehicles will have convenient and unobstructed access to them. The location shall be such that encroachment by service vehicles upon bicycle and pedestrian ways, parking spaces, or vehicular circulation drives will be minimized. Dumpsters shall not be located closer than fifty feet (50') to any residential structure nor closer than twenty feet (20') to any non-residential structure.

Sec. 24.1-271. Accessory uses permitted in conjunction with residential uses.

The following accessory uses shall be permitted in conjunction with residential uses. No accessory use, activity, or structure, except fences, shall be constructed or conducted until the principal use of the lot has commenced, or the construction of the principal building/structure has commenced and is thereafter diligently and continuously pursued to completion. Land uses not listed in this section and not deemed similar to a listed use pursuant to subsection (n) shall be deemed not allowed as residential accessory uses:

- (j) Fences or walls in single-family residential districts provided that:
- (1) fences or walls located in rear yards shall not exceed eight feet (8') in height;
- (2) fences or walls located in side yards shall not exceed six feet (6') in height;
- (3) fences or walls located in front yards shall not exceed four feet (4') in height;
- (4) fences or walls located on corner lots and adjacent to street/ or driveway intersections shall be subject to the visibility standards established in section 24.1-220;
- (5) the above standards shall not be deemed to prohibit any fences or walls which may be required for screening, security or safety purposes by other sections of this chapter;
- (6) ~~in addition,~~ in the case of lots having multiple street frontages which by definition would be considered "front yards," the Zoning Administrator may authorize the installation of fences up to eight (8) feet in height, rather than the 4-foot limit specified above, to provide privacy for the side and rear yard areas of the dwelling based on its orientation on the lot; ~~and~~
- (7) the Zoning Administrator may authorize front and side yard fence heights to be increased to a maximum of eight (8) feet when it is determined that such additional height is necessary to provide screening or buffering of a residential property from an adjacent non-residential use;
- (8) ~~when a fence is designed/constructed such that the rails, boards, wire mesh or other non-structural coverings are attached to only one side of the structural supports (i.e., posts, cross rails, etc.), that side shall be considered t~~The "finished" side of any fence and shall face outward towards surrounding properties and rights-of-ways. ~~except where t~~The Zoning Administrator may grant an exception to this requirement upon finding that determines such

orientation ~~is to be~~ impractical or unnecessary given existing fences or other extenuating circumstances on the adjacent property.

- (97) No barbed wire or electrified or similar type fences shall be permitted except in conjunction with a bona fide agricultural operation.
- (n) Other uses and structures of a similar nature which are customarily associated with and incidental to residential uses, as determined by the zoning administrator.

Sec. 24.1-272. Accessory uses permitted in conjunction with commercial and industrial uses.

The following accessory uses shall be permitted in conjunction with commercial and industrial uses. No accessory use, activity, or structure, except fences, shall be constructed until the principal use of the lot has commenced, or the construction of the principal building/structure has commenced and is thereafter diligently and continuously pursued to completion. Land uses not listed in this section and not deemed similar to a listed use pursuant to subsection (k) shall be deemed not allowed as commercial or industrial accessory uses:

- (a) Fences or walls provided that:
- (1) fences or walls located in side or rear yards shall not exceed eight feet (8') in height;
 - (2) fences or walls located in front yards shall not exceed six feet (6') in height provided that corner visibility standards, as established in section 24.1-220 shall be observed;
 - (3) the above standards shall not be deemed to prohibit any fences or walls which may be required for screening, security or safety purposes by other sections of this chapter and, furthermore, the zoning administrator may authorize the installation of fences exceeding the above height limits when it is determined that such additional fence height would be appropriate for providing screening and buffering benefits to adjoining properties; and
 - (4) when a fence is designed/constructed such that the rails, boards, wire mesh or other non-structural coverings are attached to only one side of the structural supports (i.e., posts, cross rails, etc.), that side shall be considered the "finished" side and of fences shall face any adjacent public right-of-way or residential zoning districts. ~~except where~~ the Zoning Administrator may grant an exception to this requirement upon finding that ~~determines~~ such orientation ~~is to be~~ impractical or unnecessary given existing fences or other extenuating circumstances on the adjacent property.
- (k) Other uses and structures of a similar nature which are customarily associated with and incidental to commercial or industrial uses, as determined by the zoning administrator.

Sec. 24.1-273. Location, height, and size requirements.

Except where other provisions of this chapter are more restrictive, the following requirements shall apply to the location, height, and size of all accessory uses or structures in all districts, including the planned development district unless the approving ordinance for such district (project) has established alternative or supplementary requirements:

- (a) With the exception of statues, arbors, trellises, flagpoles, fences, walls or roadside stands, accessory buildings or structures shall not be located closer to the front lot line than the principal building façade provided, however, that where the setback of the principal building exceeds fifty feet (50'), accessory buildings and structures shall be subject only to a fifty-foot (50') minimum setback requirement.
- (b) Accessory buildings or structures located closer to the front lot line than the rear of the principal building shall observe the side yard requirements applicable to the principal building. When the rear façade of the principal building has more than one plane, the accessory building side yard

requirements shall be determined based on accessory building location in relation to those rear facades as depicted in Figure II-7.1, Appendix A.

- (c) An accessory building or structure attached to a principal building by any wall or roof construction, or located within ten feet (10') of any principal building, shall be considered a part of the principal building and shall observe all yard regulations applicable thereto. Setback and spacing requirements for accessory in-ground swimming pools shall be measured to the edge of the water. Setback and spacing requirements for above-ground pools shall be measured to the outer edge of the pool wall or any above-ground decking surrounding the pool.

Sec. 24.1-281. General requirements for home occupations.

All home occupations shall be subject to the following provisions unless excepted by the board in accordance with the provisions of section 24.1-283:

- (a) The owner/operator and business license holder of the home occupation shall reside on the premises. No person other than individuals residing on the premises shall be engaged on the premises in such operation unless otherwise authorized under section 24.1-283(e).
- (b) The home occupation shall be clearly incidental and subordinate to the residential use of the property. The use may not exceed four hundred (400) square feet or twenty-five percent (25%) of the floor area of the residence, whichever shall be less, unless a greater area is deemed appropriate and is authorized by the Board of Supervisors in conjunction with consideration of a special use permit application for a home occupation.
- (c) There shall be no change in the outside appearance of the building or premises or other evidence of the conduct of such home occupation visible from the street or adjacent properties. Signs and outdoor storage are not permitted.
- (d) There shall be no on-premises sales of goods or materials to the general public or on-site customer or client contact except as may be authorized by special use permit in accordance with the standards established in section 24.1-283.
- (e) Such home occupation shall not generate traffic, parking, sewerage or water use in excess of that which is normal in the residential neighborhood.
- (f) No mechanical or electrical equipment or flammable or toxic substances shall be utilized other than that which would customarily be utilized in the home in association with a hobby or avocation not conducted for gain or profit.
- (g) Any demand for parking generated by the conduct of such home occupation which is in addition to the spaces required for the residential use shall be accommodated off the street in a suitably located and surfaced space. Parking must be ten feet (10') ~~from~~ from any property line and where three (3) or more spaces are required they shall be effectively screened and buffered by landscaping from view of adjacent residential properties and the home occupation shall be authorized only by issuance of a special use permit by the board. If more than five (5) parking spaces are required in addition to the residential use for the home occupation, the home occupation shall be prohibited. In its approval action, the Board will specify the maximum parking limits associated with the home occupation.
- (h) The occupation or activity shall not require the use of machinery or equipment that creates noise, odor, smoke, dust or glare or is dangerous or otherwise detrimental to persons residing in the home or on adjacent property. Commercial vehicles must be kept in a garage or an enclosed and screened storage yard.
- (i) No equipment or process used as a part of the occupation or activity shall disrupt residents of nearby dwellings.

- (j) No heavy truck or vehicle or piece of equipment having a gross rated carrying capacity of more than one (1) ton [900kg] gross weight shall be parked or stored on or operated from the site in connection with a home occupation unless such vehicle or equipment has been specifically authorized in conjunction with a use permit authorizing a small contracting business.

Sec. 24.1-283. Home occupations permitted by special use permit.

The board may authorize, by special use permit issued in accordance with all applicable procedural requirements as set forth in article I, the following and materially similar types of home occupations subject to the specified conditions:

- (a) Home occupations permitted under section 24.1-282 which generate a parking demand for three (3) or more parking spaces, ~~but no more than five (5) spaces~~ and those occupations permitted under section 24.1-282(b) in residential districts other than those specified.

- (e) Home occupations with non-resident employees.

- (1) All home occupation categories whether permitted as a matter of right or by special use permit under section 24.1-282 and 24.1-283 may be authorized under this section to include one (1) or more non-resident employees. The allowable number of non-resident employees shall be specified in the use permit approval.
- (2) Evaluation of this allowance shall be based on the general provisions of section 24.1-281 and applicable requirements as set forth in section 24.1-283.
- (3) The term of any use permit issued under the provisions of this section shall be for two (2) years or such other specific time period (either lesser or greater) as may be deemed appropriate by the board. Nothing in this section shall be construed to prevent the operator of the home occupation from applying for a new permit prior to or after expiration of the initial permit. Requests for an extension of the non-resident employee term shall be processed as a minor amendment which shall require only review and authorization by board resolution, provided that the request is accompanied by written statements from the owners of each of the properties abutting the subject property indicating that they have no objection to continuation of the non-resident employee authorization. In the event such statements of approval cannot be provided by the applicant, the request for an extension shall be required to be submitted and processed as if it were an original application for a Special Use Permit.

Sec. 24.1-306. Table of land uses.

P=PERMITTED USE S=PERMITTED BY SPECIAL USE PERMIT	RESIDENTIAL DISTRICTS						COMMERCIAL AND INDUSTRIAL DISTRICTS						
	RC	RR	R20	R13	R7	RMF	NB	LB	GB	WCI	EO	IL	IG
USES	CATEGORY 1 - RESIDENTIAL USES												
1. Residential - Conventional	P	P	P	P		S							
a) Single-Family, Detached													
b) Single-Family, Attached				S		P							
• Duplex						P							
• Townhouse						P							
• Multiplex						P							
c) Multi-Family						P							
d) Manufactured Home (Permanent)					P								
2. Residential (Cluster Techniques Open Space Development)													
a) Single-Family, Detached	P	P	P	P									
b) Single-Family, Attached													
• Duplex	S	S	S	S									
3. Apartment Accessory to Single-Family Detached	(1)	(1)	(1)	(1)									
4. Manufactured Home Park					S								
5. Boarding House		S				S							
6. Tourist Home, Bed and Breakfast	S	S	S	S		S		P	P				
7. Group Home (for more than 8 occupants)		S	S	S		S							
8. Transitional Home		S	S	S		S							
9. Senior Housing – Independent Living Facility													
(a) detached or attached units w/individual outside entrances						S							
(b) multi-unit structures w/internal entrances						S		S	S				

(1) Refer to Section 24.1-407 for accessory apartment location and performance standards

Section 24.1-306. Table of land uses

USES	RESIDENTIAL DISTRICTS						COMMERCIAL AND INDUSTRIAL DISTRICTS						
	RC	RR	R20	R13	R7	RMF	NB	LB	GB	WCI	EO	IL	IG
	CATEGORY 10 - COMMERCIAL / RETAIL ¹												
1. Antiques/Reproductions, Art Gallery							P	P	P	P	P		
2. Wearing Apparel Store							P	P	P		P		
3. Appliance Sales									P		P		
4. Auction House								P	P		S		
5. Convenience Store							S	S	S		S		
6. Grocery Store							P		P		P		
7. Book, Magazine, Card Shop							P	P	P		P		
8. Camera Shop, One-Hour Photo Service							P	P	P		P		P
9. Florist							P	P	P		P		P
10. Gifts, Souvenirs Shop								P	P		P		
11. Hardware, Paint Store								P	P		P	P	P
12. Hobby, Craft Shop								P	P		P		
13. Household Furnishings, Furniture									P		P		
14. Jewelry Store								P	P		P		
15. Lumberyard, Building Materials									S			P	P
16. Music, Records, Video Tapes								P	P		P		
17. Drug Store							S	S	P		P		
18. Radio and TV Sales								S	P		P		
19. Sporting Goods Store								P	P		P		
20. Firearms Sales and Service								S	S		S		
21. Tobacco Store								P	P		P		
22. Toy Store								S	P		P		
23. Gourmet Items/Health Foods/Candy/Specialty Foods/Bakery Shops							P	P	P		P		
24. ABC Store								P	P		P		
25. Bait, Tackle/Marine Supplies Including Incidental Grocery Sales									P	P	P	S	S
26. Office Equipment & Supplies								P	P		P	P	P
27. Pet Store							S	P	P		P		
28. Bike Store, Including Rental/Repair							P	P	P		P		P
29. Piece Goods, Sewing Supplies							P	P	P		P		
30. Optical Goods, Health Aids or Appliances								P	P		P		P
31. Fish, Seafood Store									P	P	P		
32. Department, Variety, Discount Store									P		P		
33. Auto Parts, Accessories (new parts)								P	P		P		
34. Second Hand, Used Merchandise Retailers (household items, etc.) a) without outside display/storage b) with outside display/storage								P	P				
								S	S				
35. Storage shed and utility building sales/display									S			P	P
36. Home Improvement Center									P		P		

¹See Section 24.1-466(g) for special provisions applicable to developments with 80,000 or more square feet of gross floor area.

Sec. 24.1-307. Prohibited uses.

The following uses shall be prohibited in the county:

- (a) Smelting;
- (b) Nuclear materials manufacturing;
- (c) Nuclear waste processing or disposal;
- (d) Biohazard waste processing or disposal; and
- (e) Manufacture, transformation, or distribution of biologically accumulative poisons or other poisons that are or ever were registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 135, et sec.).
- (f) ATV (All Terrain Vehicle) tracks, cross-country circuits or other facilities de-signed or used for operation of such vehicles by other than the property owner/occupant as an activity accessory to their residential use of a property.
- (g) Placement of trailers or containerized cargo units on any property for storage or other uses, except as specifically authorized by the terms of this chapter.

Sec. 24.1-321. RC-Resource conservation district.

- (a) *Statement of intent.* The RC district is the least intense zoning classification and is intended primarily for those areas of the county designated for military or conservation uses in the comprehensive plan. This designation is also appropriate for lands designated for low density residential development which are not served by public utilities, are located within areas of particular environmental sensitivity as identified in the natural areas inventory, or have unusual development constraints caused by previous development or the presence of steep slopes, wetlands, or other environmental constraints.
- (b) Dimensional standards. Each lot created or used shall be subject to the following dimensional standards:

RC-RESOURCE CONSERVATION DISTRICT

Use Classification	Minimum Lot Requirements		Minimum Yard Requirements			Maximum Building Height ⁽¹⁾
	Area	Width	Front	Side	Rear	
Single-Family Detached Dwellings	5 ac 2 ha	300' 90m	50' 15m	50' 15m	50' 15m	35' 40' 12m
All Other Permitted & Special Uses	5 ac 2 ha	300' 90m	50' 15m	50' 15m	50' 15m	35' 10.5m

⁽¹⁾ For dwelling units in excess of thirty-five feet (35') [10.5m] in height, refer to Section 24.1-233.

Minimum district size: none

NOTE:
Residential open space subdivision techniques may be used in this district
Performance standards and special use permit requirements or conditions may increase yard and lot requirements. See article IV.

Sec. 24.1-322. RR-Rural residential district.

- (a) *Statement of intent.* The RR district is intended to provide opportunities primarily for single-family residential development generally having a maximum density of one dwelling unit per acre. Low density development is appropriate in areas where public services and facilities are limited and/or physical or environmental constraints are prevalent.
- (b) *Dimensional standards.* Each lot created or used shall be subject to the following dimensional standards:

RR-RURAL RESIDENTIAL DISTRICT

Use Classification	Minimum Lot Requirements ⁽¹⁾		Minimum Yard Requirements			Maximum Building Height ⁽²⁾
	Area	Width	Front	Side	Rear	
Single-Family Detached Dwellings	1 ac 4000 m ²	150' 45m	50' 15m	20' 6m	50' 15m	35' 40' 12m
All Other Permitted & Special Uses	1 ac 4000 m ²	150' 45m	50' 15m	20' 6m	50' 15m	35' 10.5M

⁽¹⁾ These minimum lot requirements apply where both public water and public sewer are available. For lots not served by public water and public sewer, refer to Section 24.1-204.

⁽²⁾ **For dwelling units in excess of thirty-five feet (35') [10.5m] in height, refer to Section 24.1-233.**

Minimum district size: none

NOTE:
Residential open space subdivision techniques may be used in this district.
Performance standards and special use permit requirements or conditions may increase yard and lot requirements. See article IV.

Sec. 24.1-323. R20-Medium density single-family residential district.

- (a) *Statement of intent.* The intent of the R20 district is to provide opportunities for medium density single-family residential development. Its intended application is for areas designated medium density by the comprehensive plan where public utilities are available.
- (b) *Dimensional standards.* Each lot created or used shall be subject to the following dimensional standards:

R20-SINGLE-FAMILY RESIDENTIAL DISTRICT

Use Classification	Minimum Lot Requirements ⁽¹⁾		Minimum Yard Requirements			Maximum Building Height ⁽²⁾
	Area	Width	Front	Side	Rear	
Single-Family Detached Dwellings	20,000 sq. ft. 1850m ²	100' 30m	40' 12m	15' 4.5m	30' 9m	35' 40' 12m
All Other Permitted & Special Uses	20,000 sq. ft. 1850m ²	100' 30m	40' 12m	15' 4.5m	30' 9m	35' 10.5m

⁽¹⁾ These minimum lot requirements apply where both public water and public sewer are available. For lots not served by public water and public sewer, refer to Section 24.1-204.

⁽²⁾ **For dwelling units in excess of thirty-five feet (35') [10.5m] in height, refer to Section 24.1-233.**

Minimum district size: none

NOTE:
Residential open space subdivision techniques may be used in this district
Performance standards and special use permit requirements or conditions may increase yard and lot requirements. See article IV.

Sec. 24.1-324. R13-High density single-family residential district

- (a) *Statement of intent.* The R13 district is intended to provide opportunities for single-family residential development generally having a maximum density of 3.0 dwelling units per acre. High density single-family detached development can be expected to generate substantial demands on public services facilities and should be located where adequate public services, transportation facilities and commercial centers are available.
- (b) *Dimensional standards.* Each lot created or used shall be subject to the following dimensional standards:

R13-SINGLE-FAMILY RESIDENTIAL DISTRICT

Use Classification	Minimum Lot Requirements ⁽¹⁾		Minimum Yard Requirements			Maximum Building Height ⁽³⁾
	Area	Width	Front	Side ⁽²⁾	Rear	
Single-Family Detached Dwellings	13,500 sq. ft. 1,250m ²	90' 27m	30' 9m	12.5' 3.75m	25' 7.5m	35' 40' 12m
All Other Permitted & Special Uses	13,500 sq. ft. 1,250m ²	90' 27m	30' 9m	12.5' 3.75m	25' 7.5m	35' 10.5m

(1) These minimum lot requirements apply where both public water and public sewer are available. For lots not served by public water and/or public sewer, refer to Section 24.1-204.

(2) Side yard may be adjusted to fit lots provided that no side yard shall be less than ten feet (10') [3m] and that the total of the two side yards on the same lot is no less than twenty-five feet (25') [7.5m].

(3) **For dwelling units in excess of thirty-five feet (35') [10.5m] in height, refer to Section 24.1-233.**

Minimum district size: none.

NOTE:
Residential open space subdivision techniques may be used in this district
Performance standards and special use permit requirements or conditions may increase yard and lot requirements-See Article IV

Sec. 24.1-374. HRM-Historic resources management overlay district.

- (a) *Statement of intent.* In accordance with the objectives of the adopted comprehensive plan and specifically with section ~~15.2-2306-15.1-503-2~~, Code of Virginia, the purpose of the historic resources management overlay district is to protect the historic cultural resources of the county by ensuring that historic buildings and archaeological sites are acknowledged, properly documented, and protected or recovered and incorporated into the overall design of a proposed as development activity occurs.
- (b) *Applicability.* ~~The Historic Resources Management Overlay District shall Specifically, these provisions apply to all properties in areas of the county which have historic and archaeological resources present on the site as identified by the study entitled "Resource Protection Planning Revisited: James City County, York County, and City of Williamsburg" prepared by the Department of Archaeological Research, Colonial Williamsburg Foundation and/or as may be identified in the historic resources database maintained and managed by the Virginia Department of Historic Resources. In addition, the HRM overlay provision shall apply to all properties identified in the architectural resources database maintained and managed by the Virginia Department of Historic Resources.~~
- (c) *Use regulations.* Permitted uses, specially permitted uses, accessory uses, dimensional standards and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.
- (d) *Special requirements.*
 - (1) Archaeological sites.
 - a. A Phase I archaeological study performed in accordance with the Guidelines for Archaeological Investigations in Virginia, 1996 or as amended, published as defined by the Virginia Department of Historic Resources, shall be undertaken in conjunction

with for all development proposals involving any properties within the HRM District. The Phase I study shall identify, in accordance with accepted practices, any sites potentially eligible for listing on the Virginia Landmarks Register or the National Register of Historic Places.

- b. Potentially eligible sites recorded in the Phase I study that cannot be avoided by the development shall be further evaluated through the performance of a Phase II evaluation conducted in accordance with the referenced Guidelines. Sites that are to be avoided shall be cordoned-off in the field by orange-mesh snow fencing or other protective markings/delineations prior to any land disturbing activity on the property. If, based on the "Guidelines for Preparing Archaeological Resource Management Reports" of the Virginia Department of Historic Resources, the Phase I study indicates the desirability for additional studies, a- The Phase II study shall be submitted to the County for review and approval, and, if warranted, a Phase III study of the site shall also be completed. The recommendations of such studies shall be incorporated into the plan of development and any clearing, grading, or construction activities.
- c. At the conclusion of the Phase II evaluation and its approval as to compliance with the preparation Guidelines, if a site is determined not eligible for listing on the National Register of Historic Places, then development may occur within the subject area. If the site is determined to be potentially eligible for listing on the National Register, then the following mitigation options are available: Alternatively, instead of performing additional studies, the archaeological resource may be preserved in place provided, however, that the zoning administrator shall require that sufficient study and analysis are performed which shall determine the locational extent of the resource so as to ensure its future accessibility.
1. Avoidance. In cases where the resource is located outside of any areas that will be disturbed by development activities, the resource site may be avoided by setting aside the site and a sufficient perimeter buffer in an undisturbed natural area. National Register eligible archaeological sites that are to be avoided by the development shall be clearly marked on project construction maps. In addition, if ground clearing or construction activities will take place within 100 feet of the site area, then the site boundaries shall be cordoned-off in the field with orange snow fencing or other appropriate barrier.
 2. Partial Avoidance and Data Recovery. In cases where the resource site is partially located within a natural area to be left undisturbed by development activities and partially within an area to be disturbed by development, data recovery shall be required for the site area to be impacted. The site area that is to be protected/preserved shall be clearly marked on project construction plans. In addition, if ground clearing or construction activities will take place less than 100 feet from the site, then the remaining resource boundaries shall be cordoned-off in the field with orange snow fencing or other appropriate barrier. A Treatment/Data and Resource Recovery Plan shall be completed and submitted to the zoning administrator for review and approval as to compliance with preparation guidelines.
 3. Data and Resource Recovery. If the resource site cannot be avoided by development activities, then a Treatment Plan / Data and Resource Recovery Plan shall be completed and submitted to the zoning administrator for review and approval as to compliance with the preparation Guidelines.
- d. Archaeological excavations being conducted in accordance with an approved Treatment / Data and Resource Recovery Plan shall be under the direct supervision of an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards promulgated by the United States Department of the Interior. All work and resulting reports shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation promulgated by the United States Department of the Interior and VDHR's guidance entitled, Guidelines for Preparing Identification and Evaluation Reports for Submission Pursuant to Section's 106 and 110, National Historic Preservation Act, Environmental Impact Reports of State Agencies, Virginia Appropriations

Act, 1998 Session Amendments and Guidelines for Archaeological Investigations in Virginia June 1996, and any subsequent amendments to such guidelines. All field and laboratory methodology, as well as the final report, shall be conducted in accordance with standards set forth in the VDHR's Guidelines for Preparing Archaeological Resource Management Reports and will meet the qualifications set forth in the Secretary of Interior's Professional Qualification Standards.

- (2) *Architectural structure.*
- a. *The Secretary of the Interior's Standards for the Rehabilitation and Guidelines for Rehabilitating Historic Buildings* shall be used in performing appropriate architectural studies or analyses of standing structures.
- b. In the ~~event case of~~ demolition of an architecturally or historically significant standing structures is proposed, the zoning administrator may require that a set of measured drawings be prepared by a licensed architect and filed with the county and the state historic preservation office prior to demolition occurring.
- (3) All archaeological and architectural studies shall be submitted to the zoning administrator for review and approval and shall be made a part of any development plan approval. All such reports or studies submitted to meet the requirements of this section shall include a signed statement by the preparer certifying that they have complied with all applicable research methodology and guidelines. The zoning administrator shall determine whether the studies have been prepared in accordance with the applicable guidelines through consultation with the Virginia Department of Historic Resources or through such other procedures as deemed appropriate.
- (e) *Waiver of certain requirements.* Upon written request from the developer, the zoning administrator may waive any of the above requirements deemed not to be necessary for the proposed project or where it is determined in writing by competent authority recognized by the zoning administrator or state historic preservation officer that the value of the historic resource is insignificant in comparison to the cost of required studies, recovery, or preservation plans.

Sec. 24.1-375. TCM-Tourist corridor management overlay district.

- (f) *Special architectural standards along tourist corridors.* No building exterior or structure including signs shall have architectural materials inconsistent in quality, appearance, or detail with other architectural materials commonly used in the District. Specific consideration shall be given to compatibility with adjacent properties, thus preventing an adverse impact to existing or future development which could cause a depreciation in property values.

Design and architectural features shall demonstrate consistency with the following provisions:

- (9) Building lighting shall be recessed under roof overhangs or generated from concealed source, low level light fixtures. Site lighting shall be from concealed sources (i.e., the luminaire or bulb itself is not visible), shall be of a clear white or amber light that does not distort colors, and shall not spill over onto adjoining properties, buffers, highways, or in any way impair with the vision of motor vehicle operators. Lighting fixtures or devices shall be of a directional or cut-off type capable of shielding the light source from direct view and providing well-defined lighting patterns. Exposed neon (gas-filled) tubing shall not be permitted on exterior building surfaces or on signs.

Sec. 24.1-376. WMP-Watershed management and protection area overlay district.

(b) *Applicability.* The special provisions established in this section shall apply to the following areas:

- (1) Areas designated on the Watershed management and protection area overlay district map, dated ~~September 12, 2008~~ ~~May 15, 1994~~, and made a part of this chapter by reference. (See Map III-2 in Appendix A)
- (2) Such other areas as may be determined by the zoning administrator through drainage, groundwater and soils analyses conducted by the department of environmental and development services to be essential to protection of such existing or potential reservoirs from the effects of pollution or sedimentation.

(e) *Special requirements.*

- (4) The following uses shall not be permitted within the buffer strip required above or within five hundred feet (500') [150m] of the required buffer strip:
 - a. ~~septic tanks and drainfields, unless specifically approved by the reservoir owner;~~

Sec. 24.1-377. Yorktown Historic District Overlay.

(d) Actions Permitted with Administrative Approval

- (1) Certain actions that are deemed to have only a minor effect on the character of the historic district may be approved by the Zoning Administrator upon submittal of an appropriate application form. Such actions shall include the following and any similar actions, as determined by the Zoning Administrator, which will have no more effect on the character of the district than those listed.
 - a. Additions or deletions to a structure which will not substantially change the architectural character of the structure and which are generally hidden from public view or inconspicuous in nature.
 - b. Construction of piers, docks, and bulkheads.
 - c. Outside storage on a business property that does not involve structural changes.
 - d. Painting the exterior of a structure or the face of an existing sign when using one of the colors shown on the approved palette of colors.
 - e. Demolition or moving of any building or structure other than a Pivotal structure.
 - f. Modification or extension of existing fences or walls along street frontages or side property lines and installation of new fences in rear yards.
- (2) The Zoning Administrator shall be guided by the standards and guidelines referenced in Section 24.1-377(h) and shall have the authority to request modifications of a specific proposal in order that the proposal may comply with such standards and guidelines. In any case where the Zoning Administrator is uncertain of his or her authority to act on a particular application under this section or in any case where the Zoning Administrator and the applicant cannot agree on changes in the proposal, the application shall be referred to the HYDC for action. In the case of disapproval by the Zoning Administrator, the applicant may appeal the decision within thirty (30) days to the HYDC. The Zoning

Administrator shall keep a record of decisions under this section and shall report on such decisions to the HYDC at its next regular meeting.

(g) Actions Requiring Approval by the Historic Yorktown Design Committee

- (1) All actions not covered under Sections 24.1-377(e) or 24.1-377(f) above and any other actions not specifically exempted by the terms of this Article shall be permitted only after issuance of a certificate of appropriateness by the HYDC. Such actions include, but are not limited to:
- a. Razing, demolishing, or moving a *Pivotal* building or structure.
 - b. Constructing a new building or structure.
 - c. Any addition to, or modification of, a building or structure which alters the square footage of the structure or otherwise alters its size, height, contour or outline, ~~or color.~~
 - d. Any change or alteration of the exterior features and architectural style of a building, including removal or rebuilding of porches, dormers, cupolas, stairways, terraces, and the like.
 - e. Addition or removal of one or more stories of a building or alteration of the roofline of such structures.
 - f. Construction of walls or fences as a new feature on street frontages or side property lines (i.e., when not an extension of a fence already located on the front or side property lines).
 - g. Any addition of, or alteration to, a sign, including changing the face or repainting the face if using colors not on the Yorktown Color Palette.
 - h. Painting or repainting a structure using colors that are not on the Yorktown Color Palette.

Sec. 24.1-407. Standards for accessory apartments in conjunction with single-family detached dwellings.

- (k) Prior to issuance of a Building Permit for the accessory apartment the property owner shall prepare and record with the Clerk of the Circuit Court, at his expense, a deed restriction on the property stipulating that the accessory apartment will be used, occupied and maintained in accordance with the above-noted restrictions and such others as may be prescribed by the York County Board of Supervisors in approving the special use permit. A copy of any resolution authorizing the accessory apartment shall be attached to the deed restriction as an exhibit. Such restrictions shall not be voided, in whole or in part, unless specifically authorized by the County Administrator in recognition of some subsequent change in the zoning restrictions applicable to accessory apartments or upon removal of the accessory apartment through demolition or alterations to the structure.

Sec. 24.1-419. Standards for forestry operations.

- (g) Streamside management zones at least fifty feet (50') ~~[45m]~~ in width, within which no timbering may occur, shall be preserved on each side of all perennial and intermittent streams. Upon request, the zoning administrator may approve harvesting fifty percent (50%) of the crown cover within the

streamside management zone accompanied by an ~~fifty percent (50%)~~ increase of the streamside management zone to one hundred feet (100') ~~[30m]~~. This request must be accompanied by a recommendation of approval from the Virginia Department of Forestry.

Sec. 24.1-440. Standards for temporary sales of seasonal commodities.

Administrative permits may be issued for the temporary outdoor sale of produce or other seasonal commodities subject to the following provisions:

- (a) The maximum term for any administrative permit authorized under this section shall be one (1) one-hundred-twenty-day (120) ~~ninety (90)-day~~ period during any year.

- (d) The applicant shall post a surety by cash or certified check in the amount of five hundred dollars (\$500.00) to ensure that the site shall be maintained in a clean and sanitary condition at all times and shall be satisfactorily cleaned and restored subsequent to termination of the activity. The zoning enforcement officer shall, within ten (10) days of the closing of such use, report to the zoning administrator concerning the condition of the grounds and any corrective measures deemed necessary. The zoning administrator may waive or reduce the surety for bona fide non-profit civic groups which are located organized, meet, and operate in York County or when the applicant provides documentation satisfactory to the zoning administrator that the property owner will enforce the property maintenance/clean-up requirement (e.g., as a condition of the applicant's lease).

Sec. 24.1-444. Standards for temporary construction trailers and offices.

Administrative permits may be issued for trailers and industrialized building units used in conjunction with construction or land disturbing projects subject to the following:

- (e) The applicant shall post a surety by cash, certified check, or letter of credit in the amount of two thousand dollars (\$2,000.00) per trailer or building, not to exceed ten thousand dollars (\$10,000.00) per construction or land disturbing project, to guarantee the removal of such temporary trailer or building. Alternatively, the applicant may execute an agreement with the Building Official acknowledging that the Certificate of Occupancy for the site will be withheld until the temporary trailer is removed from the site.

Sec. 24.1-446. Standards for temporary use of trailers for office or business purposes.

Administrative permits may be issued for the temporary use of trailers for office or business purposes subject to the following provisions:

- (g) Prior to placement of such trailer on the site, the applicant shall post with the zoning administrator a two thousand five hundred dollar (\$2,500.00) letter of credit or cash escrow to ensure its removal in accordance with the time limits established herein and shall enter into an agreement, approved as to form and content by the county attorney, to effect the same. Alternatively, the applicant may execute an agreement with the Building Official acknowledging that the Certificate of Occupancy for the site will be withheld until the temporary trailer is removed from the site.

Sec. 24.1-481. Standards for shopping centers.

Shopping centers shall comply with the following performance standards:

- (a) *Area requirements.* The minimum area required for the development of the various types of shopping centers, as defined in section 24.1-104, shall be as follows:
- (1) Neighborhood Center: ~~A Neighborhood Center having less than~~ must have a minimum lot area of forty thousand (40,000) square feet. ~~[1200m²]. The definition of Neighborhood Center notwithstanding, a shopping center may have as much as 15,000 square feet of gross leasable floor area and still be considered a "Neighborhood Center" if off-street parking is calculated and provided at the Community Shopping Center ratio.~~
 - (2) Community and Specialty Centers ~~--~~ minimum lot area of three (3) acres. [1.5ha]
 - (3) For shopping centers otherwise permitted as a matter of right under the provisions of Section 24.1-306, a special use permit shall be required for any proposed development having 80,000 or more square feet of gross floor area. Any redevelopment involving an addition, expansion, renovation, enlargement, or other modification of an existing development that would increase the gross floor area to 80,000 or more square feet shall be subject to the standards and procedures applicable to amendment of special use permits set forth in Section 24.1-115(d) of this chapter.

Sec. 24.1-495. Standards pertaining to the storage, handling, transport, and disposal of fly ash, etc.

~~The requirements for approval of fly ash storage, handling, transport and disposal by special use permit shall apply to any operation which does not qualify as a "beneficial use" of the waste materials pursuant to the terms of the Virginia Solid Waste Management Regulations (VSWMR) — 9 VAC 20-80 et seq. or the terms of the Virginia Coal Combustion Byproducts Regulations (CCBR) — 9 VAC 20-85 et seq. Such beneficial uses shall include, but are not necessarily limited to: use as a base, sub-base or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway or similar structure, or in the embankment of a road.~~

- (a) *Storage and disposal of fly ash.*
- (1) The applicant shall prepare a suitable long range plan for the operation and ultimate use and development of the proposed fly ash storage and disposal area. Such plan shall be approved by the zoning administrator prior to the issuance of the use permit.
 - (2) Storage and disposal sites shall be permitted only in areas classified for heavy industrial use.
 - (3) Coal or other solid fossil fuels, fly ash, bottom ash, or other particulate by-products shall not be deposited in places or in such a manner as would or could reasonably be expected to allow movement of said materials from the deposit area to other terrain, or into any surface water or groundwater supply.
 - (4) Such fly ash, bottom ash or other particulate by-products shall be covered daily with the type and amount of soil prescribed by the zoning administrator prior to the issuance of the use permit. The determination of the required depth of cover material shall be based on analysis of the characteristics of the material being stored or deposited, the characteristics of the soils in the storage and disposal area, the characteristics of the material to be used as cover, the anticipated future use of the site as indicated on the approved plan of operation and such other considerations as the board may deem appropriate.

Fill dirt or soil approved by the zoning administrator shall be progressively applied in each storage and disposal area as the final level of the fly ash, bottom ash, or other particulate by-product reaches its prescribed limits, and shall not await the filling of the entire storage and disposal area.

- (5) Dust control methods, approved by the zoning administrator as appropriate, shall be implemented at all storage and disposal sites. No owner or other person shall cause, allow or permit any materials to be stored or disposed of without taking precautionary measures, approved by the zoning administrator as appropriate, to prevent particulate matter from becoming airborne or waterborne.
 - (6) The storage and disposal site shall be designed, constructed, and operated so as to prevent any contamination of groundwater or surface water.
 - (7) The storage and disposal site may be inspected by the zoning administrator or his designated representatives at any time. The applicant shall provide written authorization for such inspection visits prior to the issuance of the use permit.
- (b) *Transport and handling of fly ash.*
- (1) Dust control methods, approved by the zoning administrator as appropriate, shall be implemented at all loading and unloading sites, along all haul roads, and in conjunction with any other means of material transport or handling. No owner or other person shall cause, allow, or permit any materials to be handled or transported, or any roads to be used, constructed, altered, repaired or demolished without taking precautionary measures, approved by the zoning administrator as appropriate, to prevent particulate matter from becoming waterborne or airborne.
 - (2) Each truck, vehicle, or other mechanism used for hauling or transporting coal or other solid fossil fuels, fly ash, bottom ash or other particulate by-products shall be designed, covered and sealed so as to prevent such materials from being deposited or spilled during transport, upon any public or private lands or property, provided, however, that this requirement shall not apply to rail cars used to transport coal or other such fossil fuels to the site of use.
 - (3) Each and every truck, vehicle, or other mechanism used in the hauling and transportation of coal or other solid fossil fuels, fly ash, bottom ash or other particulate by-product shall be inspected and approved by the zoning administrator or his designated agent prior to its initial use for such purpose. All such trucks, vehicles, and mechanisms shall display an appropriate seal, issued by the zoning administrator, to indicate its compliance with the county's inspection requirements. Each such truck, vehicle, or mechanism may be inspected by the zoning administrator or his designated agent at any time. Such inspection shall be to determine whether or not such truck, vehicle or mechanism is being maintained and operated so as to prevent the deposit or spilling of any materials during transport. The applicant shall provide written authorization for such inspections prior to the issuance of the use permit. This requirement shall not be deemed to apply to rail cars used to transport coal or other such fossil fuels to the site of use.
 - (4) Transport, handling, and disposal of fly ash, bottom ash, cover material, and other particulate by-products shall be conducted only during the daylight hours.

Sec. 24.1-498. Submission requirements.

- (a) Before a developer establishes a nonprofit organization as provided in section 24.1-497 above, the following documents shall be submitted to the county:
 - (1) The articles of incorporation or other documents which will establish or create the nonprofit property owners association.
 - (2) The proposed declaration of covenants and restrictions.
 - (3) The proposed bylaws of the association.
 - (4) An inventory of the lands and capital facilities to be owned and managed by the organization, the anticipated valuation of the capital improvements as of their expected completion, and the anticipated useful life of the major facility components. This information shall be accompanied by a certification statement signed by the developer attesting to its completeness and

accuracy. The developer shall ensure that a copy of this inventory is provided to the initial board of directors of the organization so that it will be available to assist the association in fulfilling its obligations under the terms of Section 55-514.1 of the Code of Virginia..

- (b) The developer shall submit to the county, along with the required articles of incorporation (or similar documents) and declaration of covenants and restrictions, a certification by an attorney licensed to practice law in the Commonwealth of Virginia that the attorney has reviewed such documents and that they comply with:
- (1) the requirements of this article, and identifying where each requirement of section 24.1-497 is addressed;
 - (2) if applicable, the provisions of the Virginia Property Owners Association Act, section 55-508, et seq., Code of Virginia; and
 - (3) if applicable, the provisions of the Virginia Subdivided Land Sales Act of 1978, sections 55-336, et seq., Code of Virginia.
 - (4) any special requirements for covenants as may have been stipulated in rezoning proffers or other zoning or special use permit action approved by the board of supervisors.

The attorney shall also certify that the common areas, when conveyed to the association, will be conveyed without encumbrances or liens, other than easements for public utilities, and such other similar encumbrances as may be specifically identified in the declaration.

- (a) The county attorney shall review and approve for consistency with the requirements of this article the certification submitted in conformance with subsection (b) above, and the articles of incorporation (or similar documents) and the declaration of covenants and restrictions. The county attorney's approval shall be evidenced by signature on the documents submitted for recordation.
- (d) Any proposed amendments to the articles of incorporation or declaration of covenants and restrictions or actions that would establish encumbrances on the common area shall be submitted to and reviewed by the county attorney to ensure compatibility with the terms of this article. The county attorney's approval shall be evidenced by signature on the documents.

(Ord. No. 05-13(R), 5/17/05)

Sec. 24.1-505. Review and approval procedures for site plans.

- (a) While not required, developers and property owners are encouraged to present informally conceptual plans to the Department of Environmental and Development Services zoning administrator at a preapplication conference. Applicants should provide preliminary site sketches and plan information prior to the scheduled conference.

- (i) Pursuant to Section 15.2-2261, Code of Virginia, final approval of a site plan submitted under the provisions of this article shall expire five (5) years after the date of such approval or, if building permits, or renewals thereof, have been issued for a valid and unexpired site plan, then upon the expiration of those permits later, upon the expiration of any building permits or renewals thereof issued for any valid and unexpired site plan. The issuance, and diligent pursuit of work thereunder, of a land disturbing activity permit (LDA permit) authorizing construction of stormwater management infrastructure also shall be sufficient to extend the term of validity of a site plan approval for a period concurrent with the validity of the LDA permit. The application for and approval of minor modifications to an approved site plan shall not extend the period of validity of such plan and the original approval date shall remain the controlling date for purposes of determining validity. Notwithstanding the five (5)-year term of validity, nothing shall preclude the application, to the greatest extent possible, of the terms of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act, or the application of the provisions of any local ordinance adopted to comply with the requirements of the federal Clean Water Act, Section 402

(p.) of the Stormwater Program and regulations promulgated thereunder by the Environmental Protection Agency.

Sec. 24.1-601. General provisions.

- (c) In the event more than one principal use which requires parking or loading space is erected or established on the same premises, parking or loading space shall be provided on the basis of the sum of the required spaces for each use, except in the case of approved planned developments. For the purpose of this section, a shopping center, or a commercial facility containing three (3) or more attached tenant spaces but which does not meet the minimum lot area, setback or other design requirements specified by this chapter for shopping centers, shall be considered a single principal use and, except for theaters or bingo halls located within such centers, parking requirements need not be calculated separately for each establishment therein.

Sec. 24.1-604. Calculating the number of required off-street parking and loading spaces.

- (a) In calculating the number of required off-street parking spaces the following rules shall govern:

- (5) Except for shopping centers, or commercial facilities containing three (3) or more attached tenant spaces but which do not meet the minimum lot area, setback or other design requirements specified by this chapter for shopping centers, where multiple principal uses occupy the same site (either in the same building or in separate buildings) in the case of mixed uses including mixed uses within a single building, the parking spaces required shall equal the sum of the parking space requirements of the various uses computed separately. In the case of multiple uses of a single building where uses are exclusive for a period of time, parking requirements shall be based on the maximum requirements from among the multiple uses in each category.

Sec. 24.1-702. General sign regulations.

- (a) Sign area shall be measured within a continuous perimeter enclosing the entire display face of the sign, including background, framing, trim, molding and other borders, but excluding supports and uprights unless the combined width of such supports or uprights exceeds 25% of the width of the sign face being supported or unless such supports of any width are designed as an integral part of the display for the purpose of illustration or attraction (Note: the provisions concerning support measurement shall not apply to *monument* signs). Where a sign consists of two identical parallel faces which are back to back and located not more than twenty-four inches (24") from each other, or in a "V" arrangement where distance between the unattached ends of the "V" is forty-eight (48) inches or less, only one side of such sign shall be used in computing the area. The area of signs with more than two (2) faces or with faces which do not meet the preceding allowances are not parallel or in the same plane with each other shall be the sum of the areas of all the sign faces. The area of a cylindrical sign shall be computed by multiplying one-half (1/2) the circumference by the height of the sign. Where individual letters, characters or figures are mounted so as to use a building facade as a background, the area of such sign shall be determined by computing the sum of the area within the outer perimeter of each individual character or figures comprising the total message, symbol or advertisement. (See Figure VII-1 in Appendix A)
- (b) The maximum allowable accumulative sign area permitted on any parcel shall be calculated with respect to the principal street frontages of a parcel to which the parcel has direct access. Unless otherwise specified, the maximum allowable accumulative area shall be based on the width of the face of the principal building parallel or nearly so to the street frontages. All permanent signs, unless specifically exempted by the terms of this article, shall be counted in the calculation of maximum accumulative sign area. In no event shall the aggregate wall sign area for a building,

or for an individual tenant space if the building consists of multiple attached units ~~be~~, be allowed to exceed 240 square feet.

- (c) The height of signs shall be the vertical distance measured from the average finished grade ground elevation of the area surrounding and within ten feet (10') of from where the sign is located to the highest point of the sign. The maximum allowable height of signs shall be as specified by the regulations established herein. If the adjoining road surface elevation is more than five (5) feet above the average finished grade where the sign will be located, then the sign height may be increased by one (1) foot for each two (2) feet of elevation difference in excess of five (5), up to a maximum additional height allowance of ten (10) feet.
- (d) No sign, unless herein exempted, shall be erected, constructed or altered until a permit has been issued by the county. Fees for sign permits shall be in accordance with the schedule of fees adopted by the board.
- (e) Any sign pertaining to a nonconforming business, commercial or industrial use located within a residential district, shall be deemed a nonconforming structure.
- (f) No signs shall be permitted in conjunction with any business use or activity not possessing a valid business license issued by the county until such time as site plan approval, or a Zoning Certificate in cases where no site plan is required, has been issued for the subject use or activity.

Sec. 24.1-704. Temporary signs.

The zoning administrator, upon application, may issue permits for the following temporary signs. Such signs shall not count against the normal sign area allowances for the property on which located:

- (a) Signs not exceeding thirty-two (32) square feet in area, which promote a special civic, cultural or religious event such as a fair, exposition, play, concert or meeting sponsored by a governmental, charitable or religious organization. The duration of such permit shall not exceed thirty (30) days.
- (b) Banners not exceeding thirty-two (32) square feet in area when used in conjunction with the opening of a new business or an establishment going out of business in any commercial or industrial district. The duration of such permit shall not exceed thirty (30) days. "Grand-Opening" temporary signage shall be permitted only within the one-year period after the actual business opening occurs. The completion of a major interior or exterior remodeling or a change in ownership for a pre-existing business shall be deemed eligible for temporary "grand-opening" banners.

In addition to the above, new businesses may install a temporary banner or free-standing sign announcing employment opportunities (e.g., "Now Hiring" or "Help Wanted") on the site of such business. Only one such sign shall be permitted and the maximum allowable size shall be thirty-two (32) square feet. The maximum duration for a permit for such sign shall be sixty (60) days.

Sec. 24.1-706. Off-premises directional signs.

- (a) The zoning administrator may authorize, by permit, the installation of off-premises directional signs for churches, civic organizations, governmental functions, hospital-based emergency centers and similar activities or establishments, subject to the following findings and conditions:
 - (1) The location of the use to which the sign pertains prevents adequate identification by such signs as are normally permitted.
 - (2) The function of such signs shall be limited to directional or identification purposes.
 - (3) The location of such signs shall be consistent with the uses existing or permitted on the site of such sign. A written authorization from the owner of the property on which such sign is proposed to be located or a recorded easement permitting the placement of the

sign shall be submitted to the zoning administrator at the time of application for necessary permits.

- (4) Such signs shall be limited to a maximum area of eight (8) square feet and a maximum height of six (6) feet and shall comply with all other applicable provisions of this article. Not more than three (3) such signs shall be permitted for any single use. All off-premises directional signs, except those permitted under section 24.1-706(b) below, shall have a background color of green, blue or brown with white letters.
- (b) Off-premises directional open house signs may be erected in any zoning district when in accordance with the ~~general provisions established in section 24.1-702 and subject to the following conditions:~~
- (1) The function of such signs shall be limited to directional purposes, as opposed to advertisement of an individual realtor or realty firm. No specific realtor or realty firm name(s) shall appear on such signs provided, however, that the registered trademark of the National Association of Realtors and the equal housing opportunity logo shall be permitted.
 - (2) Such signs shall refer only to real estate open houses whose purpose is to sell, lease, or rent residential property.
 - (3) No such sign shall exceed three (3) square feet in area and three feet (3') in height.
 - (4) Such signs shall be located only at intersections where a turning movement is indicated.
 - (5) No more than two (2) such signs shall be located at any one intersection, nor shall such signs at the same intersection point in the same direction.
 - (6) Such signs shall be displayed only when the residential unit is open for public viewing.
 - ~~(7)(7)~~—Such signs shall be placed only on privately owned property and only with the express consent of the owner of said property. ~~In addition, and to the extent that such signs are not inconsistent with any requirements or regulations of the Virginia Department of Transportation, placement within a public street right-of-way shall be allowed.~~
 - (8) The provisions of Section 24.1-702(j) notwithstanding, such signs shall not be subject to the minimum ten-foot (10') setback from property lines when placed on private property.

Sec. 24.1-707. Exempt signs.

The following signs may be erected, altered or maintained in any zoning district when in accordance with the general provisions established in section 24.1-702, ~~except as noted, and provided further~~ however, that permits shall not be required unless specifically noted.

- (a) Signs erected and maintained pursuant to and in discharge of any federal, state or county governmental function, or as may be required by law, ordinance or governmental regulation including official traffic signs and signals, warning devices and other similar signs.
- (b) Memorial signs or tablets, cornerstones or names of buildings when cut into masonry or when constructed of bronze or other noncombustible material, but not to exceed six (6) square feet in area.
- (c) Non-illuminated construction signs, not exceeding thirty-two (32) square feet in area and six feet (6') in height and limited to ~~one three signs~~ one for each street frontage ~~for each principal use being constructed on the premises to which such sign refers.~~ No such signs shall be permitted unless a building permit has been issued or unless a site plan for the proposed development has been submitted to the county for official review. Such signs shall be removed at the completion of construction.

- (d) Non-illuminated realty signs, not exceeding six (6) square feet in area and four feet (4') in height in all single family residential districts, and thirty-two (32) square feet and six (6) feet in height in all multi-family, commercial and industrial zoning districts, and limited to one sign for each street frontage, and only when displayed on the premises to which such sign refers. Such signs shall be exempt from the 10-foot minimum setback requirement.
- (e) Non-illuminated signs identifying official state automobile inspection stations and the inspection number which is then due, provided that such signs shall not exceed sixteen (16) square feet in area and shall be limited to one sign for each street frontage. "A-frame" designs shall be considered as a single sign for the purposes of this section.
- (f) Bulletin boards for churches or other permanent places of worship, or for public buildings, when located on the same premises as the building to which they refer, and provided that such signs shall not exceed twelve (12) square feet in area and six feet (6') in height. If such sign is a free-standing or illuminated sign, a permit shall be secured.
- (g) Non-illuminated political signs and posters of less than or equal to six (6) square feet in area, provided that all such signs shall be removed within seven (7) days following the election, canvass or primary. Such signs shall be exempt from the 10-foot minimum setback requirement.
- (h) Non-illuminated signs and posters of less than four (4) square feet in area advertising or providing directions to a residential, civic or community operated yard or garage sale or an estate sale or auction. Such signs shall be exempt from the 10-foot minimum setback requirement.
- (i) Signs attached to machinery or equipment which is necessary or customary to a business including, but not limited to, devices such as gasoline pumps, vending machines, ice machines, etc., provided that such signs refer exclusively to products or services offered on the premises.
- (j) On-premises directional signs, not exceeding three (3) square feet in area and three feet (3') in height and not containing any advertising material or discernible business logo. A permit shall be secured for any illuminated signs. Such signs shall be exempt from the 10-foot minimum setback requirement.
- (k) Signs displayed in the windows of establishments permitted in commercial and industrial districts provided, however, that such signs shall not occupy more than twenty-five percent (25%) of the total area of the window in which they are displayed and shall not be legible from any public street.
- (l) Menu boards which are either free-standing or wall signs providing information on food and beverages offered for drive-in sales on the premises, provided that such signs and any business logos thereon are not legible from any public right-of-way and do not exceed an aggregate or individual area of thirty-two (32) square feet per drive-thru lane. A permit shall be secured.
- (m) Signs or scoreboards within a ball park or other similar public or private recreational use which are oriented to the facility and are not designed or intended to be legible from a public street or adjacent properties.
- (n) Flags, emblems or insignia of the United States, the Commonwealth of Virginia, York County, religious groups, civic organizations, service clubs and similar organizations, groups, agencies, etc. One (1) corporate logo emblem flag per parcel shall be permitted; provided however, that such sign shall count toward the maximum allowable sign area for the subject parcel. Flagpoles shall conform with the height regulations of the district in which located. Placement of flags in such quantities and locations as to be for attention-getting/advertising purposes, in the opinion of the zoning administrator, shall not be considered exempt under this section.
- (o) Non-illuminated signs warning trespassers or announcing property as posted, not to exceed four (4) square feet per sign. Such signs may be located on trees or, with the permission of the owner, utility poles. Such signs shall be exempt from the 10-foot minimum setback requirement.
- (p) On-premises safety and directional signs within a business or industrial district which are not visible from a public right-of-way or abutting property lines. A permit shall be secured for any free-standing or illuminated sign.

- (q) Special notice placards, not to exceed a total of four (4) square feet in area for all such placards of any establishment, attached to a building or to a free-standing sign indicating credit cards which are accepted on the premises, group affiliations of which the business is a member, or clubs or groups which utilize, recommend, inspect or approve the business for use by its members. A permit shall be secured for any illuminated signs.
- (r) Identification and directional boards, which are either free-standing or wall signs, designed as an outdoor means of providing information concerning the name and location of individual establishments or offices within an office, retail or industrial complex, provided that such signs are not legible from any public right-of-way and do not exceed thirty-two (32) square feet and provided further that ~~only one such sign shall be permitted for each lot or for each~~ the location of such signs shall be limited to major vehicular or pedestrian intersections, decision points and/or major sub-areas of such complex. A permit shall be secured for any free-standing or illuminated sign.
- (s) Identification signs for churches and schools, regardless of the district in which located, shall be permitted provided that they are of a ground mounted monument type and do not exceed forty (40) square feet in area and six (6) feet in height. A permit shall be obtained.

Sec. 24.1-708. Special standards for community, business/office/industrial park identification signs.

- (a) Residential community or business, office or industrial park identification signs shall be erected in accordance with section 24.1-703 and the following standards:
 - (1) Such signs must be located within the subdivision, apartment complex or other residential development being identified. The sign shall be located on one (1) of the lots within said development or on property which is owned and controlled in common by the owners of individual lots and units within the development and an affidavit affirming the responsibility for maintenance of the sign shall be filed with the application for a permit.
 - (2) A permit as required by section 24.1-702 shall be secured;
 - (3) The sign shall be of masonry, wood or other material construction, but not plastic or similar material, so as to be permanent in nature;
 - ~~(3)~~(4) Any external illumination shall be by lighting fixtures placed at ground level and directed in such a manner as to prevent glare onto adjacent roadways or properties.
 - (5) When the development includes a symmetrical design feature on both sides of the entrance street or driveway such as a decorative wall or fence, identical community identification signs may be mounted on the decorative feature on both sides of the street / drive.

Sec. 24.1-801. Nonconforming uses.

- (a) *Enlargement or extension.* A nonconforming use shall not be enlarged, extended, ~~reconstructed~~ or structurally altered except in conformance with the provisions of this section.
 - (1) Structural additions, either attached or detached, may be made to single-family detached residences located in non-residential districts provided that such additions comply with all applicable setback and yard requirements for the district in which located and that the minimum open space provisions for said district are observed.
 - (2) No other nonconforming uses shall be enlarged or extended in any way except and unless the board shall authorize such enlargement or expansion through the issuance of a special exception which shall be processed and administered in the same way as are special use permits, provided, however, in addition to the standards set out in article I, the board shall consider whether the character of the existing use will be preserved in the event of the proposed enlargement. All owners of property located within five hundred feet (500') [150m] of the subject parcel, whether

abutting or not, shall be sent notice of public hearings pertaining to the request. In no case shall the nonconforming use be permitted to expand by more than fifty percent (50%) of its size measured in building floor area on the date that it became nonconforming.

- ____(b) *Discontinuance.* In the event a nonconforming use ceases for any reason for a period of more than two (2) consecutive years, such nonconforming use shall not be reestablished. For purposes of this section, the term "discontinued" shall mean a cessation of a use or of any portion of a use, regardless of any intent by the user or owner to reestablish the use in the future. Discontinuance shall not be synonymous with abandonment and this shall be construed to incorporate both time and place, such that if the nonconforming use ceases in a particular structure or location for more than two (2) years even though it continues elsewhere on the same lot or parcel, the nonconforming use may not be reestablished in the structure or location where it was discontinued.
- (c) *Damage or destruction.* In the event a nonconforming use, or the structure(s) associated with that nonconforming use, which is damaged or destroyed by a natural disaster or other cause beyond the control of the owner, such use and associated structure(s) may be reestablished or reconstructed within two (2) years of the date of such damage or destruction provided, however, that such reestablishment or reconstruction shall not have the effect of enlarging or extending the nonconforming use or associated structure(s), unless in conformance with the provisions of section 24.1-801(a) above. However, if the nonconforming use is in an area under a federal disaster declaration and the damage or destruction is a direct result of the conditions that gave rise to the declaration, then the allowable timeframe for reestablishment or reconstruction shall be four (4) years. For a use which is dependent upon occupancy of a destroyed or damaged structure, the use shall be deemed to be reestablished upon the issuance of a building permit for the structure, provided the completion of the structure is thereafter diligently pursued. In the event the use does not involve a structure, the actual operation and conduct of the use shall be the measure of reestablishment. After two (2) years, or four (4) years if applicable, of the damage or destruction, all nonconforming use rights shall be lost.

____Reconstruction of structures pursuant to the above provisions shall be in compliance with the terms of the Virginia Uniform Statewide Building Code and all applicable terms of the Floodplain Management Overlay District regulations (section 24.1-373 of this chapter) and in a manner that eliminates or reduces nonconforming features to the extent possible. The reconstruction of any nonconforming structures shall be in accordance with the terms of section 24.1-802.

Nothing in this section shall be construed to prohibit normal and ordinary repairs and maintenance for a structure housing a nonconforming use. However, owner-initiated demolition and rebuilding/reconstruction of all or any structural portion of a building housing such use, shall not be permitted unless the need for demolition is the result of a natural disaster or other cause beyond the control of the owner.

Nothing in this section shall be construed to prevent the removal of a valid nonconforming manufactured housing unit from property and its replacement with another comparable manufactured housing unit in accordance with section 24.1-802(c).

Sec. 24.1-802. Nonconforming structures.

- (a) *Enlargement or alteration.* No structure which is nonconforming by reason of a conflict with the setback, yard, height or similar regulations of the district in which located may be enlarged, extended, ~~reconstructed~~, structurally altered or moved in any way which increases its nonconformance with the applicable setback, yard, height or similar regulations of the district in which located. Except as may be provided in article II relative to front yards in built-up areas, any addition to nonconforming structures shall comply in all respects with the applicable setback, yard, height or similar regulations of the district in which located.
- (b) *Damage or destruction.* A nonconforming structure which is damaged or destroyed by a natural disaster or other cause beyond the control of the owner may be reconstructed at the location of its original foundation, or at a location on the lot which is conforming or more nearly conforming provided that such reconstruction occurs within two (2) years of such damage or destruction and provided that a site plan submitted in accordance with article V of this chapter is approved. However, if the nonconforming building or structure is in an area under a federal disaster declaration and the damage or destruction is a direct result of the conditions that gave rise to the

disaster declaration, then the allowable timeframe for reestablishment or reconstruction shall be four (4) years. Repair, rebuilding or replacement Reconstruction of structures shall be in compliance with the terms of the Virginia Uniform Statewide Building Code and all applicable terms of the Floodplain Management Overlay District regulations (section 24.1-373 of this chapter) and in a manner that eliminates or reduces nonconforming features to the extent possible. Reconstruction shall be deemed to have occurred upon the issuance of a building permit for the structure, provided that completion is thereafter diligently pursued. If a building permit has not been issued for Should such reconstruction not occur within two (2) years or four (4) years if applicable, of the damage or destruction, then or in the event the damage or destruction, regardless of its extent, was initiated or caused by the owner of the structure, such structure may be reconstructed only in full accordance with all normally applicablethe provisions of this chapter.

Nothing in this section shall be deemed to prohibit normal and ordinary repairs and maintenance for a nonconforming structure. However, owner-initiated demolition and rebuilding/reconstruction of all or any structural portion of a nonconforming structure, shall not be permitted unless the need for demolition is the result of a natural disaster or other cause beyond the control of the owner.

- (c) *Special provisions for manufactured housing units.* Nothing in this section shall be construed to prevent the removal of a valid nonconforming manufactured home from a mobile home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code, provided that the degree of nonconformity with any yard or setback requirements applicable to the district in which located does not increase. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. If the nonconforming mobile or manufactured home is located on a property not within a mobile home park, it may be replaced with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code and provided that any nonconformity with yard or setback requirements does not increase. Such replacement unit shall retain the valid nonconforming status of the home.
- (d) Other provisions of this Chapter notwithstanding, when the owner of a building which would normally be considered not to meet the criteria for a legally existing nonconforming structure can document that such building was permitted by a Building Permit issued by York County and that the building was constructed in accordance with the Building Permit and was issued a Certificate of Occupancy by the County, such building shall be deemed nonconforming but not illegal. In addition, where the owner of a building which would normally be considered not to meet the criteria to be a legally existing nonconforming structure has paid taxes to the County for such building for a period in excess of fifteen (15) years such building shall be deemed to be nonconforming, but not illegal, provided that it is brought into compliance with the Uniform Statewide Building Code.

Sec. 24.1-805. Validity of previously-issued permits and approvals.

No provision of this chapter shall be construed to affect the validity of any of the following:

- (a) Any building permit legally issued prior to the adoption of this chapter or amendments thereto, provided that all of the terms and conditions of such permit are observed.
- (b) Any site plan which received either preliminary or final approval prior to the adoption of this chapter or amendments thereto, provided that all time limitations relative to the period of validity of said plan approval are observed.
- (c) Any special use permit lawfully authorized by the board prior to the adoption of this chapter or amendments thereto, provided that all of the terms and conditions of such permit are observed. ~~Other provisions of this chapter notwithstanding,~~ Any use legally established by use permit which subsequently becomes nonconforming may be altered, enlarged or expanded or changed with approval of the board only in accordance with the provisions of section 24.1-801(a)445(d) of this chapter.
- (d) Subdivisions granted approval prior to the adoption of this chapter or amendment thereto, may proceed to record provided that all of the terms and conditions of plan approval, including time limits, are observed, and that the minimum lot size and lot width may and construction of buildings shall be in accordance with the area and dimensional requirements existing at the date of such approval. Upon

recordation of the subdivision plat, any lot not complying with the area or lot width requirements of the then current zoning classification shall be deemed a lawfully nonconforming lot of record and tThe front setbacks, and side and rear yard requirements for such lots may be adjusted as allowed by the terms of Section 24.1-804.~~shall be clearly shown on such plats.~~— An approved preliminary subdivision plat, duly signed and dated by the agent, as defined in the subdivision ordinance, shall constitute approval for the purpose of this section if executed in accordance with all applicable laws.

- (e) Any approval of a planned development granted prior to the adoption of this chapter or amendment thereto. Such development may proceed to record provided that all of the terms and conditions of the approval, including time limits, are observed. An approved detailed plan for at least one (1) section of the development shall constitute approval for the purpose of this section.

ARTICLE IX. APPEALS

Sec. 24.1-901. Powers and duties.

The board of zoning appeals shall have all the powers and duties as prescribed in section 15.2-2309, Code of Virginia, and as set forth below:

- (a) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or any amendment thereto or any modification of zoning requirements pursuant to section 24.1-902. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision.
- (b) To authorize upon appeal or original application in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this chapter shall be observed and substantial justice done as follows:
- (1) When a property owner can show that the owner's property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this chapter, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property, or where the board of zoning appeals is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter.
- (2) No such variance shall be authorized by the board of zoning appeals unless it finds:
- That the strict application of the provisions of this chapter would produce undue hardship;
 - That the hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
 - That the condition or situation of the property concerned or the intended use of the property is not of such a general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.

- (3) In accordance with section 15.2-2309, Code of Virginia, in authorizing a variance, the board of zoning appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a performance guarantee to ensure that the conditions imposed are being and will continue to be complied with.
- (4) Notwithstanding any other provision of law, any deviation from the normally applicable regulations of this chapter that is approved by the authorization of a variance shall thereafter be considered a conforming feature of the property. However, any construction authorized by such variance shall be allowed to expand further only to the extent that such expansion conforms with all applicable requirements of this chapter. Any expansion proposed within an area of the site or part of the structure which does not conform to all applicable zoning standards shall be permitted only if authorized by approval of another variance request.
- (c) To hear and decide applications for interpretation of the zoning map where there is any uncertainty as to the location of a district boundary.
- (d) None of the provisions of this section shall be construed as granting the board of zoning appeals the power to reclassify property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the board of supervisors.

Sec. 24.1-903. Procedures.

- (a) *Variations and interpretations of the zoning map.* Applications for variances as described in section 24.1-901, may be made by any property owner, tenant, government official, department, board or bureau. Such application, and accompanying maps, plans or other information, shall be made to the secretary of the board of zoning appeals who shall place the item on the docket to be acted on by the board of zoning appeals after public notice and hearing as required by section 15.1-431, Code of Virginia.
- (b) *Appeals of administrative decisions.* An appeal to the board of zoning appeals may be made by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator or from any other requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter. Such appeal shall be made within thirty (30) days after the decision appealed from by filing with the secretary of the board of zoning appeals an application and a notice of appeal specifying the grounds thereof; provided, however, that any appeal from a notice of violation involving temporary or seasonal commercial uses (reference section 24.1-306, Category 8), parking of commercial trucks in residential zoning districts (reference section 24.1-271) maximum occupancy limitations of a residential dwelling unit, or other situations which in the opinion of the Zoning Administrator constitute a series of similar short-term, recurring violations shall be made within ten (10) days. The secretary shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the appealed action was taken. An appeal shall stay all proceedings in furtherance of the appealed action unless the zoning administrator certifies to the board of zoning appeals that, by reason of facts stated in such certificate, a stay would, in the administrator's opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board of zoning appeals or by a court of record, on application and on notice to the administrator for good cause shown.
- (c) *Process.* The board of zoning appeals shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest, and, except when the applicant concurs in a further delay, decide the same within sixty (60) days of the first regularly scheduled meeting for which the matter is on the docket. In exercising its powers, the board of zoning appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, or may remand the issue to the zoning administrator for further consideration in which case a specific time for such further consideration shall be stipulated. The concurring vote of a majority of the membership of the board of zoning appeals shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to effect any variance from this chapter. The board of zoning appeals shall keep minutes of its proceedings and other official actions which shall be filed with the zoning administrator and shall be public records. The chair of the board of zoning appeals, or the acting chair, may administer oaths and compel the attendance of witnesses.

- (d) *Reconsideration.* When the board of zoning appeals has acted on an application or appeal, substantially the same application or appeal shall not be considered by the board of zoning appeals within one (1) year of the date of action, except by unanimous vote of the membership of the board of zoning appeals.

FIGURE I-2

LOT LINES/YARD SETBACKS

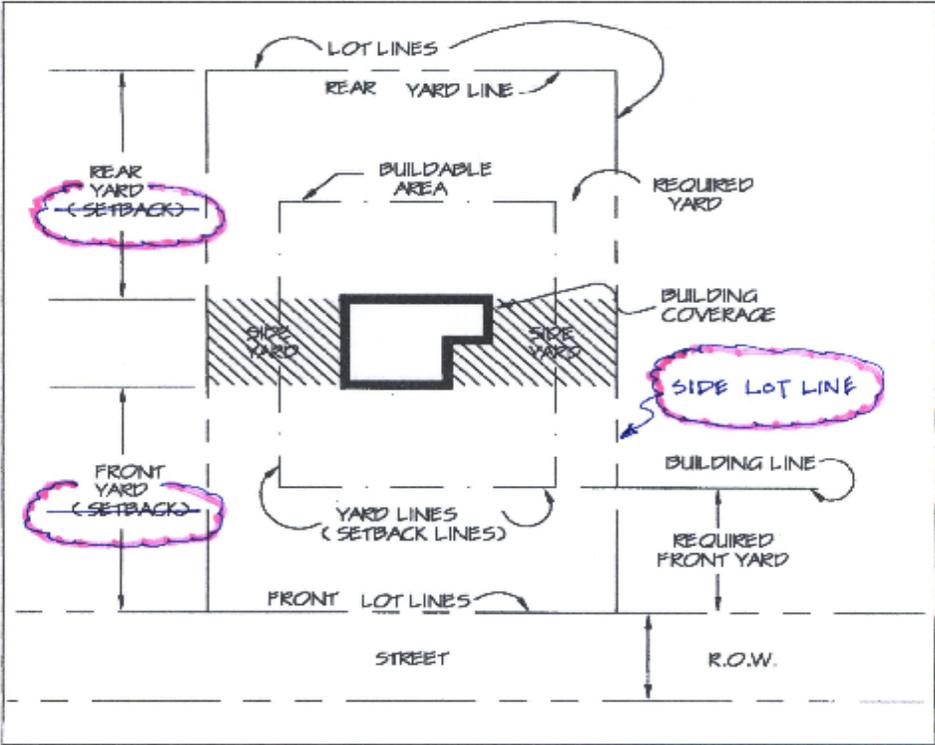
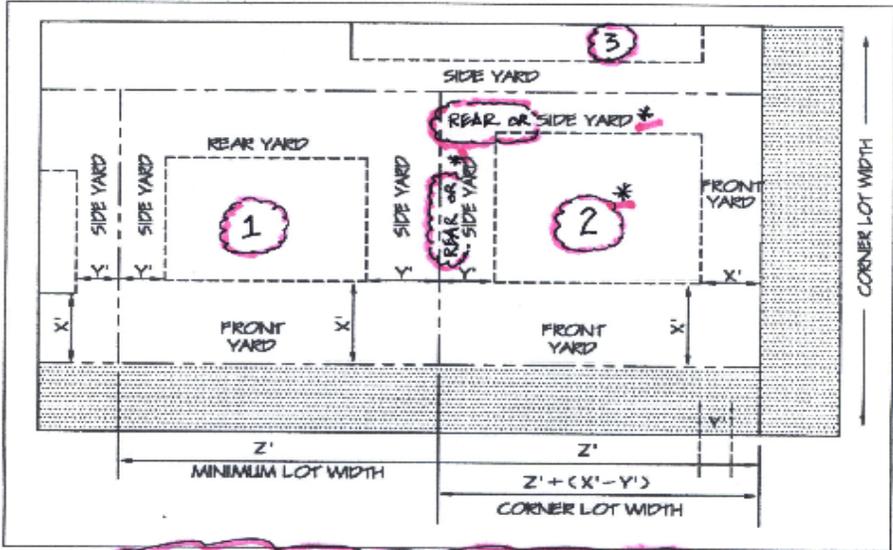
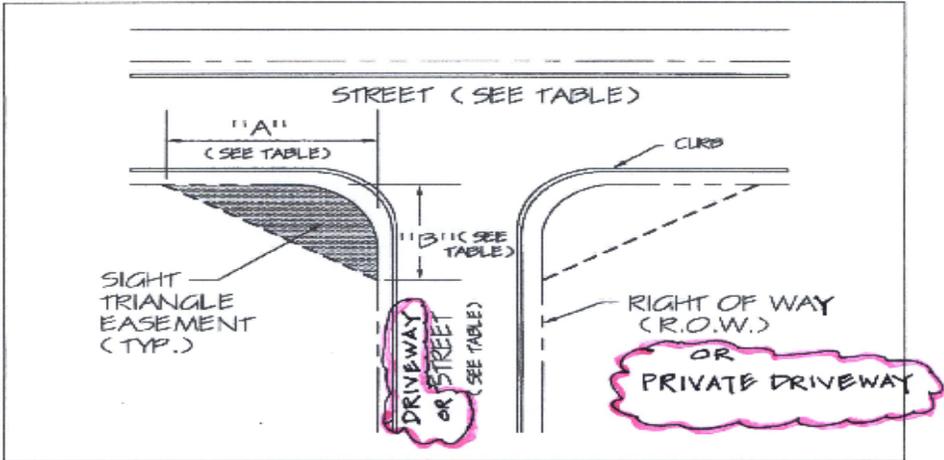


FIGURE II-3
CORNER LOTS VERSUS INTERIOR LOTS



* SIDE AND REAR YARD DETERMINATIONS TO BE MADE AT TIME OF BUILDING PERMIT APPLICATION BASED ON ORIENTATION OF PROPOSED STRUCTURE ON LOT #2 AND ORIENTATION OF ANY EXISTING STRUCTURES ON LOT #s 1 AND 3.

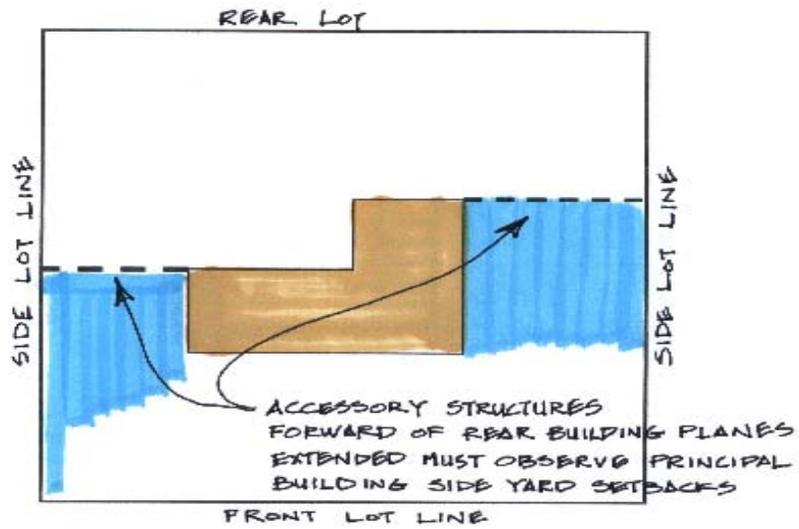
**FIGURE II-4
SIGHT TRIANGLES**



SIGHT TRIANGLES

Figure II - 7.1

ACCESSORY BUILDING SETBACK



MAP III-1

ENVIRONMENTAL MANAGEMENT AREA6

~~FORTHCOMING~~

~~(Until new map is produced and adopted, the Chesapeake
Bay Preservation Area map dated September 20, 1990,
shall remain in full force and effect)~~

MAP III-2

WATERSHED MANAGEMENT AND PROTECTION AREA

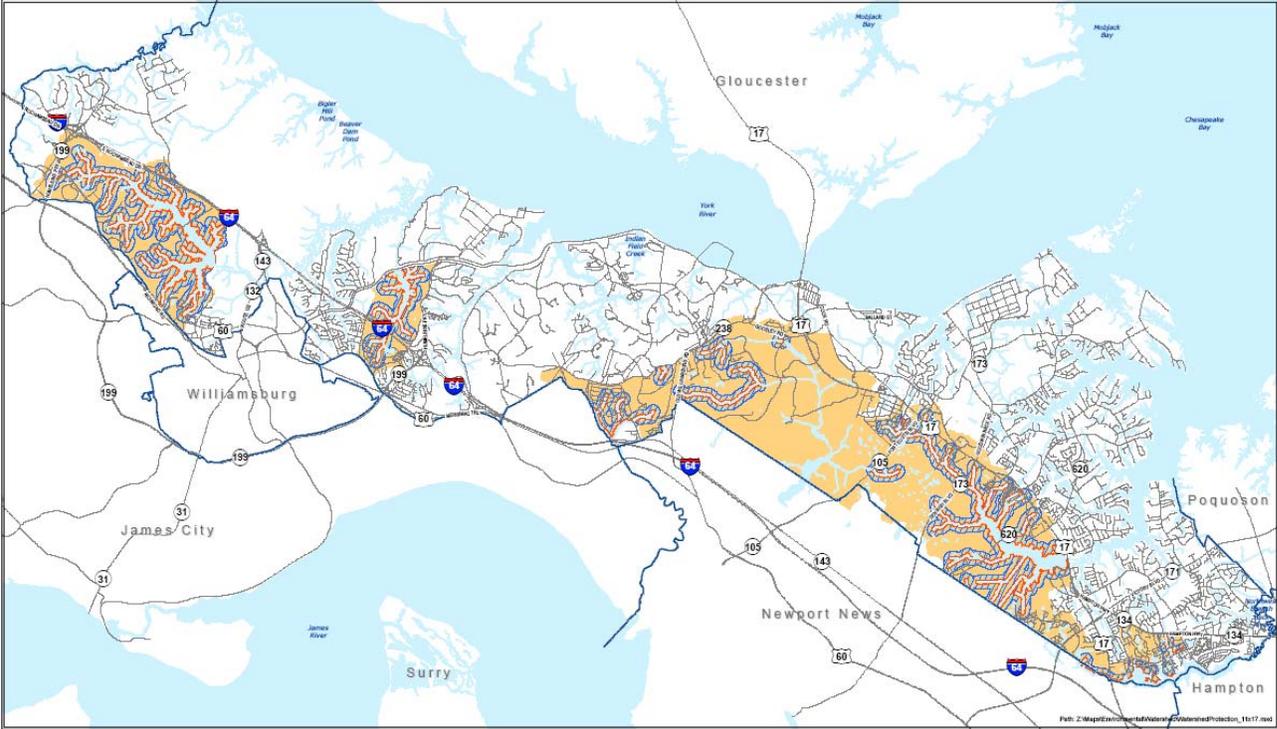
Watershed Management and Protection Area Overlay District and Buffers per York County Code Section 24-1-376. Printed on September 12, 2008



Watershed Protection Overlay District York County, Virginia



- Watershed Management and Protection Area
- Watershed Management and Protection 200' Buffer
- Watershed Management and Protection 500' Buffer



Path: Z:\MapCenter\MapData\WatershedProtection_11x17.mxd

(PUT ON BANK LETTERHEAD)

IRREVOCABLE LETTER OF CREDIT NO. (1)

_____ (2) _____

County of York
c/o ~~Mr. Daniel M. Stuck~~ James O. McReynolds
County Administrator
P. O. Box 532
Yorktown, Virginia 23690

Re: _____ (3) _____ (13) _____

Gentlemen:

We hereby establish our Irrevocable Letter of Credit No. __ (1) __ in your favor, for the account of _____ (3) _____, available by your drafts drawn at sight on us up to the aggregate amount of _____ (4) _____, each such draft accompanied by the following document:

Your written statement certifying that _____ (3) _____ has defaulted in the performance of the terms and conditions of _____ (5) _____ Agreement with you, dated the __ (6) __ day of __ (6) __, 19 __ (6) __, and that you are, in consequence, entitled to the amount of the accompanying draft.

All drafts drawn under this letter of credit must be marked "Drawn under __ (7) __ Letter of Credit No. __ (1) __ dated __ (2) __." □

This credit is valid until _____ (8) _____ and drafts drawn hereunder, if accompanied by document as specified above, will be honored if presented on or before that date to _____ (9) _____ at _____ (10) _____ or, if said bank is not doing business at that address, then to any other address or location of said bank or its successor.

Except as otherwise expressly stated herein, this credit is subject to the "Uniform Customs and Practice for Documentary Credits," fixed by International Chamber of Commerce Publication No. 400, 1983 revision.

Very truly yours,

By: _____

(1) Number assigned to letter of credit by bank.

- (1) Number assigned to letter of credit by bank.
- (2) Date issued.
- (3) Name of person, corporation, or partnership submitting letter of credit.
- (4) Amount of letter of credit written in words and numerals; i.e., fifty thousand and no/100 dollars (\$50,000.00).
- (5) Insert "his," "her," "its" or "their," as appropriate.
- (6) Date shown on agreement.
- (7) Name of bank.
- (8) Expiration date of letter of credit.
- (9) Name and address of bank.
- (10) Address of bank or branch thereof where letter of credit is to be presented. No letter of credit will be acceptable unless it may be presented at a bank office in ~~York County or James City County or in the City of Newport News, Hampton, Williamsburg, Norfolk, Virginia Beach, Chesapeake, or Richmond~~ the Hampton Roads or Richmond metropolitan areas.
- (11) Signature of authorized officer of bank.
- (12) Title of authorized officer of bank.
- (13) Name of project.

By:

Title:

(If signing for a corporation or a

partnership)

COUNTY OF YORK, VIRGINIA

By:

County Administrator

Approved as to form:

County Attorney

COMMONWEALTH OF VIRGINIA

County of York, to-wit:

I, _____, a Notary Public for the Commonwealth of Virginia at large, whose commission expires on the ____ day of _____, 19____, do hereby certify that _____, whose name is signed to the foregoing agreement bearing date of the ____ day of _____, 19____, has acknowledged the same before me in the jurisdiction aforesaid.

Given under my hand the ____ day of _____, 19____.

Notary Public

My Commission expires: _____

COMMONWEALTH OF VIRGINIA

County of York, to-wit:

I, _____, a Notary Public for the Commonwealth of Virginia at large, whose commission expires on the ____ day of _____, 19____, do hereby certify that ~~Daniel M. Stuck~~ James O. McReynolds***, County Administrator, whose name is signed to the foregoing agreement bearing date of the ____ day of _____, 19____, has acknowledged the same before me in the jurisdiction aforesaid.

Given under my hand the ____ day of _____, 19____.

Notary Public

My Commission expires: _____

*** make this same change on all other standard forms in Appendix B

COUNTY OF YORK

MEMORANDUM

DATE: February 27, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James E. Barnett, County Attorney 

SUBJECT: Proposed license agreement between the County and Donna Carrier-Tal, 200-A Hollywood Boulevard

Donna Carrier-Tal is the owner of a parcel of real estate having the address of 200-A Hollywood Boulevard in the Hollywood Estates subdivision. Attached is a copy of a County map showing the location of the property. The property actually fronts on a cul-de-sac that was platted in 1954 when the subdivision was created, but which has never been improved or accepted into the state system. The cul-de-sac, if ever constructed, would be an extension of Vine Drive. Ms. Carrier-Tal has requested a license agreement with the County for the purpose of running a waterline through the unimproved portion of Vine Drive in order to connect her property to a public water supply. The proposed license agreement would require the waterline to be located outside of the area that would be paved if a public roadway were ever to be constructed, and would require further that in the event that the roadway were ever to be improved, the waterline would be moved at Ms. Carrier-Tal's expense if necessary for the purpose of the construction of a public roadway. Similar license agreements have been granted in the past for people whose property has fronted on unimproved roadways owned by the County.

Because the proposed license agreement is in the nature of an easement, it has been advertised for a public hearing, as is the case generally with easements granted across County property. Ms. Carrier-Tal has paid for the cost of the advertisement. Proposed resolution R09-36, if approved by the Board, would authorize the County Administrator to execute a license agreement with Ms. Carrier-Tal, in the form attached to this memorandum.

Barnett/3440:swh
Attachments

- Proposed License Agreement
- GIS map showing location of property
- Resolution R09-36

LICENSE AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2009, between the COUNTY OF YORK, VIRGINIA, hereinafter referred to as the County, and DONNA CARRIER-TAL, her successors and assigns, hereinafter referred to as the Licensee.

WITNESSETH: That the County hereby grants to the Licensee a license to use, for the purpose hereinafter set forth, the unimproved portion of a certain right-of-way, being the southerly extension of Vine Drive as shown on a plat entitled "PLAT SUBDIVISION HOLLYWOOD ESTATES, PROPERTY OF BENJAMIN E. & EDNA M. WATSON, GRAFTON DISTRICT, YORK CO., VIRGINIA," made by J. M. Cochran, dated April 16, 1954, and which plat is recorded in Plat Book 5, page 153, in the Clerk's Office of the Circuit Court for the County of York, Virginia.

The license herein described and provided for is given by the County without any consideration received from the Licensee and shall be subject to the following terms and conditions:

1. This license is given solely for the purpose of the installation of a waterline to serve Licensee's property located at 200-A Hollywood Boulevard, which parcel of land is designated as a portion of Lot Numbered Two (2) in Block Lettered "A," Hollywood Estates, on the above-referenced subdivision plat, identified moreover as York County GPIN t05c-2312-0442, provided that the waterline shall be located outside of the area that would be paved if a public right-of-way were to be constructed therein. The Licensee shall be responsible for the repair and maintenance of any and all waterlines placed within the right-of-way. The County shall not be responsible for maintaining any such improvements.

2. This license shall be non-exclusive and shall be subject to the right hereby reserved by the County to grant any permit, easement, or any other right or rights whatsoever to any private, governmental, or any other entity for any purpose whatsoever at any time and for any period of time. This license shall also be subject to the rights of the County and of any third parties with respect to existing utility facilities installed within the platted Vine Drive, extended, whether or not located within a recorded easement. Licensee shall repair at Licensee's own costs any damages to such facilities caused by the exercise of Licensee's rights hereunder.

3. The Licensee shall be liable to the County for any damage to the right-of-way or any improvements now or hereafter erected thereon, which is caused by the Licensee or by an employee, agent or contractor of the Licensee.

4. The Licensee shall indemnify the County and its officers, agents, and employees and hold them harmless for any loss or damage to property or any person, caused or contributed to or by the Licensee's exercise of the rights and privileges herein granted, or the existence thereof.

5. In the event that the southerly extension of Vine Drive or any portion thereof shall at any time be improved and accepted into the State Secondary System of Highways for public maintenance, then Licensee shall upon request of either the County or the Virginia Department of Transportation and at Licensee's own cost relocate any of Licensee's waterline as may be required by the Virginia Department of Transportation.

6. This agreement may be recorded among the land records of the York County Circuit Court at the cost of Licensee.

7. The covenants and obligations set forth herein shall be deemed covenants running with the land, binding on Licensee's successors and assigns.

WITNESS the following signatures and seals:

_____(SEAL)
DONNA CARRIER-TAL

STATE OF VIRGINIA

County of York, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Donna Carrier-Tal.

Notary Public

My commission expires: _____

Approved as to form:

County Attorney

COUNTY OF YORK, VIRGINIA

By _____ (SEAL)
County Administrator

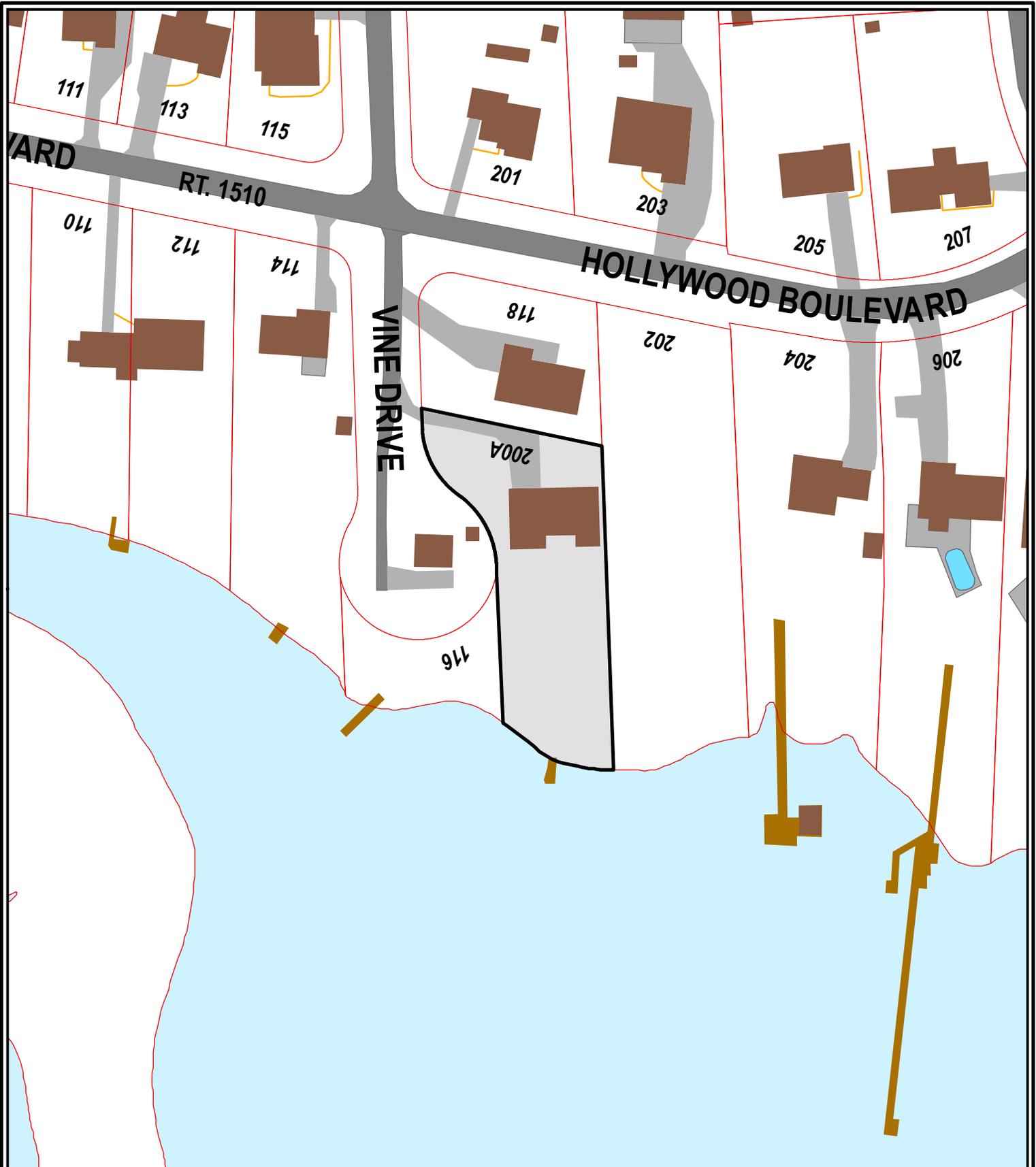
STATE OF VIRGINIA

County of York, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by James O. McReynolds, County Administrator.

Notary Public

My commission expires: _____



GEOGRAPHIC INFORMATION SYSTEMS
 Division of Computer Support Services
 Department of Financial & Management Services
 WWW.YORKCOUNTY.GOV

200 A Hollywood Boulevard

Legend

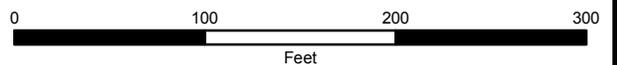
 200 A Hollywood Blvd



THIS IS NOT A LEGAL PLAT.
 This map should be used for
 information purposes. It is not
 suitable for detailed site planning.

Printed on February 27, 2009

Path: Z:\Maps\Departmental\County Attorney\200A_HollywoodBLVD.mxd



BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE A LICENSE AGREEMENT WITH DONNA CARRIER-TAL, FOR THE PURPOSE OF PLACING A WATERLINE WITHIN AN UNIMPROVED ROADWAY OWNED BY THE COUNTY AND IDENTIFIED AS VINE DRIVE EXTENDED IN THE HOLLYWOOD ESTATES SUBDIVISION, FOR THE BENEFIT OF PROPERTY HAVING A STREET ADDRESS OF 2009-A HOLLYWOOD BOULEVARD.

WHEREAS, Donna Carrier-Tal is the owner of certain property in York County having a street address of 200-A Hollywood Boulevard, otherwise identified as County GPIN T05C-2312-0442, which property has no direct access to a public waterline except through Vine Drive extended, a platted but unimproved street in Hollywood Estates subdivision; and

WHEREAS, Ms. Carrier-Tal has requested the granting of a license whereby she would be allowed to place within Vine Drive extended, and maintain, a waterline for the purpose of providing a public water supply to her property located at 200-A Hollywood Boulevard; and

WHEREAS, following a public hearing, this Board has determined that it is in the public interest to grant such a license.

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the ____ day of _____, 2009, that the County Administrator is authorized to execute a License Agreement with Donna Carrier-Tal, approved as to form by the

County Attorney, granting a license for the purpose of the installation of a waterline to serve Ms. Carrier-Tal's property located at 200-A Hollywood Boulevard, subject to the terms and conditions set forth in the proposed license agreement attached to the County Attorney's memorandum of February 27, 2009.

COUNTY OF YORK

MEMORANDUM

DATE: March 3, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Parking Restrictions for Large Commercial, Recreational and Passenger-Carrying Vehicles – Cain Terrace/York Manor

By letter received January 27, 2009 (copy attached), fifteen (15) property owners/residents of the Oak Street/Pine Street/Trinity Drive/Shamrock Avenue area have petitioned the Board for establishment of commercial vehicle parking restrictions on those neighborhood streets. Oak, Pine and Trinity were platted as part of the Cain Terrace subdivision, which dates to the early 1960s. The subdivision does not have a homeowners association.

The parking restrictions for large commercial, recreational and passenger-carrying vehicles in certain designated areas of the County (Section 15-48, York County Code) have been in effect for several years and they appear to be providing the intended benefits to residents of these areas. The restrictions prohibit the parking of any of the following types of vehicles on the public streets within the designated community:

Commercial Vehicles

- Greater than 10,000 lbs. gross weight, or
- Greater than 21 feet in length.
- Any HazMat vehicle
- Heavy construction equipment
- Tractor truck, trailer, dump truck, concrete mixer, towing vehicle, beverage/food truck or trailer

Passenger Carrying Vehicles

- 16 passengers or more, or
- Licensed as a common or contract carrier, or
- Licensed as a limousine

Recreational Vehicles

- Gross weight greater than 10,000 lbs., or
- Greater than 21 feet in length.

It is important to note that these restrictions apply only to public streets that have been

accepted into the VDOT Secondary System. It is also important to note that the restrictions do not apply to private property; instead, there are already provisions in place in the Zoning Ordinance accessory use regulations that describe the locations where recreational vehicles can be parked on residential lots (*only on driveways in front; in side or rear yards if not on driveway*).

Section 15-48 of the County Code sets forth the following guidelines to assist in evaluating the suitability of neighborhoods for the commercial vehicle parking restrictions:

- a. The determination of streets and areas to be subject to such parking restrictions shall be based on characteristics including, but not necessarily limited to:
 1. location within a residential zoning classification or within a designated business, office or industrial park or other commercial/industrial area with special character or features that could be adversely impacted by on-street parking of large vehicles;
 2. density of development, with primary focus on residential subdivisions with a typical lot size of _____ acre or less;
 3. predominant lot width and street frontage characteristics, with primary focus on subdivision settings where typical lot widths are 150 feet or less;
 4. location-specific safety issues including, but not limited to, considerations of traffic volumes, street surface width, sight distance, and use characteristics;
 5. documentation or determination of inappropriate parking of classified vehicles or the potential for such parking to occur.

I believe that the streets in Cain Terrace, as well as the streets in the adjacent York Manor subdivision (which is not represented by a homeowners association either) are appropriate candidates for inclusion in the list of areas subject to the large vehicle parking restrictions (note: the attached letter indicates that York Manor is currently listed, but actually it is not). The streets in both developments are clearly residential in character and are not suited for large vehicle parking or frequent travel. The density of development (the predominant lot size is approximately $\frac{1}{4}$ acre), lot width (the predominant lot width is approximately 75 feet), and street frontage (approximately 75 feet for each lot) characteristics are such that large vehicle circulation or parking along the public streets could create safety hazards and negatively impact the character of the neighborhood. Exacerbating the problem, as noted in the residents' petition, is the traffic associated with the salvage yards across Route 17. Several months ago VDOT found it necessary to install *no parking* signs along the entire frontage of the salvage yards to prevent trucks from parking on the northbound shoulder while waiting to enter one of the salvage/recycling businesses. This queue has now apparently been shifted, at least occasionally, to the neighborhood streets across Route 17 and those streets are clearly not appropriate for such vehicles.

I recommend that the Board approve the parking restrictions as requested and also on the

York County Board of Supervisors

March 3, 2009

Page 3

adjacent streets in York Manor. This recommendation has been reviewed and is supported by Mr. Halacy, Williamsburg Residency Administrator. It should be noted that these proposed restrictions would extend to the Oak, Pine and Shamrock intersections with Route 17 since the entire lengths of those streets were created/platted as part of the respective subdivisions.

In addition, I recommend that Section 15-48(c)(4)a.2. be amended to correct the inadvertent omission of the *1-acre* lot size characteristic in the list of criteria for evaluating eligibility of streets for inclusion in the program. The reference to 1-acre was included in the early 2002 drafts of revisions to Section 15-48, however, the "1" was inadvertently omitted before the material was presented for final adoption. These amendments can be accomplished by the adoption of proposed Ordinance No. 09-3.

Carter/3337:jmc

Attachments: Residents' letter/petition
Vicinity Map
Copy of Section 15-48
Proposed Ordinance No. 09-3

Copy to: Mr. Todd Halacy, Williamsburg Residency Administrator (VDOT)

York County Board of Supervisors
P.O. Box 532
Yorktown, VA 23690

Attention: James O. McReynolds, County Administrator

Dear Mr. McReynolds:

On behalf of the residents of Cain Terrace subdivision, we would like to request that the Board of Supervisors add Cain Terrace to the list of developments covered by the Commercial, Passenger Carrying and Recreational Vehicle No Parking restrictions set forth in section 15-48 of the York County Code. The streets in Cain Terrace are not capable of safely accommodating large vehicle parking and such activity is incompatible with the residential character of our community.

Thank you for considering our request. If there are questions, please don't hesitate to contact Chris Fairbanks at 246-0966.

Sincerely,



Homeowners Association President (or authorized representative) OR Signatures by a group of neighborhood residents if no HOA

Received
1-27-09
MES
(2)

Dear Mr. McReynolds,

I am a resident of Cain Terrace, which is in the southern part of York County, directly across from the junk yards that reside on Rt. 17. I am sending this request on behalf of the residents of our subdivision (we have no HOA) because of the problems our exclusion from an existing code has caused. Because we are situated right across from the junk yards on 17, there are several issues we deal with as a result. We frequently have to replace tires on our cars because they are punctured by screws, bolts, etc. that are left in the adjacent medians by trucks that are pulling into the junk yards. We also have to deal with the noise and unsightly nature of the junk yards that characterize this area. Now, I was aware when I moved here that these conditions would exist, and I am willing to deal with them as such, with the exception of one matter that I hope you can help our neighborhood with. From time to time we have big trucks; dump trucks, scrap trucks, big rigs, etc. use our neighborhood as a thoroughfare to make U-turns, wait out a line at a recycling facility, etc. We also have two big rigs that permanently park in our neighborhood, specifically on Oak St., right out my front door. Because of the narrow streets that we have, as all these vehicles have negotiated our streets and especially the two permanent resident big rigs, they have caused damage to numerous mail boxes, fences, cable and power lines, as well as side-swiped cars, not to mention the fact that these vehicles start up and idle at all hours of the night in a residential area. As I gathered signatures to have our neighborhood added to this code, the enthusiasm and cooperation for this change was greater than I anticipated. The majority of people in the neighborhood had a story of how they were directly affected by the nuisance of these trucks' presence in our neighborhood. The two big rigs that permanently park in our neighborhood do not even belong to residents of the neighborhood. One belongs to a former resident who has since moved, but continues to park here along with her current boyfriend who drives a truck as well. Through researching my options about taking care of this, I was informed (by Mr. Mark Carter) that there is a code that exists to prohibit such a thing. The odd thing is that the neighborhood behind ours; York Manor is part of this code, but ours; Cain Terrace, is not part of the code. Any help you can give in getting our neighborhood added to this code would be greatly appreciated by a great number of people. If you require anything more of me, or the residents of Cain Terrace, please feel free to let me know. Thanks for your time.

Sincerely, Chris Fairbanks

Contact info: Chris Fairbanks home phone# 757.246.0966 email: steelpinata@yahoo.com
105 Oak St.
Yorktown, Va. 23693



Sec. 15-48. Parking prohibited or restricted in specified places.

- (a) *Secondary system highways.* No person shall park a vehicle in any of the following places within any part of the state secondary system of highways in the county:
- (1) On Comte de Grasse Street (a portion of State Route 1002) in Yorktown;
 - (2) On Read Street (State Route 1004) between Main and Water Streets in Yorktown;
 - (3) On Ballard Street (a portion of State Route 1001);
 - (4) On Buckner Street (State Route 1007) between Main and Water Streets in Yorktown;
 - (5) On Water Street (in part a portion of State Route 1002) in Yorktown between Comte de Grasse Street, on the east and its intersection with the Colonial National Historical Park access ramp opposite the Yorktown Victory Center on the west, excepting the south side of Water Street between Read Street and a point approximately 340 feet east of Ballard Street;
 - (6) On Mathews Street (Route 1001) between Route 17 and Water Street (Route 1002);
 - (7) On the Back Creek Park recreational access road (State Route 1291) from State Route 173 eastwardly approximately one thousand eight-hundred feet (1,800') to its terminus at a cul-de-sac;
 - (8) On the New Quarter Park recreational access road (State Route 1314) from State Route 1330 northwardly approximately one and two-tenths (1.2) miles to its terminus.
 - (9) On Glen Laurel Way (State Route 1069) between the hours of 7:00 a.m. and 3:00 p.m., Monday through Friday.
- (b) *Main Street between Ballard and Read Streets.* No person shall park a vehicle on any part of Main Street in Yorktown, between Ballard and Read Streets, between the hours of 8:00 a.m. and 6:00 p.m., for a period of time in excess of one (1) hour.
- (c) *Parking of certain classifications of vehicles in certain designated areas*
- (1) Statement of Intent: The purpose of the following regulations is to define certain classifications of vehicles and to identify those areas where it is necessary to prohibit the parking of such classified vehicles in order to enhance pedestrian and vehicular safety, protect and preserve the public investment in such streets that are designed primarily for residentially-related traffic, and to protect and preserve the character of residential areas. In addition, where applied in non-residential areas, such restrictions are intended to provide for enhanced vehicular safety and to protect and preserve the character of the subject industrial or office park or other commercial/industrial area.
 - (2) Classification of Vehicles: For the purposes of this subsection, the classification of vehicles shall be as follows:
 - a. Commercial Vehicle:
 1. Any vehicle with a gross vehicle weight of ten thousand (10,000) pounds or more, or a length of 21 feet or more, including trailers or other attachments;
 2. Any vehicle, regardless of size, used in the transportation of hazardous materials as defined in section 103 of the federal

Hazardous Materials Transportation Act (49 C.F.R. Part 172, Subpart F);

3. Any heavy construction equipment, whether located on the street or on a truck, trailer or semi-trailer;
 4. Any solid waste collection vehicle, tractor truck or tractor truck/semi-trailer or tractor/truck combination, dump truck, concrete mixer truck, or towing or recovery vehicle;
 5. Any trailer, semi-trailer or other vehicle in which food or beverages are stored or sold
- b. Passenger Carrying Vehicle
1. Any vehicle designed to carry sixteen (16) or more passengers, including the driver.
 2. Any vehicle licensed by this Commonwealth for use as a common or contract carrier or as a limousine.
- c. Recreational Vehicle

A device, whether or not self-propelled, designed or used for transporting persons or property for or in connection with recreation, as distinguished from mere transportation, having a gross vehicle weight of ten thousand (10,000) pounds or more, or a length of 21 feet or more, including trailers or other attachments, and including such things as motor homes, travel trailers, campers, boats and boat trailers.

(3) Designation of Specific Vehicle Classifications and Areas Subject to Restriction

No person shall park any commercial vehicle, passenger-carrying vehicle, or recreational vehicle (all as defined herein) on any road, highway or street within the state secondary system of highways in any of those areas or subdivisions in the County as described below. In the case of subdivisions, the areas governed by this subsection shall be those areas commonly known by the names listed below and designated on the plats of subdivision recorded in the clerk's office of the circuit court of the county. Such restrictions shall have no application to any privately owned street, or any street owned by a property owners association within the listed areas. In the event a street serves as the dividing line between a designated residential subdivision and an adjoining commercial zoning district, the parking restrictions shall apply only on the residentially-zoned side of the street.

- a. Skimino Farms subdivision, all sections.
- b. Greensprings vicinity being further described as the area bounded by Bypass Road on the south, Waller Mill Road on the west, Carrs Hill Road on the north, and Route 132 on the east.
- c. Penniman Road/Government Road/Hubbard Lane vicinity being further described as the area bounded by Government Road and Penniman Road on the south and southwest, the Williamsburg city line on the west and northwest, the Colonial Parkway on the north, and Interstate 64 on the northeast and southeast, including, but not limited to, all sections of the Queenswood, Charleston Heights, Springfield Terrace, Nelson Park, York Terrace, Magruder Woods, Bruton Glen, Penniman East, Penniman Woods, Queens Creek Estates, and Middletown Farms subdivisions.
- d. Carver Gardens

- e. Yorktown, being further described as the area bounded by the York River on the northeast, the United States Coast Guard Reserve Training Center on the east, Route 238 and the Colonial Parkway on the southwest, and Yorktown Creek on the west.
- f. York Crossing.
- g. Glen Laurel
- h. Yorkshire Park
- i. Heritage Hamlet
- j. Plantation Acres
- k. Bethany Terrace
- l. Grafton Woods
- m. Sommerville
- n. Villages of Kiln Creek
- o. Williamsburg Bluffs
- p. Breezy Point
- q. Woodlake Crossing
- r. Mill Crossing
- s. The Homestead
- t. Yorkshire Downs
- u. Coventry
- v. The Greenlands
- w. Meadowlake Farms (aka—Heatherlea)
- x. Wythe Creek Farms
- y. Lakeside Forest
- z. Wood Towne Quarters
- aa. Victory Industrial Park
- bb. Willow Lakes
- cc. Brandywine
- dd. Gaines Estates
- ee. Lotz Acres Estates, Section 2
- ff. Tabb Meadows
- gg. Running Man
- hh. Victory Meadows

- (4) Procedures for Consideration and Establishment of Classifications and Area Designations:
- a. The determination of streets and areas to be subject to such parking restrictions shall be based on characteristics including, but not necessarily limited to:
 1. location within a residential zoning classification or within a designated business, office or industrial park or other commercial/industrial area with special character or features that could be adversely impacted by on-street parking of large vehicles;
 2. density of development, with primary focus on residential subdivisions with a typical lot size of acre or less;
 3. predominant lot width and street frontage characteristics, with primary focus on subdivision settings where typical lot widths are 150 feet or less;
 4. location-specific safety issues including, but not limited to, considerations of traffic volumes, street surface width, sight distance, and use characteristics;
 5. documentation or determination of inappropriate parking of classified vehicles or the potential for such parking to occur.
 - b. Subsequent to this preliminary review and consideration, the Board will determine whether an amendment to this ordinance designating additional streets and areas should be formally considered and, if so, it shall be advertised for public hearing by the Board in accordance with the advertisement and public notice requirements for County Code amendments, as set forth in the Code of Virginia. In addition to the standard legal advertisements, the Board's intention to consider such restrictions will be advertised on the County's government access cable channel and through such other media opportunities as the Board and County Administrator determine appropriate.
 - c. Concurrently with the advertisement of the proposed ordinance for public hearing, the Board will transmit a copy of the proposal to the Virginia Department of Transportation Residency Administrator. The County staff will coordinate with the Residency Administrator to ensure communication of any VDOT concerns or considerations to the Board for its review. Among other considerations, the Residency Administrator will be asked to review the potential for such restrictions to shift commercial vehicle parking to Primary routes or to other portions of Secondary routes where more serious traffic safety problems might be created.
 - d. The County Administrator shall ensure the fabrication and posting of all such signs as are necessary to inform the public of the restrictions that apply to the subject streets and the subsequent maintenance of such signs and the prompt repair, removal and/or replacement of any signs that are damaged or destroyed.
- (d) *Application.* The prohibitions and restrictions set forth in this section shall have no application when a vehicle is parked or stopped in compliance with the order of a law enforcement officer or a traffic control device, or during a permitted period of time in officially-designated parking areas, or in case of vehicular breakdown, or in an emergency which renders it necessary. Moreover, the prohibitions and restrictions contained in subsection (c) of this section shall have no application to any vehicle while such vehicle is in actual use for loading or unloading or while actually engaged in the provision of goods or services.
- (e) *Posting of signs.* The county administrator shall cause "No Parking" and "1-Hour Parking" signs to be posted in the subject areas. Such signs shall comply with all applicable standards and specifications as set forth in the Manual of Uniform Traffic Control Devices (MUTCD) and the specifications that the County intends to use shall be coordinated with and approved by the Resident Engineer prior to fabrication. The County shall secure such permits as may be

necessary for its personnel to work within and install the signs in VDOT rights-of-way.

(f) *Application of sections 15-43 through 15-45.* The provisions of sections 15-43, 15-44 and 15-45 of this Code shall apply in the enforcement of this section.

(g) *Penalty for violation.* Any person who violates any provision of this section shall be guilty of a traffic infraction and punished as provided in section 15-2 of this Code.

(Ord. No. 02-8, 6/4/02; Ord. No. 02-12, 7/16/02; Ord. No. 03-38, 9/2/03; Ord. No. 05-18, 6/21/05; Ord. No. 05-23, 9/20/05; Ord. No. 05-27, 10/25/05; Ord. No. 06-25(R), 9/19/06; Ord. No. 06-26, 9/19/06)

(As of January 30, 2009)

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE TO AMEND SECTION 15-48, PARKING PROHIBITED OR RESTRICTED IN SPECIFIC PLACES, OF THE YORK COUNTY CODE, TO ADD THE CAIN TERRACE AND YORK MANOR SUBDIVISIONS TO THE LIST OF SPECIFIC AREAS WHERE THE PARKING OF COMMERCIAL, RECREATIONAL AND PASSENGER-CARRYING VEHICLES ON PUBLIC STREETS IS PROHIBITED AND TO CORRECT AN OMISSION IN THE SECTION LISTING THE CHARACTERISTICS OF STREETS WHICH MAY BE CONSIDERED FOR SUCH RESTRICTIONS

WHEREAS, the York County Board of Supervisors has determined that the parking of large vehicles along certain streets, other than for temporary periods to allow deliveries, may present safety hazards for other vehicles and for pedestrians and may contribute to premature failure of road surfaces designed to accommodate primarily passenger vehicles; and

WHEREAS, pursuant to Section 46.2-1222 of the Code of Virginia, the Board has adopted an ordinance that prohibits the parking of certain classifications of vehicles on certain secondary system highways in designated areas of the County; and

WHEREAS, pursuant to a request made on behalf of the residents of the subject neighborhoods, and the investigation of the streets and parking characteristics of that area, the Board has determined that it would be appropriate and desirable to add both the Cain Terrace and York Manor subdivisions, as delineated and described in the

County Administrator's report to the Board dated January 30, 2009, to the list of areas subject to the special parking restrictions; and

WHEREAS, the Board also wishes to correct the inadvertent omission of the 1-acre or less lot size standard in the list of criteria to be considered in evaluating the suitability of streets for such restrictions.

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this ____ day of _____, 2009, that Section Nos. 15-48(c)(3) and (c)(4)a.2. of Chapter 15, Motor Vehicles and Traffic, York County Code, be and they are hereby amended as follows:

(3) Designation of Specific Vehicle Classifications and Areas Subject to Restriction

_____ ii. Cain Terrace
_____ jj. York Manor

(4) Procedures for Consideration and Establishment of Classifications and Area Designations:

- a. The determination of streets and areas to be subject to such parking restrictions shall be based on characteristics including, but not necessarily limited to:
1. location within a residential zoning classification or within a designated business, office or industrial park or other commercial/industrial area with special character or features that could be adversely impacted by on-street parking of large vehicles;
 2. density of development, with primary focus on residential subdivisions with a typical lot size of one (1) acre or less;
 3. predominant lot width and street frontage characteristics, with primary focus on subdivision settings where typical lot widths are 150 feet or less;
 4. location-specific safety issues including, but not limited to, considerations of traffic volumes, street surface width, sight distance, and use characteristics;
 5. documentation or determination of inappropriate parking of classified vehicles or the potential for such parking to occur.

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Regular Meeting
February 17, 2009

6:00 p.m.

Meeting Convened. A Regular Meeting of the York County Board of Supervisors was called to order at 6:01 p.m., Tuesday, February 17, 2009, in the Board Room, York Hall, by Chairman Walter C. Zaremba.

Attendance. The following members of the Board of Supervisors were present: Walter C. Zaremba, Sheila S. Noll, Donald E. Wiggins, George S. Hrichak, and Thomas G. Shepperd, Jr.

Also in attendance were James O. McReynolds, County Administrator; J. Mark Carter, Assistant County Administrator; and James E. Barnett, County Attorney.

Invocation. Pastor Delores Borum, Faith for Living Outreach Center, gave the invocation.

Pledge of Allegiance to the Flag of the United States of America. Girl Scout Troop 1472, Yorktown, led the Pledge of Allegiance.

PRESENTATIONS

HAMPTON ROADS PARTNERSHIP

Mr. Dana Dickens, President, Hampton Roads Partnership (HRP), gave a presentation on the annual report. He explained the Hampton Roads Partnership included the 17 counties and cities in the region and 8 major military commands. He stated the HRP works to influence areas important to the region and to make Hampton Roads stronger in the global economy. He spoke about HRP involvement in the areas making up the HRP and progress made as a result of the support received from its members. Mr. Dickens explained that the HRP has recognized upcoming budget issues and has reduced its request for local government funding by 5 percent from last year's request. Specifically, he stated the Partnership has focused on the area's transportation system, and they are still working to obtain more funding for transportation needs. Mr. Dickens then reviewed the new "Hampton Roads Performs" program, which is a collection of more than 50 of the major indicators of the quality of life in Hampton Roads and includes indicators from crime statistics, economic development, education, transportation, and quality of life. He noted the website includes a great deal of information regarding the region, and he encouraged the Board to view the site at www.hamptonroadsperforms.org.

Chairman Zaremba thanked Mr. Dickens for the update on the Hampton Roads community.

Mr. Shepperd expressed his appreciation for the update, and he addressed the investment the County was making in the partnership and the return the County was getting. He asked for an update on the statistics.

Mr. Dickens explained that the statistics report would be ready in a few days. He noted the report was very informative, especially regarding interdependence. He stated if a business opened in a neighboring jurisdiction in Hampton Roads, it would benefit the entire region.

Mrs. Noll thanked Mr. Dickens for the time and effort spent at the General Assembly and for how much the Partnership does in Hampton Roads.

Mr. Dickens spoke of the progress achieved at this year's General Assembly caucus meetings. He also commented on the high numbers of legislators that participated at the caucus meetings each week.

Discussion followed regarding the progress being made between localities working together to accomplish shared goals.

PORT-VENDRES SISTER CITY RELATIONSHIP

Ms. Shirley Estes made a presentation on the Port-Vendres Sister City Relationship that was formed in 1990 between the Yorktown Trustees and Port-Vendres, France. She noted the international relationship will be celebrating its 20th anniversary in 2010. She then spoke of the similarities between the two villages and how the French helped America to win its independence. She urged the Board to issue an invitation to their counterparts in France to come and visit York County. She explained that the committee was seeking its 501c status and was not requesting any funding from the County. She also spoke of the opportunity for the Bastille Day celebration to open up the community and bring business to the County. Ms. Estes then presented the Board with a Sister City International Charter and a sculpture.

FISCAL YEAR 2010 BUDGET

Mr. McReynolds presented the proposed Fiscal Year 2010 Budget to the Board of Supervisors. He stated this year's process involved the difficult task of reducing budgets from their current levels. He noted the actual 2009 revenues will be lower than projected when the FY2009 Budget was prepared. He then reviewed the purpose of the budget, stating it meets the requirements of the Code of Virginia for a balanced budget. Mr. McReynolds then explained the FY2010 budget was developed following the Board's direction to include no tax rate changes, no compensation adjustments, maintain the current level of funding for the schools and, to the extent possible, continue to provide the current level of service delivery. The total proposed FY2010 General Budget is \$125 million, a 3.5 percent decrease from the FY2009 budget. He noted the tax rates would remain the same as those currently in place. He stated the proposed budget emphasizes the Board's priorities and direction to meet the demand for governmental services, and significant emphasis has been placed on education and public safety. Mr. McReynolds explained that while the decrease in the over all budget was 3.5 percent, every other function in County's operating budget had to be reduced by 6 percent to maintain level funding for the schools. He then reviewed the following highlights of the proposed budget:

- Balanced budget
- Level funding for schools
- Complies with all Board guidelines
- Proposed delay of all County General Fund capital projects for one year
- Proposed delay of most capital maintenance projects for at least one year
- Funding recommended for each functional area is less than that included in the current year budget
- Recommendation that the County establish a fee for medical transports

Mr. McReynolds then displayed for the Board a breakdown of General Fund expenditures by functional area, showing that 44 percent of the total goes to education and is by far the largest single expenditure and priority, with Public Safety at 22 percent as the second priority. He then reviewed the decrease in expenditures included in the proposed budget for categories of personnel and non-personnel. Mr. McReynolds stated the major factor driving down FY2010 revenue was decreased economic activity resulting in lower meals, sales, lodging, and BPOL tax collections. He also noted that property taxes, both real and personal, were expected to decrease by about \$1.2 million due primarily to less new construction and lower automobile

values. He reviewed the revenue side of the of the proposed budget stating the primary sources of revenue are the general property taxes at \$76.9 million and other local taxes at \$27.8 million. Combined, these two categories account for 84 percent of the total \$125 million.

Mr. McReynolds noted if the proposed medical transport fee was implemented in January it would be expected to generate approximately \$750,000 in FY 2010. He also noted that revenues from commercial activity are expected to provide more than half of the locally generated revenues. He stated these efforts have accomplished the Board's goal of collecting at least 50 percent of local taxes from commercial activity in order to shift some of the burden of paying for the cost of government from the residential taxpayers to the business taxpayers. Mr. McReynolds spoke of the County's tradition of fiscal conservatism, noting that York County has a relatively low tax rate when compared to some other local jurisdictions and similar localities from around the state, as well as fewer employees per 1000 population than other area localities. In terms of budget growth, he stated the budget has increased over time; and he compared the FY2003 budget to the FY2009 budget in terms of looking at the raw dollars, adjusting the numbers for inflation and population growth, and comparing the inflation adjusted numbers on a per-capita basis. Mr. McReynolds stated the County has an excellent bond rating and highly sought-after credit, and is in a strong financial position. Mr. McReynolds concluded his presentation by providing information concerning the Board's upcoming public hearings and work sessions on the proposed budget prior to its scheduled adoption on April 7.

Meeting Recessed. At 6:54 p.m. Chairman Zaremba declared a short recess.

Meeting Reconvened. At 7:04 p.m. the meeting was reconvened in open session by order of the Chair.

PUBLIC HEARINGS

SALE OF CROSSROADS COMMUNITY YOUTH HOME PROPERTY

Mr. McReynolds made a presentation on proposed Resolution R09-5 to authorize the sale of the County's interest in property located at 4881 Longhill Road in James City County, formerly utilized as the Crossroads Community Youth Home.

Mr. Shepperd asked Mr. McReynolds to explain how the gift of the plans from the City of Hampton for the new facility was involved in this effort.

Mr. McReynolds stated the City of Hampton had built a similar facility that was very efficiently organized, and the City made its plan available for the County's use so that it could be site adapted for the Mooretown Road location as opposed to the County having to go through the full design process.

Mr. Hrichak asked if the proceeds from the sale would all go to the County or if they would be split.

Mr. McReynolds stated the proceeds would be divided based on the equity in the property.

Mrs. Noll asked if the money might be used to payoff part of the debt for the new facility.

Mr. McReynolds stated he thought some of the proceeds would be returned, but mostly would be used as part of the construction.

Chairman Zaremba then called to order a public hearing on proposed Resolution R09-5 that was duly advertised as required by law and is entitled:

A RESOLUTION TO AUTHORIZE THE SALE OF CROSSROADS
COMMUNITY YOUTH HOME LOCATED AT 4881 LONGHILL

February 17, 2009

ROAD AND APPROPRIATING THE COUNTY'S SHARE OF THE
SALE PROCEEDS FOR THE CONSTRUCTION OF A NEW CROSS-
ROADS FACILITY ON MOORETOWN ROAD IN YORK COUNTY

There being no one present who wished to speak concerning the subject resolution, Chairman Zaremba closed the public hearing.

Mrs. Noll then moved the adoption of proposed Resolution R09-5 that reads:

A RESOLUTION TO AUTHORIZE THE SALE OF CROSSROADS
COMMUNITY YOUTH HOME LOCATED AT 4881 LONGHILL
ROAD AND APPROPRIATING THE COUNTY'S SHARE OF THE
SALE PROCEEDS FOR THE CONSTRUCTION OF A NEW CROSS-
ROADS FACILITY ON MOORETOWN ROAD IN YORK COUNTY

WHEREAS, York County operates Crossroads Community Youth Home located on property located at 4881 Longhill Road in James City County, Virginia, and which is owned by the Counties of York, James City, and Gloucester and the City of Williamsburg as tenants-in-common; and

WHEREAS, that facility located at 4881 Longhill Road in James City County was greatly in need of replacement and the owner localities provided for the construction of a new 16-bed co-ed facility located at 5684 Mooretown Road in York County; and

WHEREAS, the Virginia General Assembly approved an exception by name for this project from the moratorium on construction of residential facilities for juveniles and subsequently approved the state share of funding for this project; and

WHEREAS, the four local government owners have for several years banked funds toward their shares; various grants have been received or submitted to further defray local costs and proceeds from the sale of the existing facility shall be applied toward the construction costs, with the balance of those costs to be shared by local government owners according to population percentages; and

WHEREAS, in 2005 in order to make available a site for planning and approvals for the construction of a new facility and for pursuit of the State share of funding, the City of Williamsburg made available three (3) acres located on Mooretown Road in the County of York and offered the owner localities a long-term lease agreement for \$180,000 with 50 percent borne by the Commonwealth; and

WHEREAS, construction of that facility is now complete and has been occupied and all appropriate equipment, furnishings, and other materials have been transferred from the Longhill Road facility; and

WHEREAS, it is also necessary to sell the existing facility at 4881 Longhill Road and apply the proceeds to the costs of construction; and

WHEREAS, after the availability of the property has been advertised to the public and any and all potential buyers have been actively pursued; and

WHEREAS, the King of Glory Lutheran Church has offered to purchase the property for the purchase price of \$855,345, which is in excess of the appraised value of \$615,000.00; and

WHEREAS, all due diligence, title issues, and other such considerations of sale have been satisfied;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 17th day of February, 2009, that the Board does approve the sale of the Crossroads property located at 4881 Longhill Road in James City County to the King of Glory Lutheran Church for

the amount of \$855,345 with the County's portion of the net proceeds of the sale being hereby appropriated to be applied to the construction costs for the new Crossroads facility located at 5684 Mooretown Road in the County of York.

BE IT STILL FURTHER RESOLVED that the County Administrator is hereby directed and authorized to execute a sales contract and any and all documents necessary to affect the sale of such property, with all such documents subject to approval as to form by the County Attorney.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Hrichak, Shepperd, Zaremba
Nay: (0)

AMENDMENT TO ANIMAL AND FOWL ORDINANCE

Mr. Barnett made a presentation on proposed Ordinance No. 09-2 to amend Chapter 4 of the York County Code, Animals and Fowl, to bring it in to conformance with new Title 3.2, Chapter 65, of the Code of Virginia.

Chairman Zaremba spoke of concerns with people who keep incessant barking dogs in their yards for security purposes and lawns strewn with dog feces which become a nuisance to the neighborhood.

Mr. Barnett explained that the incessant barking dog would fall under the County's noise ordinance, and he felt the dog feces would be an issue for the Health Department.

Mr. Shepperd asked if the animal control officer was appointed by the Board of Supervisors, as he did not remember making an appointment.

Mr. Barnett said he would look into it; and if it was something that needed to be corrected, he would take care of it.

Chairman Zaremba then called to order a public hearing on proposed Ordinance No. 09-2 that was duly advertised as required by law and is entitled:

AN ORDINANCE TO AMEND VARIOUS SECTIONS OF CHAPTER 4 OF THE YORK COUNTY CODE, "ANIMALS AND FOWL," TO BRING IT INTO CONFORMANCE WITH NEW TITLE 3.2, CHAPTER 65, OF THE CODE OF VIRGINIA, "COMPREHENSIVE ANIMAL CARE"

There being no one present who wished to speak concerning the subject ordinance, Chairman Zaremba closed the public hearing.

Mr. Wiggins then moved the adoption of proposed Ordinance No. 09-2 that reads:

AN ORDINANCE TO AMEND VARIOUS SECTIONS OF CHAPTER 4 OF THE YORK COUNTY CODE, "ANIMALS AND FOWL," TO BRING IT INTO CONFORMANCE WITH NEW TITLE 3.2, CHAPTER 65, OF THE CODE OF VIRGINIA, "COMPREHENSIVE ANIMAL CARE"

BE IT ORDAINED by the York County Board of Supervisors, this 17th day of February, 2009, that the following sections of Chapter 4, York County Code, be and they are hereby amended to read and provide as follows:

Sec. 4-1. Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 4 misdemeanor.

Sec. 4-2. Definitions

- (a) "Animal" means any nonhuman vertebrate species except fish. For purposes of Article IV. of this chapter, animal means any species susceptible to rabies. For purposes of Section 4-5, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner.
- (b) "Animal yard" means a tract or parcel of land or part thereof, enhanced or not, used to contain or maintain livestock, or land upon which livestock is permitted to roam, free or tethered. The term "animal yard" shall include a pasture.
- (c) The following terms are as defined in Code of Virginia Section 3.2-6500:
 - (1) "Abandon"
 - (2) "Companion Animal"
 - (3) "Dump"
 - (4) "Kennel"
 - (5) "Livestock"
 - (6) "Other Officer"
 - (7) "Owners"
 - (8) "Poultry"
 - (9) "Sore"
 - (10) "Weaned"
- (d) "Stable" means a structure constructed, designed or used for the sheltering or housing of livestock.

Sec. 4-3. Animal control officer—Generally.

- (a) There is hereby created and established the position of animal control officer. The animal control officer shall be appointed by the board of supervisors. The board may appoint one (1) or more deputy animal control officers to assist the animal control officer with enforcement of all county ordinances and state laws enacted for animal control and protection. The animal control officer and any deputy animal control officers shall have all authority granted to such officers by the Virginia Comprehensive Animal Care Laws, Chapter 65 of Title 3.2 of the Code of Virginia. The animal control officer and the deputy animal control officers shall be paid as the county board of supervisors shall prescribe.
- (b) The animal control officer and deputy animal control officer shall have a knowledge of and shall enforce the provisions of this chapter and all ordinances of the county and laws of the state enacted for animal control and protection.
- (c) Whenever the term "animal control officer" is used in this chapter, it shall mean the animal control officer appointed pursuant to this section or any duly appointed deputy animal control officer.
- (d) Nothing in this section shall be construed to prevent the issuance of a warrant for any violation of this chapter based upon the complaint of any citizen or any law enforcement officer and upon a finding of probable cause by an officer authorized to issue arrest warrants generally.
- (e) Every animal control officer and deputy animal control officers shall complete the following training: Within two years after appointment, a basic animal control course that has been approved by the State Veterinarian which shall include training in recognizing

suspected child abuse and neglect and information on how complaints may be filed, and thereafter shall complete such additional training as may be required by the Code of Virginia.

* * *

Sec. 4-5. Cruelty to animals.

- (a) Any person who:
- (1) Overrides, overdrives, overloads, tortures, illtreats, abandons , willfully inflicts inhumane injury or pain, not connected with a bona fide scientific or medical experimentation, upon or cruelly or unnecessarily beats, maims, mutilates or kills, any animal, whether belonging to himself or another, or deprives any animal of necessary sustenance, food, drink or shelter, or emergency veterinary treatment; or
 - (2) Sores any equine for any purpose or administers drugs or medications to alter or mask such soring for the purpose of sale, show, or exhibition of any kind, unless such administration of drugs or medications is within the context of a veterinary client-patient relationship and solely for therapeutic purposes; or
 - (3) Willfully sets on foot, instigates, engages in or in any way furthers any act of cruelty to any animal; or
 - (4) Carries or causes to be carried by any vehicle, vessel or otherwise any animal in a cruel, brutal or inhumane manner, so as to produce torture or unnecessary suffering; or
 - (5) Causes any of the above things, or being the owner of such animal permits such acts to be done by another; shall be guilty of a Class I misdemeanor.
- (b) Nothing in this section shall be construed to prohibit the dehorning of cattle done in a reasonable and customary manner.
- (c) In addition to the penalties provided in subsection (a), the court may, in its discretion, require any person convicted of a violation of this section to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of such a program or counseling upon the person convicted.
- (d) This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under the Code of Virginia, including Title 29.1, or to lawful farming activities.
- (e) It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide, fur or pelt of the dog or cat. A violation of this subsection is a Class 1 misdemeanor. A second or subsequent violation may be prosecuted under state law as a Class 6 felony pursuant to Code of Virginia section 3.2-6570 (E).
- (f) Any person convicted of violating this section may be prohibited by the court from possession or ownership of companion animals.

Sec. 4-6. Abandoning domestic animal in public place or on property of another.

No person shall abandon or dump any animal. Violation of this section shall be punishable as a Class 3 misdemeanor. Nothing in this section shall be construed to prohibit the release of an animal by its owner to an approved animal shelter or other releasing agency.

Sec. 4-7. Disposal of dead companion animals.

- (a) The owner of any companion animal which has died from disease or other cause shall forthwith cremate, bury or sanitarily dispose of the same. If, after notice, any owner fails to do so, the animal control officer or other officer shall bury or cremate the animal and the control officer or other officer may recover, on behalf of the county, the cost of this service.
- (b) Any person, animal control officer or other officer euthanizing a companion animal under this chapter shall cremate, bury or sanitarily dispose of the same.
- (c) When the owner of any animal or grown fowl, other than companion animal, which has died knows of such death, such owner shall forthwith have its body cremated or buried, or request such service from an officer or other person designated for the purpose and, if he fails to do so, any judge of a general district court, after notice to the owner if he can be ascertained, shall cause any such dead animal or fowl to be cremated or buried by an officer or other person designated for the purpose. Such officer or other person shall be entitled to recover of the owner of every such animal or fowl so cremated or buried the actual cost of the cremation or burial, not to exceed seventy-five dollars, and of the owner of every such fowl so cremated or buried the actual cost of the cremation or burial, and a reasonable fee to be recovered in the same manner as officers' fees are recovered, free from all exemptions in favor of such owner. Any person violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

Nothing in this section shall be deemed to require the burial or cremation of the whole or portions of any animal or fowl which is to be used for food or in any commercial manner.

* * *

ARTICLE III. DOGS**DIVISION I. GENERALLY****Sec. 4-33. Definitions.**

For the purpose of this article, and unless otherwise required by the context, the following words and terms shall have the meanings respectively ascribed to them by this section:

Dangerous dog. Any canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. However, when a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite, (ii) if both animals are owned by the same person, (iii) if such attack occurs on the property of the attacking or biting dog's owner or custodian, or (iv) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event. No dog that has bitten, attacked, or inflicted injury on a person shall be found to be a dangerous dog if the court determines, based on the totality of the evidence before it, that the dog is not dangerous or a threat to the community.

Treasurer. Includes the treasurer of the county and his assistants or other officer designated by law to collect taxes in the county.

Vicious dog. Any canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of

health, or serious impairment of bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by ordinance that it is a dangerous dog, provided that its owner has been given notice of that finding.

* * *

Sec. 4-36. Dogs running at-large—Impoundment and disposition.

- (a) Any dog found running at-large without the tag required by section 4-53 or in violation of section 4-35 of this article shall be apprehended by the animal control officer or other officer and placed in a pound meeting the requirements of the Code of Virginia. All drugs and drug administering equipment used by animal wardens or other officers to capture dogs shall have been approved by the state veterinarian.
- (b) A dog impounded under this section shall be kept for a period of not less than five (5) days, such period to commence on the day immediately following the day the dog is initially confined, unless sooner claimed by the rightful owner thereof. The operator or custodian of the pound shall make a reasonable effort to ascertain whether the animal has a collar, tag, license, tattoo, or other form of identification. If such identification is found on the animal, the animal shall be held for an additional five days, unless sooner claimed by the rightful owner. If the rightful owner of the animal can be readily identified, the operator or custodian of the pound shall make a reasonable effort to notify the owner of the animal's confinement within the next forty-eight hours following its confinement.
- (c) If any animal confined pursuant to this section is claimed by its rightful owner, such owner may be charged with the actual expenses incurred in keeping the animal impounded.
- (d) If a dog confined pursuant to this section has not been claimed upon expiration of the appropriate holding period as provided by subsection (b), it shall be deemed abandoned and become the property of the pound. The dog may be euthanized or disposed of as permitted by any applicable provision of Code of Virginia section 3.2-6546.
- (e) No provision of this section shall prohibit the euthanasia of a critically injured, critically ill or unweaned animal for humane purposes.
- (f) Any animal euthanized pursuant to the provisions of this section shall be euthanized by one of the methods prescribed by or approved by the state veterinarian.
- (g) Prior to disposition by euthanasia, or otherwise, all the provisions of this section shall have been complied with.
- (h) In the event that the county has contracted with any other entity to maintain a pound enclosure, then, in addition to any fees specified in this section, the person claiming the impounded animal shall pay all applicable fees charged by the entity maintaining the pound enclosure.
- (i) The payment of any fees provided for in this section shall not relieve the owner of his liability for any violation of section 4-35 of this article.
- (j) For purposes of this section, "rightful owners" means a person with a right of property in the animal.

Sec. 4-37. Dangerous and vicious dogs.

- (a) Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog or vicious dog

shall apply to a magistrate of the county for the issuance of a summons requiring the owner or custodian, if known, to appear before the general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of Code of Virginia § 3.2-6562. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia. The County or the Commonwealth shall be required to prove its case beyond a reasonable doubt.

- (b) No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian, or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog, or a vicious dog.
- (c) If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.
- (d) The owner of any animal found to be dangerous dog shall, within ten days of such finding, obtain a dangerous dog registration certificate from the animal control officer or treasurer for a fee of fifty dollars in addition to other fees that may be authorized by law. The animal control officer or treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained. The animal control officer shall provide a copy of the dangerous dog registration certificate and verification of compliance to the State Veterinarian.
- (e) All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons eighteen years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable, (ii) that the animal has been neutered or spayed, and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless

they present satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least \$100,000 that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least \$100,000.

- (f) While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.
- (g) The owner of any dog found to be dangerous shall register the animal with the Commonwealth of Virginia Dangerous Dog Registry, as established under Code of Virginia § 3.2-6542, within 45 days of such a finding by a court of competent jurisdiction.

The owner shall also cause the animal control officer to be promptly notified of (i) the names, addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

- (h) After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the animal control authority to be notified if the animal (i) is loose or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved.
- (i) Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:
 - (1) Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person; or
 - (2) Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury; or
 - (3) Class 1 misdemeanor if any owner or custodian whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person.

The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its ken-

nel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

- (j) The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section is guilty of a Class 1 misdemeanor.
- (k) All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the County for the purpose of paying the expenses of any training course required under Code of Virginia § 3.2-6556.

Sec. 4-38. Dogs killing or injuring livestock or poultry.

- (a) It shall be the duty of the animal control officer or other officer, when he finds a dog in the act of killing or injuring livestock or poultry, to kill such dog forthwith, whether such dog bears a tag or not, and any person finding a dog committing any of the depredations mentioned in this section shall have the right to kill such dog on sight, as shall any owner of livestock or his agent finding a dog chasing livestock on land utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court shall have the power to order the animal control officer or other officer to kill any dog known to be a confirmed livestock or poultry killer, and any dog killing poultry for the third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian or harbinger of the dog to produce the dog.
- (b) If the animal control officer has reason to believe that any dog is killing livestock or poultry, he shall be empowered to seize such dog solely for the purpose of examining such dog in order to determine whether it committed any of the depredations mentioned in this section.
- (c) If the animal control officer or any other person has reason to believe that any dog is killing livestock, or committing any of the depredations mentioned in this section, he shall apply to a magistrate of the county, who shall issue a warrant requiring the owner or custodian of the dog, if known, to appear before the general district court at a time and place named therein, at which time evidence shall be heard and, if it shall appear that such a dog is a livestock killer, or has committed any of the depredations mentioned in this section, the dog shall be (i) ordered killed immediately, which the animal control officer, or other officer designated by the judge of the court to act, shall do, or (ii) removed to another state which does not border on the Commonwealth and prohibited from returning to the Commonwealth. Any dog ordered removed from the Commonwealth which is later found in the Commonwealth shall be ordered by a court to be killed immediately.
- (d) Any person who has any livestock or poultry killed or injured by any dog not his own shall be entitled to receive as compensation the fair market value of such livestock or poultry, not to exceed four hundred dollars (\$400.00) per animal or ten dollars (\$10.00) per fowl; provided, that the claimant has furnished evidence within sixty (60) days of discovery of the quantity and value of the dead or injured livestock and the reasons the claimant believes that death or injury was caused by a dog; the animal control officer or other officer shall have been notified of the incident with seventy-two (72) hours of its discovery; and the claimant first has exhausted his legal remedies against the owner, if known, of the dog doing the damage for which compensation under this section is sought. Exhaustion shall mean a judgment against the owner of the dog upon which an execution has been returned unsatisfied. Upon payment under this section, the board of supervisors shall be subrogated to the extent of compensation paid to the right of action to the owner of the livestock or poultry against the owner of the dog and may enforce the same in an appropriate action at law.

- (e) It is a Class 1 misdemeanor for any person to present a false claim or to receive any money on a false claim under this section.

* * *

Sec. 4-48. When tax due and payable.

The license tax imposed on individual dogs by section 4-47 of this article shall be due and payable not later than thirty (30) days after a dog has reached the age of four (4) months, or not later than thirty (30) days after an owner acquires a dog four (4) months of age, and each year thereafter. Any kennel license tax imposed by section 4-47 shall be due on January 1 and shall be paid not later than January 31 of each year.

* * *

Sec. 4-57. Disposition of funds.

- (a) Unless otherwise provided by ordinance of the board of supervisors, the treasurer shall deposit all money collected by him for dog license taxes in a separate account from all other funds collected by him. Such funds shall be used for the following purposes:
- (1) The salary and expenses of the animal control officer and necessary staff;
 - (2) The care and maintenance of a dog pound;
 - (3) The maintenance of a rabies control program;
 - (4) Payments as a bounty to any person neutering or spaying a dog up to the amount of one (1) year of the license fee set forth in section 4-47 of this article;
 - (5) Payments for compensation as provided in section 4-38(d) of this article; and
 - (6) Efforts to promote sterilization of dogs and cats.
- (b) Any part or all of any surplus remaining in such account on December 31 of any year may be transferred by the board of supervisors into the general fund of the county.

* * *

Sec. 4-73. Destruction or confinement of dog or cat bitten by rabid animal.

Any dog or cat for which no proof of current rabies vaccination is available, and which is exposed to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, by an animal believed to be afflicted with rabies, shall be confined in a pound, kennel or enclosure approved by the health department for a period not to exceed six (6) months at the expense of the owner; however, if this is not feasible, the dog or cat shall be euthanized by one of the methods approved by the state veterinarian. A rabies vaccination shall be administered prior to release. Inactivated rabies vaccine may be administered at the beginning of confinement. Any dog or cat so bitten, or exposed to rabies through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, with proof of a valid rabies vaccination shall be revaccinated immediately following the bite and shall be confined to the premises of the owner, or other site as may be approved by the local health department, for a period of forty-five (45) days.

Sec. 4-74. Confinement or destruction of animal which has bitten person.

- (a) The owner or keeper of any animal that has bitten any person shall immediately confine it in a substantial and satisfactory enclosure, meeting the approval of the health director, and he shall forthwith notify the animal control officer or the health officer, giving

the name and address of the person bitten, if known to him, and the location of the confined animal. At the discretion of the director of the health department, such animal shall be quarantined under the observation of the health director and the animal control officer for a period of ten (10) days, unless the animal develops active symptoms of rabies or expires before that time, during which time of confinement it shall not be permitted to leave the enclosure. At the end of such quarantine period, the animal control officer may permit the animal to be released from confinement if, in his opinion, it is not vicious, provided the court has not ruled upon the question to the contrary.

- (b) Notwithstanding the above provisions, a seriously injured or sick animal may be humanely euthanized by one of the methods approved by the state veterinarian and its head sent to the Division of Consolidated Laboratory Services of the Department of General Services or the local health department for evaluation.

Sec. 4-74.1 Animals other than dogs and cats; exposing other animals to rabies; exposure to rabies.

- (a) When any potentially rabid animal other than a dog or cat exposes or may have exposed a person to rabies through a bite, or through saliva or central nervous system tissue in a fresh open wound or mucous membrane, that animal shall be confined at the discretion of a local health director in a manner approved by the health department or humanely euthanized by a method approved by the state veterinarian and its head sent to the Division of Consolidated Laboratory Services of the Department of General Services or the local health department for evaluation.
- (b) When any animal other than a dog or cat is exposed to rabies through a bite, or through saliva or central nervous system tissue in a fresh wound or mucous membrane by an animal believed to be afflicted with rabies, that newly exposed animal shall be confined at the discretion of a local health director in a manner approved by the health department or humanely euthanized by a method approved by the state veterinarian.

On roll call the vote was:

Yea: (5) Wiggins, Hrichak, Noll, Shepperd, Zaremba
Nay: (0)

APPLICATION NO. UP-759-09, SHANE HATCHELL

Mr. Carter made a presentation on Application No. UP-759-09 to approve a use permit authorizing an accessory apartment in a detached structure in connection with an existing single-family home located at 713 Dare Road. The Planning Commission considered the application and forwarded it to the Board of Supervisors with a recommendation of approval, and staff recommended approval of the application through the adoption of proposed Resolution R09-23.

Mrs. Noll asked if there were any fines for people who do something in opposition to the County's regulations.

Mr. Carter explained there would be an opportunity to cite the property owner if they did not respond to the County's notice. He noted the applicant upon receiving notification of the requirement for the special use permit had applied for the permit.

Mr. Shepperd asked if a record was maintained when a citizen applied for a use permit.

Mr. Carter stated the use permit applications are maintained permanently, and the certificate of occupancy is maintained, but not the actual building permit files that would show the plans.

Mr. Wiggins asked if there had been any other complaints besides the one for the permit.

Mr. Carter stated none that he could recall.

Chairman Zaremba then called to order a public hearing on Application No. UP-759-09 that was duly advertised as required by law. Proposed Resolution R09-23 is entitled:

A RESOLUTION TO APPROVE A SPECIAL USE PERMIT TO AUTHORIZE A DETACHED ACCESSORY APARTMENT AT 713 DARE ROAD

Mr. David Ware, 106 Colonna Point Road, appeared in support of the application. He stated he and his wife co-own the subject property with their son, the applicant, and they also own the adjacent property to the rear of the subject property. He added he would be happy to answer any questions the Board might have.

There being no one else present who wished to speak concerning the subject application, Chairman Zaremba closed the public hearing.

Mr. Hrichak then moved the adoption of proposed Resolution R09-23 that reads:

A RESOLUTION TO APPROVE A SPECIAL USE PERMIT TO AUTHORIZE A DETACHED ACCESSORY APARTMENT AT 713 DARE ROAD

WHEREAS, Shane Hatchell has submitted Application No. UP-759-09 to request a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize an accessory apartment in a detached structure in connection with an existing single-family home on a 0.45-acre parcel of land located at 713 Dare Road (Route 620) and further identified as Assessor's Parcel No. 25F-2-1 (GPIN# T07d-3472-1590); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends approval of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has given careful consideration to the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 17th day of February, 2009 that Application No. UP-759-09 be, and it is hereby, approved to authorize a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, for an accessory apartment in a detached structure in connection with an existing single-family home on a 0.45-acre parcel of land located at 713 Dare Road (Route 620) and further identified as Assessor's Parcel No. 25F-2-1 (GPIN# T07d-3472-1590) subject to the following conditions:

1. This use permit shall authorize a detached accessory apartment in conjunction with a single-family detached home on a 0.45-acre parcel of land located at 713 Dare Road (Route 620) and further identified as Assessor's Parcel No. 25F-2-1 (GPIN# T07d-3472-1590).
2. The apartment shall be contained within a structure located behind the principal dwelling as depicted on the sketch plan and in accordance with the floor plans submitted by the applicant, copies of which shall remain on file in the office of the Planning Division.

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3. Construction and occupancy of the accessory apartment shall be in compliance with the performance standards set forth in Section 24.1-407 of the Zoning Ordinance.
4. Not more than one (1) accessory apartment shall be permitted in conjunction with the principal dwelling unit.
5. The habitable floor area of the accessory apartment unit shall not exceed 487 square feet.
6. The accessory apartment unit shall contain no more than one (1) bedroom and no more than one (1) bathroom with tub and/or shower facilities.
7. Adequate provisions shall be made for off-street parking of motor vehicles in such a fashion as to be compatible with the character of the single-family residence and adjacent properties.
8. The accessory apartment shall not be rented separate from the principal dwelling and shall be occupied only by family members or guests of the occupant of the single-family dwelling.
9. Prior to issuance of a building permit for the accessory apartment, the applicant shall be responsible for recording with the Clerk of the Circuit Court, a copy of the resolution approving this use permit. A court-certified copy of the document shall be submitted to the County at the time of building permit application.

BE IT FURTHER RESOLVED that this Special Use Permit is severable and invalidation of any word, phrase, clause, sentence, or paragraph shall not invalidate the remainder.

On roll call the vote was:

Yea: (5) Hrichak, Shepperd, Noll, Wiggins, Zaremba
Nay: (0)

APPLICATION NO. UP-760-09, KENNETH DALE MOORE

Mr. Carter made a presentation on Application No. UP-760-09 to approve a use permit authorizing the establishment of a cross-parcel vehicular connection between an existing mini-storage warehouse/retail/contractor business located at 7307 George Washington Memorial Highway and an adjacent convenience store/gas station located at 7305 George Washington Memorial Highway. The Planning Commission considered the application and forwarded it to the Board of Supervisors with a recommendation of approval, and staff recommended approval of the application through the adoption of proposed Resolution R09-24.

Mrs. Noll recalled that one reason this permit had been previously disallowed was because of the houses in the back of the area and the concern that the cut-through would cause problems for those residents. She asked if that had changed.

Mr. Carter stated the houses were still there, but over the past three years the traffic situation had lessened to a relatively minor amount of traffic going into both of the sites. He added there may have been some concern at the time that Stor Moore would generate quite a lot of traffic, but he explained that the storage facility was not generating a great deal of traffic nor were the retail spaces that are occupied there in the front of the property.

Mr. Wiggins stated he had been surprised to hear that the owners of the Uppy's property were in favor of the connection, and he asked if it would take away one parking space.

Mr. Carter stated it would eliminate one or two of the parking spaces, but it would leave a sufficient number of spaces. He explained that this was something that was encouraged by

the zoning ordinance as a matter of course in any commercial development, and that was bolstered by the fact that VDOT has adopted access management standards that encourage joint entrances and interconnection of sites.

Chairman Zaremba then called to order a public hearing on Application No. UP-760-09 that was duly advertised as required by law. Proposed Resolution R09-24 is entitled:

A RESOLUTION TO APPROVE A MAJOR AMENDMENT TO A PREVIOUSLY APPROVED SPECIAL USE PERMIT TO AUTHORIZE A CROSS-PARCEL PARKING LOT INTERCONNECTION BETWEEN PROPERTIES LOCATED AT 7307 AND 7305 GEORGE WASHINGTON MEMORIAL HIGHWAY

Mr. Jim Kinter, representing Uppy's Convenience Stores, spoke on behalf of the owner, Mr. Uphoff, in support of the amendment. He asked that the letter included in the Board's package from Mr. Uphoff be allowed to speak for itself. He noted he would be happy to answer any questions the Board might have.

Mr. Kenneth D. Moore, 104 Lewis Drive, the applicant, appeared to answer any questions the Board might have. He spoke of the difficulty in having to make u-turns to access the property.

There being no one else present who wished to speak concerning the subject application, Chairman Zaremba closed the public hearing.

Mr. Wiggins then moved the adoption of proposed Resolution R09-24 that reads:

A RESOLUTION TO APPROVE A MAJOR AMENDMENT TO A PREVIOUSLY APPROVED SPECIAL USE PERMIT TO AUTHORIZE A CROSS-PARCEL PARKING LOT INTERCONNECTION BETWEEN PROPERTIES LOCATED AT 7307 AND 7305 GEORGE WASHINGTON MEMORIAL HIGHWAY

WHEREAS, the York County Board of Supervisors adopted Resolution No. R04-84 to approve Application No. UP-634-04 to authorize a mini-storage warehouse facility and access to a contractor's outdoor storage yard through the GB (General Business) zoning district on property located on the west side of George Washington Memorial Highway (Route 17) approximately 250 feet north of its intersection with Whites Road (Route 1216); and

WHEREAS, Stor Moore LLC has submitted Application No. UP-760-09, which requests to amend the above-referenced Special Use Permit, pursuant to Section 24.1-115(d)(3) of the York County Zoning Ordinance, to authorize a parking lot interconnection between the above-referenced facility, located at 7307 George Washington Memorial Highway (Route 17) and further identified as Assessor's Parcel No. 24-128 (GPIN# Q08d-4951-0396), and the adjacent convenience store/gas station located at 7305 George Washington Memorial Highway and further identified as Assessor's Parcel No. 24-129 (GPIN# R08c-0703-0569); and

WHEREAS, said application has been referred to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends approval of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 17th day of February, 2009, that Application No. UP-760-09 be, and it is hereby, approved

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to authorize amendment of a previously approved Special Use Permit (Application No. UP-634-04) to authorize a parking lot interconnection between a mini-storage/retail/contractor facility, located at 7307 George Washington Memorial Highway (Route 17) and further identified as Assessor's Parcel No. 24-128 (GPIN# Q08d-4951-0396), and an adjacent convenience store/gas station located at 7305 George Washington Memorial Highway and further identified as Assessor's Parcel No. 24-129 (GPIN# R08c-0703-0569), subject to the following conditions:

1. This use permit shall authorize amendment of Special Use Permit UP-634-04 to authorize a parking lot interconnection between a mini-storage/retail/contractor facility, located at 7307 George Washington Memorial Highway (Route 17) and further identified as Assessor's Parcel No. 24-128 (GPIN# Q08d-4951-0396), and an adjacent convenience store/gas station located at 7305 George Washington Memorial Highway and further identified as Assessor's Parcel No. 24-129 (GPIN# R08c-0703-0569).
2. A site plan, prepared in accordance with the provisions of Article V of the York County Zoning Ordinance, shall be submitted to and approved by the County prior to the establishment of the proposed parking lot interconnection. Said site plan shall be in substantial conformance with the sketch plan titled "Parking Lot Tie-In, Stor-Moore/Uppy's" (a copy of which shall remain on file in the office of the Planning Division), except as necessary to comply with applicable Zoning Ordinance requirements.
3. Prior to site plan approval, a joint access/maintenance easement, approved as to content by the Plan Approving Agent and as to form by the County Attorney, shall be established and platted across both subject parcels.
4. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of the Resolution authorizing this Special Use Permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court prior to site plan approval.

On roll call the vote was:

Yea: (5) Shepperd, Noll, Wiggins, Hrichak, Zaremba
 Nay: (0)

VERIZON CABLE FRANCHISE AGREEMENT

Mr. Barnett made a presentation on proposed Ordinance No. 09-4 to approve the Cable Franchise Agreement between Verizon and the County of York. He stated this was the same agreement that the Board had considered at its February 3 work session with the addition of two changes included in the February 6 memorandum. The first change addressed the ability to advertise, and Verizon has agreed to amend the definition of "non-commercial" in Section 1.19 of the agreement to allow the County to solicit sponsorships as long as it was done in accordance with the guidelines adopted by the Public Broadcasting Services (PBS). The second change addressed rethinking the initial service area. He explained the map entitled "Exhibit A, Service Area Map" had been altered to remove the portions of the Initial Service Area that were within the US Naval Weapons Station, as the County has no authority to require cable connections on that property. He then proposed changes to the title to more accurately describe the ordinance. The ordinance should state "to authorize the County Administrator to execute a non-exclusive negotiated franchise agreement".

Discussion followed regarding the correct wording for the title of the ordinance and adding the authority of the County Administrator to execute the agreement once approved by the Board.

Mr. Barnett suggested the following wording be added at the conclusion of the ordinance: "BE IT FURTHER ORDAINED that the County Administrator is hereby authorized to execute an agreement consistent with the terms and conditions of this ordinance."

Mr. Shepperd suggested to Chairman Zaremba that the County Administrator work with the County Attorney to establish a policy that would determine the type of programming and how it would be applied.

Mr. Barnett stated he would do some research and check with other jurisdictions that have done this to see if they can help shorten the research time. Once he has the information, he stated he would forward it to the County Administrator for further determination according to the Board's requirements.

Chairman Zaremba asked Mr. Barnett to briefly conceptualize what Verizon was attempting to do through this initiative and what it would mean to current Cox customers.

Mr. Barnett explained the high points of the agreement, stating the General Assembly changed the way localities can enter into agreements with cable companies. The agreement with Cox has been non-exclusive since its inception. He explained that technologies are changing, and telephone companies are able to use their wires to transmit cable television, and cable companies are providing telephone and internet business. The Cox franchise agreement expires in August of 2012. Some areas of the County are capable of carrying Verizon's FIOS cable television service, and Verizon has indicated it can begin service in various parts of the County within a few weeks. Mr. Barnett further explained the franchise agreement service areas and how the FIOS cable service will be transmitted through boxes.

Chairman Zaremba then called to order a public hearing on proposed Ordinance No. 09-4 that was duly advertised as required by law and is entitled:

AN ORDINANCE TO GRANT A NONEXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE COUNTY OF YORK AND VERIZON VIRGINIA, INC., PURSUANT TO CODE OF VIRGINIA SECTION 15.2-2108.19 ET. SEQ. FOR THE PROVISION OF CABLE TELEVISION SERVICE WITHIN THE COUNTY, AND PROVIDING THAT THE TERMS AND CONDITIONS OF THE FRANCHISE AGREEMENT WITH VERIZON SHALL SUPERSEDE THE TERMS AND CONDITIONS OF THE EXISTING YORK COUNTY CABLE COMMUNICATIONS ORDINANCE (ORDINANCE O97-7) TO THE EXTENT INCONSISTENT WITH THE PROPOSED AGREEMENT

There being no one present who wished to speak concerning the subject ordinance, Chairman Zaremba closed the public hearing.

Mrs. Noll then moved the adoption of proposed Ordinance No. 09-4(R) that reads:

AN ORDINANCE TO GRANT A NONEXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE COUNTY OF YORK AND VERIZON VIRGINIA, INC., PURSUANT TO CODE OF VIRGINIA SECTION 15.2-2108.19 ET. SEQ. FOR THE PROVISION OF CABLE TELEVISION SERVICE WITHIN THE COUNTY, AND PROVIDING THAT THE TERMS AND CONDITIONS OF THE FRANCHISE AGREEMENT WITH VERIZON SHALL SUPERSEDE THE TERMS AND CONDITIONS OF THE EXISTING YORK COUNTY CABLE COMMUNICATIONS ORDINANCE (ORDINANCE O97-7) TO THE EXTENT INCONSISTENT WITH THE PROPOSED AGREEMENT

WHEREAS, on August 27, 1997, the County adopted Ordinance O97-7 amending in its entirety the County's Cable Communications Ordinance providing for the provision of cable television within the County by means of franchise agreements with private cable television service providers; and

WHEREAS, effective July 1, 2006, the Virginia General Assembly adopted Article 1.2 of Chapter 21 of Title 15.2 of the Code of Virginia, substantially amending the applicable statutes

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relative to the granting of cable television franchise agreements by local governments in Virginia and overriding various provisions of the County's Cable Communications Ordinance; and

WHEREAS, the County has entered into negotiations with Verizon Virginia, Inc. (Verizon) for the granting of a negotiated cable television franchise agreement for the provision of cable television services within the County, and following the holding of a public hearing has determined that it is in the best interests of the public, and consistent with the public's general welfare, that the County enter into a nonexclusive cable television franchise agreement with Verizon, that the County Administrator be authorized to execute the same, and that provisions of the Verizon franchise agreement be deemed to control over inconsistent provisions of the County's Cable Communications Ordinance (O97-7).

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors, this 17th day of February, 2009, as follows:

1. The County hereby grants to Verizon Virginia, Inc. a nonexclusive cable television franchise agreement for a term of 15 years, as follows:

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between The County of York, a duly organized County under the applicable laws of the Commonwealth of Virginia (the "County"), and Verizon Virginia Inc., a corporation duly organized under the applicable laws of the Commonwealth of Virginia (the "Franchisee").

WHEREAS, the County wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a Cable System in the Franchise Area as designated in this Franchise;

WHEREAS, the County is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to the Code of Virginia, Virginia Code Ann. § 15.2-2108;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premises Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of, among other things, Telecommunications and other Non-Cable Services pursuant to authority granted by the Commonwealth of Virginia;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the County, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services in the Franchise Area;

WHEREAS, the County has identified the future cable-related needs and interests of the County and its community, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties;

WHEREAS, the County has found Franchisee to be financially, technically and legally qualified to operate its Cable System;

WHEREAS, the County has determined that, subject to the terms and conditions set forth herein, the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the County and Franchisee have reached agreement on the terms and conditions set forth herein, and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the County's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the

County pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. References in this section to any federal or state law shall include amendments thereto as may be enacted from time-to-time. In addition, the following definitions shall apply:

1.1. *Access Channel*: Any Channel that Franchisee is required to make available under this Agreement to the County without charge for Non-commercial Educational or Governmental use.

1.2. *Affiliate*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning in relation to any Person, another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3. *Basic Service or Basic Service Tier*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the Cable Service tier that includes (i) the retransmission of local television broadcast Channels, and (ii) EG Channels required to be carried in the basic tier.

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

1.5. *Cable System or System*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within the Service Area, except that such term shall not include (i) a system that serves fewer than twenty (20) Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any Public Rights-of-Way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric system; (vi) any portion of a system that serves fewer than fifty (50) Subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

1.6. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), meaning a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

1.7. *Communications Act*: The Communications Act of 1934, as amended.

1.8. *County*: The County of York, Virginia, and its lawful and permitted successors, assigns and transferees.

1.9. *EG*: Educational and Governmental.

1.10. *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.

1.11. *Force Majeure*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee's facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

1.12. *Franchise Area*: The entire existing unincorporated territorial limits of the County and such additional areas as may be included in the unincorporated territorial limits of the County during the term of this Franchise.

1.13. *Franchisee*: Verizon Virginia Inc., and its lawful and permitted successors, assigns and transferees.

1.14. *FTTP Network*: Shall mean the fiber-to-the-premises telecommunications network that the Franchisee is installing in the Franchise Area for the transmission of, among other things, Telecommunications and other Non-Cable Services pursuant to authority granted by the Commonwealth of Virginia.

1.15. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), meaning the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service; provided, however, that any reference to Information Services in this Agreement does not include any Cable Services over the Cable System in the Franchise Area.

1.16. *Incumbent Cable Operator*: Any franchised cable operator other than the Franchisee providing cable service in the Franchise Area as of the Effective Date of this Agreement.

1.17. *Initial Service Area*: The portion of the Franchise Area as outlined in Exhibit A.

1.18. *Non-Cable Services*: Any service that does not constitute a Cable Service.

1.19. *Non-commercial*: Non-commercial means for use other than (i) the carriage of programming in return for compensation (including programming selected by a third party), or (ii) the carriage of advertising; provided that the County or any entity responsible for managing an Access Channel may enter into underwriting or sponsorship arrangements with third party entities that conform with sponsorship guidelines used by the Public Broadcasting Service ("PBS").

1.20. *Normal Business Hours*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(i), meaning those hours during which most similar businesses in the

community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

1.21. *Normal Operating Conditions:* Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(ii), meaning those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

1.22. *Person:* An individual, partnership, association, joint stock company, trust, corporation, or its lawful and permitted successors, assigns and transferees or governmental entity; provided, however, Person shall not include the County.

1.23. *Public Rights-of-Way:* The surface, the air space above the surface, below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar right-of-way property in which the County now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining the Cable System. No reference in this Agreement to a Public Right-of-Way shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and the Franchisee shall be deemed to gain only those rights to use the Public Rights-of-Way as are properly in the County and as the County may have the undisputed right and power to give. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.

1.24. *Service Area:* All portions of the Franchise Area where Cable Service is being offered.

1.25. *Service Date:* The date that the Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area. The Franchisee shall memorialize the Service Date by notifying the County in writing of the same, which notification shall become a part of this Franchise.

1.26. *Service Interruption:* The loss of picture or sound on one or more cable channels.

1.27. *Subscriber:* A Person who lawfully receives Cable Service over the Cable System. Subscriber includes the County to the extent the County lawfully receives Cable Service over the Cable System.

1.28. *Telecommunications Facilities:* Franchisee’s existing facilities used to provide Telecommunications Services and Information Services and its FTTP Network facilities.

1.29. *Telecommunication Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), meaning the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

1.30. *Title II:* Title II of the Communications Act.

1.3.1 *Title VI:* Title VI of the Communications Act.

1.32. *Transfer of the Franchise:* Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or

indirectly, from one person or group of persons to another person or group of persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise are transferred or assigned to another person or group of persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a Transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another affiliate of the Franchisee; (b) transfer of an interest in the cable franchise granted hereunder or the rights held by the Franchisee under the Franchise to the parent of the Franchisee or to another affiliate of the Franchisee; (c) any action that is the result of a merger of the parent of the Franchisee; (d) any action that is the result of a merger of another affiliate of the Franchisee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the Cable System used to provide Cable Services in order to secure indebtedness.

1.33 *Video Programming*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Act, the County hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as provided under federal, state or local law.

2.2. *County Does Not Regulate Telecommunications*: The County's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of the Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term*: This Franchise shall become effective on February 17, 2009 (the "Effective Date"), following its approval by the County Board and the execution of this Agreement by Franchisee within thirty (30) days of the Board's approval, which execution shall constitute acceptance of this Franchise by Franchisee. The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier surrendered or revoked as provided herein.

2.4. *Grant Not Exclusive*: The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the County reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not authorize or permit physical damage to existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal Law*: This Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act; provided, however, that this Section 2.5 shall not be construed as in any way limiting or waiving the County's right to assert or claim that any amendment or change to federal law made after the Effective Date improperly interferes with or takes without compensation any contractual property rights of the County hereunder.

2.6. *No Waiver*:

2.6.1. The failure of County on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse County from performance, unless such right or performance has been specifically waived in writing.

2.7. *Construction of Agreement:*

2.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.7.2. Notwithstanding Section 4-6(a) of County Ordinance O97-7, in the event of a conflict between Ordinance O97-7 and this Agreement, this Agreement shall prevail. In the case of a conflict between Ordinance O97-7 and Virginia Code Sections 15.2-2108.19, et seq., the Virginia Code shall prevail. In the event a conflict does not exist between Ordinance O97-7 and this Agreement, then the Franchisee shall comply with Ordinance O-97-7 in effect on the Effective Date to the extent that Ordinance O97-7 is not preempted by Virginia or federal law.

2.7.3. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.8. *Police Powers:* Except as otherwise provided in this Franchise, Verizon's rights under this Franchise shall be subject to the lawful police powers of the County to adopt and enforce ordinances of general applicability necessary to protect and preserve the health, safety and welfare of the public. Verizon shall comply with all applicable general laws and ordinances lawfully enacted by County pursuant to such police powers, except where an exercise of such powers would impair the obligations of this Franchise.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. *Initial Service Area:* Subject to Subsection 3.1.4, within no less than three (3) years of the Effective Date, Franchisee shall make Cable Service available to all of the occupied residential dwelling units in the Initial Service Area. Franchisee may make Cable Service available to businesses in the Franchise Area.

3.1.2. *Year Seven (7) Threshold:* Subject to Subsection 3.1.4, within seven (7) years of the Effective Date, Franchisee shall make Cable Service available to no less than sixty-five percent (65%) of the occupied residential dwelling units in the Franchise Area (the "Year Seven (7) Threshold").

3.1.3. *Year Ten (10) Threshold:* During the twelve (12) month period commencing after the seventh-year anniversary date of the Effective Date, the County may, by ordinance adopted after a public hearing in which the County specifically finds that such a requirement is necessary to promote competition in cable services within the Franchise Area, require the Franchisee to make Cable Service available to no more than eighty percent (80%) of the occupied residential dwelling units in the Franchise Area in within no less than ten (10) years of the Effective Date, subject to the conditions of Subsection 3.1.4, 3.1.5, and 3.1.7, (the "Year Ten (10) Threshold"). Upon adoption of such ordinance, Franchisee agrees that the Ten

Year Threshold requirement included therein shall become a part of this Agreement and shall be enforceable pursuant to the terms of this Agreement.

3.1.4. *Exceptions:* Notwithstanding Subsections 3.1.1, 3.1.2 and 3.1.3 above, Franchisee shall not be required to make Cable Service available:

3.1.4.1. for periods of Force Majeure;

3.1.4.2. for periods of delay caused by the County;

3.1.4.3. for periods of delay resulting from the Franchisee's inability to obtain authority to access Public Rights-of-Way in the Service Area;

3.1.4.4. in areas where developments or buildings are subject to claimed exclusive arrangements or where Franchisee has a reasonable, good faith claim that such an exclusive arrangement exists;

3.1.4.5. in developments or buildings that the Franchisee cannot access under industry standard terms and conditions after good faith negotiation;

3.1.4.6. in developments or buildings that the Franchisee is unable to provide Cable Service for technical reasons or that requires facilities that are not available or cannot be deployed on a commercially reasonable basis;

3.1.4.7. in areas where it is not technically feasible to provide Cable Service due to the technology used by the Franchisee to provide Cable Service;

3.1.4.8. in areas where the average occupied residential household density is less than thirty (30) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the Franchisee's active Cable System; and

3.1.4.9. when the Franchisee's prior service, payment, or theft of service history with a Subscriber or potential subscriber has been unfavorable.

3.1.5. Should, through new construction, an area within the Service Area meet the density requirement set forth in Subsection 3.1.4.8, the Franchisee shall, subject to Subsections 3.1.4.1 through 3.1.4.7 and 3.1.4.9, make Cable Service available to such area within six (6) months of receiving notice from the County that such density requirement has been met.

3.1.6. *Additional Service in the Franchise Area:* Except for the Initial Service Area and any portions of the Service Area serviced pursuant to the Year Seven (7) Threshold and, if applicable, Year Ten (10) Threshold, Franchisee shall have the right but not the obligation to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any renewals thereof.

3.1.7. *Availability of Cable Service:* Franchisee shall make Cable Service available to all occupied residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of trunk or feeder lines and not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.1.8. *Certificates*: Franchisee shall file with the County a certificate at its third (3rd) and seventh (7th) and, if applicable, tenth (10th) anniversary dates certifying its compliance with the requirements set forth in Subsections 3.1.1, 3.1.2, and 3.1.3, respectively.

3.2. *Cable Service to Municipal Buildings*:

3.2.1. Subject to Section 3.1, Franchisee shall provide, without charge throughout the term of the Franchise within the Service Area, installation of one (1) drop, one (1) cable outlet, one (1) converter, and the most commonly subscribed-to tier of Cable Service, to each public building, school, library and fire station set forth in Exhibit B hereof and also required of other cable operators in the County. The Franchisee shall provide any drop, outlet, and converter required by this Subsection 3.2.1 to Bruton High School (Ex. B, item 26(c)(i)) notwithstanding any applicable density exception set forth in Subsection 3.1.4.8.

3.2.2. Subject to Section 3.1, Franchisee shall, upon written request by the County, provide, without charge throughout the term of the Franchise within the Service Area, installation of one (1) drop, one (1) cable outlet, one (1) converter, and the most commonly subscribed-to tier of Cable Service, to any fire station, public school, police station, public library, or any newly constructed or acquired government building that may be designated by the County and also required of other cable operators in the County (collectively, "Additional Buildings"), so long as such Additional Buildings do not exceed fifteen (15) during the term of the Agreement; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than two hundred fifty (250) feet solely to provide service to any such school or public building, the County or the school (as applicable) shall have the option either of paying Franchisee's direct costs for such extension in excess of two hundred fifty (250) feet, or releasing Franchisee from the obligation to provide service to such building. Franchisee shall not be required to provide cable service without charge to non-staffed or non-habitable locations.

3.2.3. Additional subscriber drops and/or outlets in any of the locations set forth in Subsection 3.2.1 or 3.2.2 above will be installed by Franchisee on written request by the County or the school (as applicable) at the lowest actual cost of Franchisee's time and material. Alternatively, the County or the school (as applicable) may add additional outlets at its own expense (or use existing additional outlets), as long as such installation and/or outlets meet Franchisee's standards and approval, which approval shall not be unreasonably withheld.

3.2.4. Cable Service provided pursuant to this Section 3.2 may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged, unless such loss or damage is caused by a Force Majeure event.

3.3. *Regulation of Cable Service Rates*: The County acknowledges that, at the time of the Effective Date, the County has no authority to regulate the rates for Cable Service over the Cable System because the Franchisee's Cable System is subject to effective competition pursuant to 47 U.S.C. § 543.

4. **SYSTEM OPERATION**

The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of the County over such Telecommunications Facilities is restricted by federal and state law, and the County does not and will not assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

5. **SYSTEM FACILITIES**

5.1. *System Characteristics and System Maintenance*: Franchisee's Cable System shall meet or exceed the following requirements:

5.1.1. The System shall be designed with an initial digital carrier pass-band between 50 and 860 MHz.

5.1.2. The System shall be designed to be an active two-way plant for Subscriber interaction, if any, required for selection or use of Cable Service.

5.1.3. Modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the term of this Agreement. The FTTP Network shall initially utilize the ITU G.983 Passive Optical Network standard and have no active elements so as to make it more reliable.

5.1.4. Protection against outages due to power failures, so that back-up power is available for at least twenty-four (24) hours at each headend, and conforming to industry standards, but in no event rated for less than four hours, at each power supply site.

5.1.5. Facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

5.1.6. Facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Subsection 5.1.19 below.

5.1.7. Facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

5.1.8. All facilities and equipment designed to be capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

5.1.9. All facilities and equipment designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment, and (ii) interference with the reception of off-the-air signals by a subscriber.

5.1.10. All facilities and equipment designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

5.1.11. Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to System outages.

5.1.12. All facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve System problems.

5.1.13. Design capable of interconnecting with other cable systems in the Franchise Area as set forth in Section 5.2 below.

5.1.14. Facilities and equipment at the headend shall allow the Franchisee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

5.1.15. The System shall be capable of transmitting in high definition any Channels that are received in high definition format. Actual carriage of any such high definition Channels will be at the Franchisee's sole discretion unless otherwise required by federal law.

5.1.16. The System shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System. Such equipment shall at a minimum offer as an option that the County or a Person ordering programming must provide a personal identification number or other means provided by the Franchisee only to a Subscriber; provided, however, that the Franchisee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

5.1.17. The provision of additional Channels, increased Channel capacity, and/or upgrades of any kind to the Cable System is solely within the control and discretion of the Franchisee.

5.1.18. With the exception of any EG Channels and subject to applicable law, all content and programming of Cable Services, including the mix, level, and/or quality of such content and programming, remains in the sole discretion of the Franchisee.

5.1.19. The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the County is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable provisions of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

5.1.19.1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

5.1.19.2. National Electrical Code;

5.1.19.3. National Electrical Safety Code (NESC);

5.1.19.4. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

5.1.19.5. Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and

5.1.20. Requirements set forth in the Virginia Uniform Statewide Building Code.

5.2. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

5.3. *Emergency Alert System:*

5.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. In the event of a state or local civil emergency, the EAS shall be remotely activated as set forth in the Virginia EAS plan.

5.4. *System Tests, Maintenance, Inspections and Performance Monitoring:*

5.4.1. The Franchisee shall perform all tests required under federal law necessary to demonstrate compliance with the requirements of this Agreement and to ensure that the Cable System components are operating as required. Subject to Section 9.4, Franchisee shall provide the County with copies of the results of any such required tests.

5.4.2. The County may, at its discretion, hold scheduled performance evaluation sessions once every three (3) years from the Effective Date and as may be required by federal and state law. The Franchisee shall fully cooperate with the County and shall, subject to Section 9.4, provide such information and documents as the County may need to reasonably perform its review.

6. **ACCESS SERVICES**

6.1 *Access Channel Set Aside:*

6.1.1. Franchisee shall provide on the Basic Service Tier three (3) EG Access Channels to the County for the use solely of the County or its designee. The County shall comply with all applicable laws and regulations related to use of the EG Access Channels. One (1) of the EG Access Channels shall be designated for Non-commercial use of the public school system of the County, and two (2) of the EG Access Channels shall be designated for the Non-commercial use of the County government.

6.1.2. The County or its designee shall be responsible for management, operation, and programming of the EG Access Channels.

6.1.3. *Additional EG Channels:*

6.1.3.1 If the County substantially utilizes all of the EG Access Channels provided pursuant to Section 6.1.1, it may require one (1) additional EG Access Channel, so long as such requirement applies equally to all franchised cable operators within the County. Any additional EG Access Channel provided pursuant to this Subsection 6.1.3.1 that is not utilized by the County for at least eight (8) hours per day need no longer be made available to the County by Franchisee, and may be programmed at the Franchisee's discretion. At such time as the County can certify to the Franchisee a schedule for at least eight (8) hours of daily programming for a period of three (3) months, the Franchisee shall restore such EG Access Channel. For purposes of this Subsection 6.1.3.1, an EG Access Channel shall be considered to be substantially utilized when twelve (12) hours are programmed on that EG Access Channel each calendar day; in addition, at least thirty-three percent (33%) of the twelve (12) hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. For purposes of this Subsection 6.1.3.1, nonrepeat programming shall include the first three videocastings of a program and shall include programming on other EG Access Channels in the County. Programming for purposes of determining substantial utilization shall include an alphanumeric scroll for not more than one (1) EG Access Channel.

6.1.4 The County hereby authorizes Franchisee to transmit EG Access Channel programming within and without County's jurisdictional boundaries. Except as otherwise set forth in this Subsection 6.1.4 with respect to EG Access Channels, Franchisee specifically reserves its right to make or change all other Channel assignments in its sole discretion. With respect to EG Access Channels, the Franchisee shall reserve the right to initially assign such Channels at its sole discretion; provided, however, that the Franchisee shall provide any EG Access Channels on the basic tier, at no additional charge, and such EG Access Channels shall be viewable by the Subscriber without the need for equipment other than the equipment that is required by every Subscriber to view any programming. In addition, the Franchisee may change EG Access Channel assignments as it reasonably deems appropriate so long as the Franchisee gives the County at least forty-five (45) days notice of any such EG Access Channel assignment change if the reason for the change is within the control of Franchisee, and as soon as possible if the reason for the change is not within the control of Fran-

chisee; provided, however, that the Franchisee shall not arbitrarily or capriciously change EG Access Channel assignments, and the Franchisee shall minimize the number of EG Access Channel assignment changes.

6.1.5 *Access Channel Connection:*

6.1.5.1. Subject to the provisions of this Subsection 6.1.5, the Franchisee's System shall capture EG Access Channel programming for distribution to Subscribers from the following locations: (1) the County-owned aggregation point at York Broadcast Center, 9300 George Washington Memorial Highway, Yorktown, Virginia (the "County-owned Aggregation Point" or "CAP"); (2) the Board of Supervisors Meeting Room, York Hall, 301 Main St., Yorktown, Virginia ("York Hall"); (3) York High School Auditorium, 9300 George Washington Memorial Highway, Yorktown, Virginia ("York High School"); and (4) the Additional EG Facilities listed in Subsection 6.1.5.4.

6.1.5.2. The Franchisee shall obtain, without charge to the County, the EG Access Channel programming via a dedicated fiber connection to the CAP. Further, the Franchisee shall, without charge to the County, aggregate EG Access Channel programming at the CAP by providing two (2) auxiliary fiber connections (the "Initial Auxiliary Links") to transport EG Access Channel programming to the CAP facility from the following locations: (1) York Hall; and (2) York High School. The Franchisee's obligations under this Subsection 6.1.5, including its obligation to provide upstream equipment and facilities necessary to transmit signals, shall be subject to the provision by the County, without charge to the Franchisee, of: (1) access to the CAP, York Hall, and York High School facilities; (2) access to any required EG equipment within the CAP, York Hall, and York High School facilities, and suitable required space, environmental conditions, electrical power supply, access, and pathways within such facilities; (3) video and audio signal feeds in a mutually agreed upon format suitable for EG Access Channel programming; (4) any third-party consent that may be necessary to transmit EG signals (including, without limitation, any consent that may be required with respect to third-party facilities, including the facilities of the Incumbent Cable Operator, used to transmit EG content to the CAP facility from auxiliary locations); and (5) any other cooperation and access to facilities as are reasonably necessary for the Franchisee to fulfill the obligations stated herein. The County shall further be responsible for ensuring that such video and audio signal feeds are properly connected to the correct EG Access Channel for distribution to Subscribers. The Franchisee shall, within one hundred eighty (180) days of either the Effective Date or the delivery of suitable video signals, whichever is later, provide, install, and maintain in good working order the equipment necessary for transmitting such signals to Subscribers and shall transmit such signals to Subscribers.

6.1.5.3. Franchisee may attempt to interconnect its Cable System with that of the Incumbent Cable Operator and any other cable operator franchised by the County to cablecast EG Access Channel programming generated at the Additional EG Facilities listed in Subsection 6.1.5.4, consistent with its EG access obligations under this Section 6. Subject to subsection 6.1.5.5, interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. Franchisee may in good faith negotiate interconnection terms respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. If the Franchisee attempts to interconnect, the County shall, pursuant to Section 15.2-2108.22(1) of the Code of Virginia, attempt to require the Incumbent Cable Operator and any other cable operator franchised by the County to provide such interconnection to Franchisee on reasonable terms and conditions. If Franchisee does not obtain an interconnection agreement within one hundred and eighty (180) days of the Effective Date, or at such time as the Franchisee is the only franchised cable operator in the County, then the Franchisee shall obtain, without charge to the County, EG Access Channel programming not obtained at the CAP facility as specified in Subsection 6.1.5.4.

6.1.5.4. Subject to the provisions set forth in Subsection 6.1.5.3, the Franchisee shall, without charge to the County, provide five (5) additional auxiliary fiber connections ("Additional Auxiliary Links") for the provision of EG Access Channel pro-

programming to the CAP facility from the following locations: (1) Griffin-Yeates Center, 1490 Government Road, Williamsburg, Virginia; (2) Public Safety Building, 301 Goodwin Neck Road, Yorktown, Virginia; (3) Bruton High School, 185 East Rochambeau Drive, Williamsburg, Virginia; (4) Grafton High School, 403 Grafton Drive, Yorktown, Virginia; and (5) Tabb High School, 4431 Big Bethel Road, Yorktown, Virginia (collectively, the "Additional EG Facilities"). The Franchisee shall provide such Additional Auxiliary Links within twenty-four (24) months of the Effective Date, or within twenty-four (24) months of the time that Franchisee receives written notice from the County that Franchisee is the only franchised cable operator in the County, excluding periods of Force Majeure. The Franchisee's obligations under this Subsection 6.1.5 shall be subject to the provision by the County, without charge to the Franchisee, of: (1) access to the CAP facility and the Additional EG Facilities; (2) access to any required EG equipment within the CAP facility and the Additional EG Facilities and suitable required space, environmental conditions, electrical power supply, access, and pathways within such facilities; (3) video and audio signal feeds in a mutually agreed upon format suitable for EG Access Channel programming; (4) any third-party consent that may be reasonably required; and (5) any other cooperation and access to facilities as are reasonably necessary for the Franchisee to fulfill the obligations stated herein. Franchisee agrees that EG signals and EG programming carried over the Initial Auxiliary Links and the Additional Auxiliary Links shall be owned and controlled by the County and may be retransmitted by the County in its sole discretion. The County agrees that the Initial Auxiliary Links and the Additional Auxiliary Links are the sole property of the Franchisee and that the interconnection with or other use of such Links by any other cable operator in the County for the transmission of EG content shall be on a depreciated cost and maintenance basis on reasonable terms and conditions.

6.1.5.5. Franchisee shall ensure that all EG channel signals carried on its Cable System, whether via interconnection, direct connection or other method, comply with all applicable FCC signal quality and technical standards for relevant classes of signals, and that the manner of interconnection or direct connection shall preserve the technical and signal quality of all EG access channel signals.

6.2 *EG Grant:*

6.2.1. Subject to 6.2.1.2, Franchisee shall provide an EG Capital Grant Surcharge Fee to the County (the "EG Capital Grant Surcharge Fee"). The EG Capital Grant Surcharge Fee shall be used by the County to support the capital costs of EG Channel facilities. Except as provided in Section 14.16, no application, application fee, application filing fee, or grant or similar fee or reimbursement of any kind shall be required by the County for grant of this Franchisee.

6.2.1.1. The EG Capital Grant Surcharge Fee shall be the sum of six cents (\$.06) per month, per Subscriber in the Service Area to Franchisee's Basic Service Tier. Calculation of the EG Capital Grant Surcharge Fee will commence with the first calendar month during which Franchisee obtains its first Subscriber in the Service Area.

6.2.1.2. Prior to August 28, 2012, the County may negotiate or require the payment by all other franchised cable operators in the County of a new, recurring fee to support the reasonable and necessary capital costs of EG facilities (the "EG Capital Fee"). The Franchisee agrees that the amount of twenty cents (\$.20) per subscriber per month would be a reasonable and necessary amount for such EG Capital Fee, and, accordingly, agrees to pay to the County up to twenty cents (\$.20) per Subscriber per month upon sixty (60) days written notice, so long as such requirement applies equally to all franchised cable operators in the County. Any EG Capital Fee paid by the Franchisee is intended to replace (and not be in addition to) the EG Capital Grant Surcharge Fee, such that should, at any time, Franchisee begin paying an EG Capital Fee, it shall cease paying the EG Capital Grant Surcharge Fee.

6.2.1.3. Franchisee shall pay the EG Capital Grant Surcharge Fee or EG Capital Fee to the County on a quarterly basis, with each quarterly payment due no later than forty-five (45) days following the end of each calendar quarter. Each

quarterly payment shall be accompanied by a report certified by a duly authorized representative of the Franchisee.

6.2.2. On reasonable request by the Franchisee (which shall be no more often than once per year), the County shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 6.2.

6.3. *Indemnification by Access Programming Producers and Users:* The County shall require all local producers and users of any of the EG facilities or EG Access Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement. The County shall further require all local producers and users of any of the EG facilities or EG Access Channels other than the County and the York County School Board ("School Board") to defend and hold harmless Franchisee, the County, and the School Board from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer, user, Franchisee, the County, or the School Board; and for any other injury or damage in law or equity, which result from the use of a EG facility or EG Access Channel.

6.4. *Itemization:* To extent permitted by, and consistent with, federal and state law, Franchisee may identify as a separate line item on each regular bill of each Subscriber: (i) the amount of the total bill assessed as a franchisee fee, or any equivalent fee, and the entity to which it is paid; (ii) the amount of the total bill assessed to satisfy any requirement imposed on the Franchisee, including those to support educational or governmental access facilities, including institutional networks; and (iii) the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental entity on the transaction between the Franchisee and the Subscriber.

7. **COMMUNICATIONS SALES AND USE TAX**

7.1. The parties shall comply with all applicable requirements of the provisions of Sections 58.1-645, *et seq.*, of the Code of Virginia (the "Communications Sales and Use Tax") in their current form and as they may be amended.

8. **CUSTOMER SERVICE**

Customer Service Requirements are set forth in Exhibit C, which shall be binding unless amended by written consent of the parties.

9. **REPORTS AND RECORDS**

9.1 *Open Books and Records:* Subject to applicable law, upon reasonable notice to the Franchisee, which shall be no less than thirty (30) days, and no more frequently than once every twenty-four (24) months, the County shall have the right to inspect at any time during Normal Business Hours and on a nondisruptive basis, all books and records, including all documents in whatever form maintained and electronic media, to the extent that such books and records relate to the Cable System or the provision of Cable Service in the Franchise Area and are reasonably necessary to monitor or ensure compliance with the terms of this Agreement ("Books and Records"). Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary Books and Records for appropriate access by the County. Franchisee shall not be required to maintain any Books and Records for Franchise compliance purposes longer than three (3) years, except for any Books and Records relating to an on-going audit under Section 9.2 or a pending dispute between the Franchisee and the County as reasonably agreed by the parties. Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area or to its compliance with this

Agreement. Franchisee shall not be required to provide Subscriber information in a manner that violates Section 631 of the Communications Act, 47 U.S.C. §551.

9.2. *Audit:* Inspections performed pursuant to Section 9.1 include an audit of all Books and Records reasonably necessary to confirm the accurate payment of the EG Capital Grant Surcharge Fee or EG Capital Fee. Franchisee shall bear the County's reasonable, documented out-of-pocket expenses of any such audit performed by a qualified, independent third-party auditor, up to a maximum of twenty thousand dollars (\$20,000), if such audit discloses an underpayment by Franchisee of more than three percent (3%) of any quarterly payment and five thousand dollars (\$5,000) or more. The County shall not audit Franchisee more frequently than once every twenty-four (24) months. The County shall have no more than three (3) years from the time Franchisee delivers a payment to provide a written, detailed objection to or dispute of that payment, and if the County fails to object to or dispute the payment within that time period, the County shall be barred from objecting to or disputing it after that time period. Franchisee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to the County. In the event that Franchisee disputes any underpayment discovered as the result of an audit conducted by the County, the County shall work together with Franchisee in good faith to promptly resolve such dispute. The County and Franchisee maintain all rights and remedies available at law regarding any disputed amounts. The County may require Franchisee to pay any additional undisputed amounts due to the County as a result of an audit performed by the County pursuant to this Section 9.2 within thirty (30) days following receipt by Franchisee of written notice by the County. Notwithstanding the foregoing, Franchisee shall not be obligated to bear any audit expenses for any auditor utilized by the County that is compensated on a success-based formula, *e.g.*, payment based on a percentage of underpayment, if any.

9.3. *Inspection Location:* Books and Records produced for inspection pursuant to Sections 9.1 and 9.2 shall be produced at a mutually agreed location within the County. If any requested Books and Records are too voluminous, not available locally in the County, or for security reasons cannot be moved, then the Franchisee may request that the inspection take place at a location mutually agreed to by the County and the Franchisee, provided that the Franchisee shall pay all reasonable and documented travel expenses incurred by the County and any additional copying expenses incurred by the County above those that would have been incurred had the documents been produced in the County.

9.4. *Proprietary and Confidential:* Notwithstanding anything to the contrary set forth in this Agreement, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature except in accordance with the following procedures. If Franchisee believes that any requested information is confidential and proprietary, Franchisee must provide the following documentation to the County: (i) specific identification of the information; (ii) a statement attesting to the reason(s) Franchisee believes the information is confidential and/or proprietary; and (iii) a statement that the document(s) are available for inspection by the County. Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains any confidential or proprietary information as set forth herein. Unless otherwise ordered by a court or agency of competent jurisdiction, the County agrees that, to the extent permitted by applicable law, it shall deny access to any of Franchisee's information marked "Confidential" as set forth in this Section 9.4 to any Person. If, in the course of enforcing this Franchise or for any other reason, the County believes it must disclose any information marked "Confidential" as set forth in this Section 9.4, the County shall provide to Franchisee reasonable advance notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. If the County receives a demand from any Person for disclosure of any information identified as "Confidential" pursuant to this Section 9.4, the County shall, so far as consistent with applicable law, advise Franchisee and provide Franchisee with a copy of any written request prior to granting the Person access to such information.

9.5. *Copying of Books and Records:* Subject to Section 9.4, the County shall have the right to copy and Books and Records requested pursuant to this Article 9.

9.6. *Complete and Accurate Records:* The Franchisee shall keep complete and accurate books of account and records of its business and operations under and in connection with the Agreement.

9.7. *Records Required:* Franchisee shall at all times maintain:

9.7.1. Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used in this Article 9 refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.7.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.7.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.7.4. Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.7.5. A map showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

9.8. *Annual Report:* Unless this requirement is waived in whole or in part by the County, no later than April 30th of each year of this Agreement, Franchisee shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

9.8.1. A summary of the previous calendar year's activities in development of the Cable System, including but not limited to descriptions of Services begun or dropped, homes passed and miles of FTTP Network plant in service;

9.8.2. A summary description of the complaints during the previous calendar year; such summary shall provide the number and category of such complaints received during such period, including a description of the issues involved (excluding personally identifiable information of Subscribers) and the category of each resolved complaint;

9.8.3. A copy of the annual report, if any, of Franchisee's parent corporation;

9.8.4. A current list of any person or entity with an ownership interest in the Franchisee of five (5) percent or more as reflected in the annual report of Franchisee's corporate parent;

9.8.5. A report on technical tests and measurements on the Cable System made by the Franchisee for compliance with applicable FCC standards; and

9.8.6. Subject to 9.4, such other information as the County Administrator or the Board reasonably and lawfully may request in order to ascertain Franchisee's compliance with this Agreement.

9.9. *Quarterly Report:* Beginning six (6) months after the Effective Date, Franchisee shall submit a written report to the County no later than forty-five (45) days after

the end of each calendar quarter during the term of this Agreement, which report shall be in a form reasonably satisfactory to the County, that shall include:

9.9.1. A report showing the number of service calls received and sorted by descriptive code indicating the actual service calls that were resolved during that quarter;

9.9.2. A summary of complaints identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Franchisee; and

9.9.3. A report of all Significant Outages (as defined in Exhibit C).

9.10. Franchisee agrees that, upon request and with no less than thirty (30) days' written notice, but no more than once per year, a representative of the Franchisee will meet with representatives of the County to provide additional information on the status of Franchisee's deployment of Cable Services in the Franchise Area. During these meetings, the Franchisee representative will show the County representatives, for viewing only, a map showing the availability of Cable Services in the Franchise Area. Nothing herein shall prevent the County from contacting at any time the single point of contact identified in Section 14.20 with respect to any additional matters regarding this Agreement. In addition, Franchisee shall, during the Term of this Agreement, provide a means of making information available to York County residents regarding the availability of the Franchisee's Cable Services in the County. Currently, York County residents can obtain such information by calling Verizon or accessing the Verizon website.

9.11. *Performance Evaluation:* The County may, at its discretion, hold scheduled performance evaluation sessions once every three (3) years from the Effective Date and as may be required by federal and state law. The Franchisee shall fully cooperate with the County and shall, subject to Section 9.4, provide such information and documents as the County may reasonably need to perform its review.

10. **INSURANCE AND INDEMNIFICATION**

10.1 *Insurance:*

10.1.1. Franchisee shall maintain insurance coverage in accordance with the terms of this Section 10.1, and Franchisee specifically agrees that it will maintain, throughout the entire length of its franchise term, at least the following insurance coverage insuring the County and the Franchisee:

10.1.1.1. Workers' Compensation in compliance with the statutory requirements of the Commonwealth of Virginia of and Employer's Liability insurance with a minimum limit of one million dollars (\$1,000,000.00) each accident/disease/policy limit;

10.1.1.2. Commercial General Liability insurance with a minimum combined single limit of two million dollars (\$2,000,000.00) per occurrence for bodily injury and property damage with respect to the construction, operation, and maintenance of the Franchisee's Cable System, and the conduct of the Franchisee's business in the County;

10.1.1.3. Automobile Liability insurance with a combined single limit of one million dollars (\$1,000,000.00) each accident for bodily injury and property damage.

10.1.1.4. Umbrella Liability Insurance shall be maintained above the primary Commercial General Liability, Automobile Liability, and Employers' Liability policies required herein. The limit of such Umbrella Liability Insurance shall not be less than five million dollars (\$5,000,000.00) each occurrence and in the annual aggregate.

10.1.2. The limits required above may be satisfied with a combination of primary and excess coverage.

10.1.3. The County its officers boards, commissioners agents and employees shall be included as an additional insured as their interest may appear on all policies required by this agreement except Workers' Compensation and Employer's Liability.

10.1.4. The insurance shall contain a provision stating that the insurer or its authorized representative shall endeavor to provide thirty (30) days prior written notice of intent to non-renew, cancellation or material adverse change to County, except that ten (10) days notice for nonpayment of premium shall apply.

10.1.5. All insurance policies shall be with issued by insurers authorized or permitted to do business in the Commonwealth of Virginia, with an "A-: VII" or better rating by Best's Key Rating Guide, Property/Casualty Edition.

10.1.6. All insurance policies required by this Agreement shall be available for review by the County at the Franchisee's Corporate Headquarter located and One Verizon Way, Basking Ridge, New Jersey, and the Franchisee shall keep on file with the County certificates of insurance.

10.2 *Indemnification:*

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend the County, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by the negligent construction, operation, or maintenance of the Cable System by the Franchisee or its officers, employees, agents, contractors, or subcontractors, provided that the County shall give Franchisee written notice of its obligation to indemnify the County within ten (10) business days of receipt of a claim or action pursuant to this subsection. Franchisee also agrees to indemnify, save and hold harmless, and defend the County, its officers, agents, boards and employees, from and against any liability for damages arising out of copyright infringements or a failure by Franchisee or its officers, employees, agents, contractors, or subcontractors to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System. These damages shall include but not be limited to penalties arising out of copyright infringements and damages arising out of any failure by Franchisee or its officers, employees, agents, contractors, or subcontractors to secure consents from the owners, authorized distributors or licensees of programs to be delivered by Franchisee's Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by the Agreement. Notwithstanding the foregoing, Franchisee shall not indemnify the County, for any damages, liability or claims resulting from the willful misconduct or negligence of the County, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by the County or any Person other than Franchisee or its officers, employees, agents, contractors or subcontractors, in connection with EG Access Channels, EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the County by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the County, which shall not unreasonably be withheld. Such defense shall include, but not be limited to, reasonable and documented attorney's fees incurred by such counsel. Nothing herein shall be deemed to prevent the County from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the County, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement include the release of the County

and the County does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement.

10.2.3. The Franchisee shall not be required to indemnify the County for acts of the County which constitute willful misconduct or negligence on the part of the County, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

10.2.4. Neither the provisions of this Section 10.2 nor any damages recovered by the County hereunder shall be construed to limit any other liability that the Franchisee may otherwise have to the County for damages.

11. **TRANSFER OF FRANCHISE**

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the County, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for transactions excluded under Section 1.32 above. No Transfer of the Franchise shall be made to a Person that is not legally, technically, and financially qualified to operate the Cable System and satisfy the Franchise obligations.

12. **RENEWAL OF FRANCHISE**

12.1. *Formal Renewal:* The County and Franchisee agree that any proceedings undertaken by the County that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546, or Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.30, as applicable.

12.2. *Informal Renewal:* Notwithstanding anything to the contrary set forth herein, Franchisee and the County agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the County and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the County may grant a renewal thereof.

13. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1. *Notice of Violation:* If at any time the County believes that Franchisee has not complied with the terms of the Franchise, the County shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the County shall then notify Franchisee in writing of the exact nature of the alleged non-compliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have fifteen (15) days from receipt of the Noncompliance Notice to: (i) respond to the County, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance and file written notification to the County of such cure; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such fifteen (15) day period, initiate reasonable steps to remedy such noncompliance and notify the County of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, Franchisee shall provide written confirmation that such cure has been effected, which confirmation and cure the County shall acknowledge in writing to the Franchisee if the County agrees that such cure has been effected.

13.3. *Public Hearing:* The County shall schedule a public hearing if the County seeks to continue its investigation into the alleged noncompliance in the event that: (i) Franchisee contests the Noncompliance Notice pursuant to Section 13.2(i); or (ii) Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article; or (iii) Franchisee has not remedied the alleged noncompliance within fifteen (15) days or the date

projected pursuant to Section 13.2(ii) or 13.2(iii) above. The County shall provide Franchisee at least thirty (30) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

13.4. *Enforcement:* Subject to applicable federal and state law, in the event the County, after the public hearing set forth in Section 13.3, determines that Franchisee is in default of any provision of this Franchise, the County may:

13.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

13.4.2. Commence an action at law for monetary damages or seek other equitable relief; or

13.4.3. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.5; or

13.4.4. *Liquidated Damages:* Enforce the following liquidated damages for the following violations of this Agreement, because such violations will result in injury to the County and Subscribers, and because it is difficult to estimate the extent of such injury, the County and the Franchisee agree to the following liquidated damages for the following violations, which amounts represent both parties' best estimate of the damages resulting from the specified non-compliance:

13.4.4.1. For failure to materially comply with carriage of EG Channel(s) requirements as set forth in Section 6.1 of this Agreement: Four hundred dollars (\$400.00) per day for each violation for each day the violation continues;

13.4.4.2. For failure to materially comply with timely and full payment of the EG Capital Grant Surcharge Fee or EG Capital Fee: Three hundred dollars (\$300.00) per day for each day the violation continues, in addition to the balance of such fees owed and applicable interest;

13.4.4.3. For failure to materially comply with reporting requirements set forth in Article 9 and in Exhibit C ("Customer Service Standards") of this Agreement: Three hundred dollars (\$300.00) per day for each violation for each day the violation continues;

13.4.4.4. For failure to materially comply with Customer Service Standards set forth in Exhibit C of this Agreement: Three hundred dollars (\$300.00) per day for each day the violation continues, except where compliance is measured quarterly, in which case liquidated damages shall be as follows: (a) Franchisee shall be liable for liquidated damages in the amount of seven hundred fifty dollars (\$750.00) for each quarter in which such standards were not met if the failure was by less than five percent (5%); one thousand five hundred dollars (\$1,500.00) for each quarter in which such standards were not met if the failure was by five percent (5%) or more but less than fifteen percent (15%); and three thousand dollars (\$3,000.00) for each quarter in which such standards were not met if the failure was by fifteen percent (15%) or more.

13.4.4.5. For purposes of any liquidated damages assessments, all similar violations or failures arising out of the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any single one of the above-referenced categories. Violations or failures shall not be deemed to have occurred or commenced until they are deemed not cured as provided in Section 13.2.

13.4.4.6. The amount of all liquidated damages per annum shall not exceed fifteen thousand dollars (\$15,000.00) in the aggregate.

13.4.4.7. The County may reduce or waive any of the above liquidated damages if it determines, in its discretion, that such waiver is in the public interest.

13.4.4.8. If a court of competent jurisdiction determines that liquidated damages cannot be imposed by this Agreement, the foregoing amounts shall be construed to be penalties to the full extent allowed and contemplated by Section 15.2-2108.22(6) of the Code of Virginia.

13.5. *Revocation:* Should the County seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 13.3, the County shall give written notice to Franchisee of its intent to revoke. The notice shall set forth the exact nature of the noncompliance. The Franchisee shall have sixty (60) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the County has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The County shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.5.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the County, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete record and verbatim transcript shall be made of such hearing.

13.5.2. Following the public hearing, Franchisee shall be provided up to fifteen (15) days to submit its proposed findings and conclusions in writing, and thereafter the County shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The County shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the County determines that the Franchise shall be revoked, the County shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the County to an appropriate court, which shall have the power to review the decision of the County, to the extent permitted by law, *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the County's written decision.

13.5.3. The County may, at its sole discretion, take any lawful action which it deems appropriate to enforce the County's rights under the Franchise in lieu of revocation of the Franchise.

13.6. *Letter of Credit:* Franchisee shall obtain within thirty (30) days of executing this Agreement, and maintain thereafter throughout the Agreement term, an irrevocable letter of credit in the amount of twenty thousand dollars (\$20,000) (the "Letter of Credit") from a federally insured lending institution licensed to do business in Virginia ("Lending Institution"). The Letter of Credit shall be in a form substantially the same as the form attached hereto as Exhibit D. The Letter of Credit shall be used to ensure Franchisee's substantial compliance with the material terms and conditions of this Agreement.

13.6.1. Franchisee shall file with the County a complete copy of the Letter of Credit (including all terms and conditions applying to the Letter of Credit or to draws upon it) prior to its effective date, and keep such copy current with respect to any changes over the term of the Agreement.

13.6.2. If the County notifies the Franchisee of any amounts lawfully due to the County pursuant to the terms of this Agreement and the Franchisee does not

make such payment within thirty (30) days, the County may draw upon the Letter of Credit by presentation of a draft at sight drawn on the Lending Institution, accompanied by a written certificate signed by the County Administrator certifying that Franchisee has failed to comply with this Agreement and citing the specific provision of the Agreement at issue and the specific basis for the amount being withdrawn.

13.6.3. In the event the Lending Institution serves notice to the County that it elects not to renew the Letter of Credit, the County may withdraw the entire amount of the Letter of Credit unless the Franchisee provides, before the effective Letter of Credit expires, a substitute Letter of Credit from a Lending Institution in substantially the same form as that attached hereto as Exhibit D.

13.6.4. No later than thirty (30) days after receipt by the Franchisee of notification by certified mail, return receipt requested of a withdrawal under the Letter of Credit, the Franchisee shall restore the amount of the Letter of Credit to the total amount specified herein.

13.6.5. No recovery by the County of any sum by reason of the Letter of Credit required in this Section 13.6 shall be any limitation upon the liability of Franchisee to the County under the terms of this Agreement, except that any sums so received by the County shall be deducted from any recovery which the County shall establish against Franchisee under the terms of this Agreement.

14. **MISCELLANEOUS PROVISIONS**

14.1. *Actions of Parties:* In any action by the County or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

14.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption:* In the event that federal or state laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, subject to Subsections 14.3.1 and 14.3.2, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County.

14.3.1. If, subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of local governments to require and grant cable television franchises for the provision of Cable Service, then to the extent permitted by law this Franchise shall survive such legislation and remain in effect for the term of this Agreement.

14.3.2. In the event that federal or state laws, rules or regulations preempt, or substantially preempt, the material provisions of this Agreement, the Franchisee agrees to enter into a new agreement governing Franchisee's provision of Cable Service in the Service Area to the extent such an agreement is not prohibited by federal or state laws, rules or regulations and is consistent with this Agreement.

14.4. *Interest on Unpaid Amounts:* Interest on any unpaid amounts due and owing the County pursuant to this Agreement shall accrue at the legal rate set forth in Section 6.1-330.53 of the Virginia Code (as of the Effective Date, six percent (6%) per annum).

14.5. *Rights Cumulative:* All rights and remedies given to the County and Franchisee by this Franchise shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the County and Franchisee at law or in equity.

14.6. *Force Majeure:* Franchisee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure event. In the event that any such delay in performance or failure to perform affects only part of the Franchisee's capacity to perform, the Franchisee shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such causes(s) in as expeditious a manner as reasonably possible.

14.7. *Governing Law:* To the extent state law rather than federal law controls, this Franchise Agreement shall be governed in all respects by the law of the Commonwealth of Virginia.

14.8. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.8.1. Notices to Franchisee shall be mailed to:

Robert W. Woltz, Jr.
President, Verizon Virginia Inc.
703 E. Grace St., 7th Floor
Richmond, VA 23219-1843

14.8.2. with a copy to:

John Raposa
Senior Vice President & General Counsel – Telecom
Verizon
1320 N. Courthouse Rd.
Room 8SE011
Arlington, VA 22201

14.8.3. Notices to the County shall be mailed to:

County Administrator
County of York
224 Ballard St.
Yorktown, VA 23690

14.8.4. with a copy to:

James Barnett, Esq.
County Attorney, County of York
P.O. Box 532
224 Ballard St.
Yorktown, VA 23690

14.9. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the County, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties

regarding the subject matter hereof. Any ordinances or parts of ordinances existing as of the Effective Date of this Agreement that conflict with the provisions of this Agreement are superseded by this Agreement.

14.10. *Amendments*: Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.11. *Captions*: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.12. *Severability*: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall, subject to Section 14.3, have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.13. *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.14. *FTTP Network Transfer Prohibition*: Provided that and for so long as Franchisee retains its right under applicable law to use the Public Rights-of-Way to provide Telecommunications Services, under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of the Franchisee's FTTP Network including, without limitation, any capacity on that network that has been or could be used to provide Cable Services or otherwise, to the County or any third party. Provided that and for so long as Franchisee retains its right under applicable law to use the Public Rights-of-Way to provide Telecommunications Services, Franchisee shall not be required to remove the FTTP Network(s) or to relocate the FTTP Network(s) or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. However, the foregoing FTTP Network transfer prohibition shall be ineffective if for any reason in the future the Franchisee ceases to provide Telecommunications Services over its FTTP Network and the Franchisee lacks the authority to use the Public Rights-of-Way to provide any such Telecommunications Services. This provision is not intended to contravene leased access requirements under Title VI or EG requirements set out in this Agreement.

14.15. *Independent Review*: County and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.16. *Franchise Grant*: Franchisee shall pay to the County five thousand dollars (\$5,000.00) for a Franchise Grant (the "Franchise Grant"). The Franchise Grant shall be payable ninety (90) days from the Effective Date. To the extent permitted by federal law, Franchisee shall be allowed to recover the Franchise Grant from Subscribers and may line-item or otherwise pass-through this amount to Subscribers. Franchisee shall not offset the amount of the Franchise Grant against any other amounts due and owing the County under this Agreement or other applicable law.

14.17. *Equal Employment Opportunity*: Franchisee shall comply with all applicable federal and state laws and regulations regarding equal opportunity and non-discrimination with respect to employment of all individuals, regardless of their race, color, religion, age, sex, national origin, sexual orientation or disability.

14.18. *Communications with Regulatory Agencies:* Upon request and subject to Section 9.4, Franchisee shall provide the County with a copy of any document filed by Franchisee or any of its Affiliates with any regulatory agency or other legislative body (other than publicly available agency mailings or publications) that materially or expressly pertains to the provision of Cable Services within the County.

14.19. *Counterparts:* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and the parties may become a party hereto by executing a counterpart hereof. This Agreement and any counterpart so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

14.20. *Single Point of Contact for County:* Franchisee shall provide the County with contact information for an individual who shall be the single point of contact for Franchisee on Cable Services in the Franchise Area. Contact information shall include the contact's name, address, business telephone and facsimile numbers, and e-mail address.

14.21. *Protection of Privacy:* Franchisee agrees to comply with all practices and procedures for protecting against invasion of privacy as set forth in 47 U.S.C. § 551.

BE IT FURTHER ORDAINED that the County Administrator is hereby authorized to execute an agreement consistent with the terms and conditions of this ordinance.

SIGNATURE PAGES FOLLOW

AGREED TO THIS ____ DAY OF _____, 2009.

County of York, Virginia

By: _____
James O. McReynolds
County Administrator

SIGNATURES CONTINUE ON NEXT PAGE

Verizon Virginia Inc.

By: _____
Robert W. Woltz, Jr.
Verizon Virginia Inc., President

EXHIBITS

Exhibit A: Service Area Map

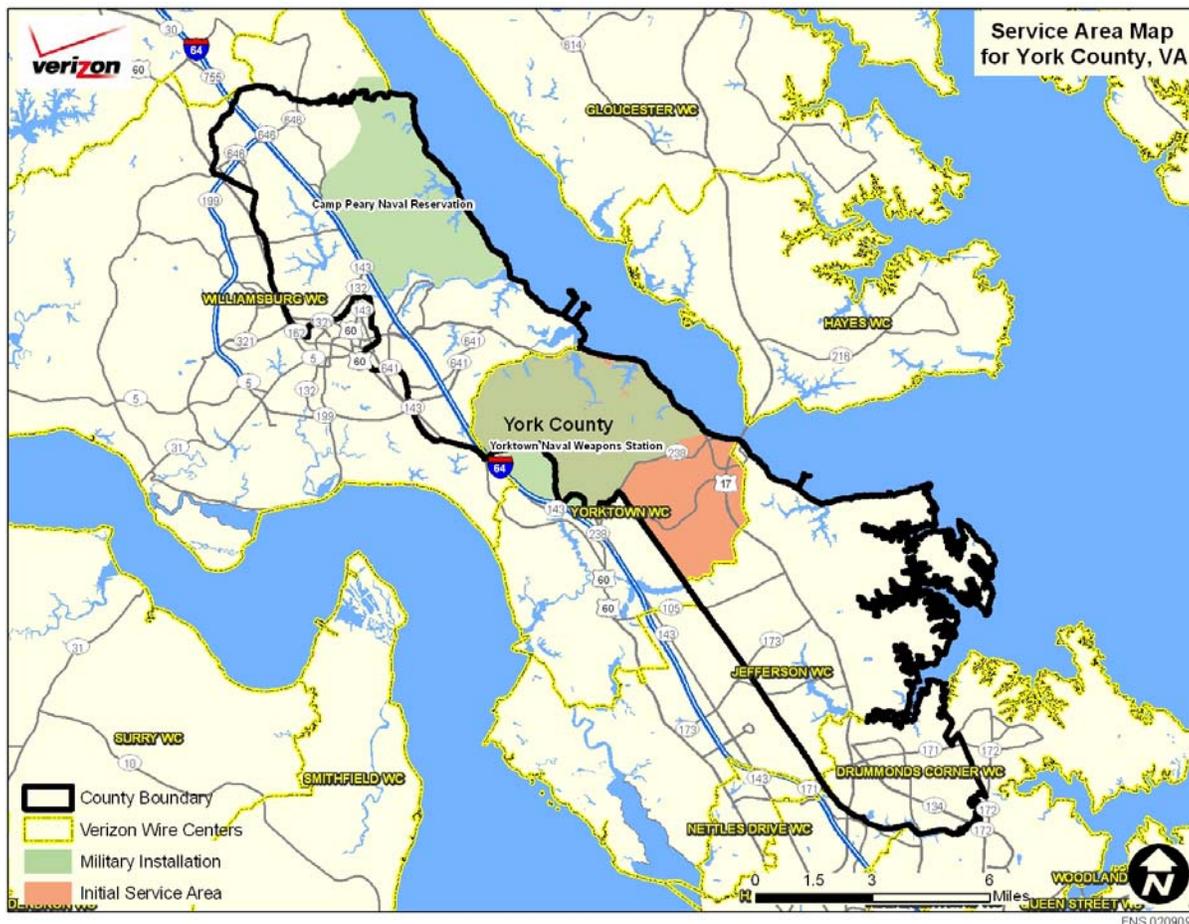
Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: Customer Service Standards

Exhibit D: Sample Letter of Credit

EXHIBIT A
SERVICE AREA MAP

The initial service area is shown in the attached map.



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EXHIBIT B**MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE**

1. County Administration Building
224 Ballard Street, Yorktown, VA 23690
2. York/Poquoson Courthouse
300 Ballard Street, Yorktown, VA 23690
3. York Hall ***
301 Main Street, Yorktown, VA 23690
4. Computer Support Building
126 Ballard Street, Yorktown, VA 23690
5. Finance Office Building
120 Alexander Hamilton Blvd., Yorktown, VA 23690
6. Public Safety Building
301 Goodwin Neck Road, Yorktown, VA 23692
7. Parks, Recreation & Extension Building
100 County Drive, Yorktown, VA 23692
8. Dockmasters Office, Yorktown Waterfront
425 Water Street, Yorktown, VA 23690
9. Community Services Center, Brown Park
1950 Old Williamsburg Road, Lackey, VA 23690
10. Griffin-Yeates Center
1490 Government Road, Williamsburg, VA 23185
11. Crossroads Community Youth Home
5684 Mooretown Road, Williamsburg, VA 23185
12. Senior Center of York
5314 George Washington Memorial Highway, Yorktown, VA 23692
13. Tabb Library
100 Long Green Blvd., Yorktown, VA 23693
14. Yorktown Library
8500 George Washington Memorial Highway, Yorktown, VA 23692
15. Upper County Library at Marquis
301 Whittaker's Trace, Williamsburg, VA 23185
16. Environmental & Developmental Services Building
105 Service Drive, Yorktown, VA 23692
17. Building Regulations Building
103 Service Drive, Yorktown, VA 23692
18. Waste Management Admin Building
145 Goodwin Neck Road, Yorktown, VA 23692

19. Utilities Satellite Building (Penniman Road)
1490 Government Road, Williamsburg, VA 23185
20. General Services Administration Building
102 County Drive, Yorktown, VA 23692
21. Vehicle Maintenance Building
201 Operations Drive, Yorktown, VA 23692
22. Building & Grounds offices
1801 Wolf Trap Road, Yorktown, VA 23692
23. 911 Communications Center
301 A Goodwin Neck Road, Yorktown, VA 23692
24. Fire Stations:
 - a) Station 1 Grafton – 5751 George Washington Memorial Highway, Yorktown, VA 23692
 - b) Station 2 Tabb – 4450 Big Bethel Road, Yorktown, VA 23693
 - c) Station 3 Bruton – 114 Hubbard Lane, Williamsburg, VA 23185
 - d) Station 4 Yorktown – 901 Goosley Road, Yorktown, VA 23690
 - e) Station 5 Skimino – 2000 Newman Road, Williamsburg, VA 23188
 - f) Station 6 Seaford – 503 Back Creek Road, Seaford, VA 23696
25. York County School Board offices
320 Dare Road, Yorktown, VA 23692
26. York County Schools:
 - a) Elementary
 - i. Bethel Manor ES – 1797 First Avenue, Langley AFB, VA 23665
 - ii. Coventry ES – 200 Owens Davis Blvd., Yorktown, VA 23693
 - iii. Dare ES – 300 Dare Road, Yorktown, VA 23692
 - iv. Grafton Bethel ES – 410 Lakeside Drive, Yorktown, VA 23692
 - v. Magruder ES – 700 Penniman Road, Williamsburg, VA 23185
 - vi. Mt. Vernon ES – 310 Mt. Vernon Drive, Yorktown, VA 23693
 - vii. Seaford ES – 1105 Seaford Road, Seaford, VA 23696
 - viii. Tabb ES – 3711 Big Bethel Road, Yorktown, VA 23693
 - ix. Waller Mill ES-Fine Arts Magnet – 314 Waller Mill Road, Williamsburg, VA 23185
 - x. Yorktown ES -Math, Science & Technology Magnet – 131 Seige Lane, Yorktown, VA 23692
 - b) Middle Schools
 - i. Grafton MS – 405 Grafton Drive, Yorktown, VA 23692
 - ii. Queens Lake MS – 124 West Queens Drive, Williamsburg, VA 23185
 - iii. Tabb MS – 300 Yorktown Road, Yorktown, VA 23693
 - iv. Yorktown MS – 11201 George Washington Memorial Highway, Yorktown, VA 23692
 - c) High Schools
 - i. Bruton HS – 185 East Rochambeau Drive, Williamsburg, VA 23188
 - ii. Grafton HS – 403 Grafton Drive, Yorktown, VA 23692
 - iii. Tabb HS – 4431 Big Bethel Road, Yorktown, VA 23693
 - iv. York HS *** – 9300 George Washington Memorial Highway, Yorktown, VA 23692
 - v. York River Academy-9300 George Washington Memorial Highway, Yorktown, VA 23692

27. Broadcast Center in Life Long Learning Building (adjacent to York High School) ***-
9300 E George Washington Memorial Highway, Yorktown, VA 23692

*** The Franchisee shall provide to this location any drop, outlet, and converter required by Subsection 3.2.2 within thirty (30) days of any date by which the Franchisee must provide a dedicated fiber connection to this same location as set forth in Subsection 6.1.5.2.

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EXHIBIT C**CUSTOMER SERVICE STANDARDS**

These standards shall apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

SECTION 1. DEFINITIONS

A. Respond: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

B. Service Call: The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

C. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

D. Standard Installation: Installations where the subscriber is within one hundred fifty (150) feet of trunk or feeder lines.

SECTION 2. TELEPHONE AVAILABILITY

A. The Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.

B. The Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by the Franchisee.

C. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. The Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

E. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Beginning six (6) months after the Service Date, upon request from the County, but in no event more than once a quarter thirty (30) days following the end of each quarter, the

Franchisee shall report to the County the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.

(2) Percentage of time customers received busy signal when calling the Verizon service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request.

G. At the Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the County of such a change at least thirty (30) days in advance of any implementation.

SECTION 3. INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after the placement of the Optical Network Terminal ("ONT") on the customer's premises or within seven (7) business days after an order is placed if the ONT is already installed on the customer's premises. The Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than seven (7) days after ONT placement or later than seven (7) days after an order is placed if the ONT is already installed on the customer's premises.

C. Beginning six (6) months after the Service Date, the Franchisee shall provide the County with a report upon request from the County, but in no event more than once a quarter thirty (30) days following the end of each quarter, a report noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request. At the Franchisee's option, the measurements and reporting of above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the County of such a change not less than thirty (30) days in advance.

The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Franchisee's discretion, the Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

D. Franchisee shall not cancel an appointment with a Subscriber after close of business on the day before the scheduled appointment. At the Franchisee's discretion, the Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber.

E. The Franchisee shall use due care in the process of installation and shall substantially restore the Subscriber's property to its prior condition. Such restoration shall be undertaken and completed as soon as reasonably possible after any damage is incurred.

SECTION 4. SERVICE INTERRUPTIONS AND OUTAGES

A. The Franchisee shall notify the County of any Significant Outage of the Cable Service.

B. The Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the County and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the forgoing, Franchisee may perform modifications, repairs and upgrades to the System between 12.01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.

(2) The Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the County of a Cable Service problem.

E. Under Normal Operating Conditions, the Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. The Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. Beginning six (6) months after the Service Date, the Franchisee shall provide the County with a report upon request from the County, but in no event more than once a quarter within thirty (30) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request. At the Franchisee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the County of such a change at least thirty (30) days in advance.

H. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

I. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5. CUSTOMER COMPLAINTS

Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by the County within five (5) business days. The Franchisee shall notify the County of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The County may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6. BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee may, without limitation as to additional line items and only in a manner consistent with applicable law, itemize as separate line items the Communications Sales and Use Tax, and/or other taxes or governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
- (4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.

G. The Franchisee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the County upon request.

H. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its' discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Franchisee, the payment alternative may be limited.

I. *County Information:* County hereby requests that Franchisee omit County name, address and telephone number from Franchise bill as permitted by 47 C.F.R. 76.952.

SECTION 7. DEPOSITS, REFUNDS AND CREDITS

A. The Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, or 3) who rent Subscriber equipment from the Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment which the Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by the Franchisee or its authorized agent. Appropriate time considerations shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8. RATES, FEES AND CHARGES

A. The Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Franchisee's equipment (for example, a dog chew).

B. The Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9. DISCONNECTION / DENIAL OF SERVICE

A. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

SECTION 10. COMMUNICATIONS WITH SUBSCRIBERS

A. Franchisee shall provide a designated local office accessible to Subscribers that provides customer services such as bill payment, equipment pick up or drop off and similar services when Franchisee has attained a minimum of ten thousand (10,000) Subscribers. Prior to opening such local office, Franchisee shall provide a convenient alternative means for bill payment, and Franchisee shall provide for the pick up or drop off of equipment by any one or more of the following: (i) having a Franchisee representative go to the Subscriber's premises; (ii) using a mailer; or (iii) establishing a location(s) for the pick up and drop off of equipment. With regard to mobility-limited Subscribers, upon Subscriber request, Franchisee shall arrange for pickup and/or replacement of converters or other equipment at Subscriber's address or by a satisfactory equivalent (such as the provision of a mailer).

B. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

C. All contact with a Subscriber or potential Subscriber by a Person representing the Franchisee shall be conducted in a courteous manner.

D. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the County.

E. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

F. The Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject

to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee, and the Franchisee shall provide a copy of the notice to the County including how and where the notice was given to Subscribers.

G. The Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address and telephone number of the County, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;
- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of the Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.F. will be given to the County at least fifteen (15) days prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not within the control of Franchisee.

H. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

I. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

J. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;

(3) The date by which payment is required in order to avoid termination of Cable Service; and

(4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

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EXHIBIT D
SAMPLE IRREVOCABLE STANDBY LETTER OF CREDIT

Issue Date:

L/C No.:

Amount: USD \$00,000 (00 Thousand Dollars and 00/100 United States Dollars)

Beneficiary:

Applicant:

Verizon Communications Inc.

One Verizon Way

MC VC53S459

Basking Ridge, NJ 07920-1097

TO:

(Beneficiary)

We hereby establish this irrevocable standby Letter of Credit No. _____ in your favor, for an aggregate amount not to exceed the amount indicated above, expiring at (Name and address of Bank), at our close of business on _____.

This Letter of Credit is available with (Name of Bank) against presentation of your draft at sight drawn on (Name of Bank) when accompanied by the documents indicated herein.

Beneficiary's dated statement purportedly signed by one of its officials reading as follows:

"The amount of this drawing USD \$_____, under (Name of Bank) Letter of Credit No. _____ represents funds due us as Verizon Virginia Inc. has failed to perform under cable franchise granted by (Beneficiary) to Verizon Virginia Inc."

It is a condition of this Irrevocable Letter of Credit that it shall be automatically extended without amendment for additional one year periods from the present or each future expiration date, but not beyond [insert date], unless at least 30 days prior to that current expiry date, we send you notice in writing by overnight carrier or hand delivery at the above address that we elect not to renew this Letter of Credit for such additional period.

Upon such notice to you, you may draw on us at sight for an amount not to exceed the balance remaining in this Letter of Credit within the then-applicable expiry date, accompanied by your dated statement purportedly signed by one of your officials reading as follows:

"The amount of this drawing USD \$_____ under (Name of Bank) Letter of Credit No. _____ represents funds due us as we have received notice from (Name of Bank) of their decision not to automatically extend Letter of Credit No. _____ for an additional year."
All correspondence and any drawings hereunder are to be directed to (NAME AND ADDRESS OF BANK)

We hereby agree with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600.

This Letter of Credit shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws.

Authorized Signature (Bank)

2. BE IT FURTHER ORDAINED that the County Administrator is hereby authorized to execute an agreement consistent with the terms and conditions of this ordinance.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Hrichak, Shepperd, Zaremba
Nay: (0)

APPLICATION NOS. ZM-120-08 AND SE-20-08, EDWARD E. HALL

Mr. Carter made a presentation on Application Nos. ZM-120-08 and SE-20-08 to reclassify approximately 17,405 square feet of land located on Catesby Lane (Route 608) from High Density Single-Family Residential to High Density Single-Family Residential subject to voluntarily proffered conditions and to rezone approximately 1.56 acres on Catesby Lane and Second Street (Route 162) from R13 and General Business to General Business subject to voluntarily proffered conditions; and to approve a special use permit authorizing the expansion of a non-conforming auto body work and painting facility located at 535 Second Street and 464 Catesby Lane. He explained that a revised proffer statement had been submitted earlier this evening prior to the public hearing. He verified and explained the provisions of the proffer. He stated the proposal would leave 17,400 square feet of the property zoned R13, but with proffers attached. The property that would be rezoned GB with proffers attached was 23,896 square feet. The use permit requested relatively minor building additions, including a claims bay addition, office space, and the relocation of a storage shed. Mr. Carter stated the purpose of the rezoning and use permit was to allow the rear parcel to be used solely for parking, a relocated shed, landscape buffer, and storm water retention pond, and he explained how Mr. Hall and the neighboring residents had met on January 12 to develop a revised concept plan that features a decrease in the size of the parking area to a single row of parking served by an access drive between the storage shed and the main building. Mr. Carter stated this allowed for additional parking spaces, and he gave specifications on the parking layout and the berm that would be constructed that would help screen the view from the Middletowne Farms residents. He also reviewed the revised concept plans, as described in the revised proffers, which included berm placement, and fence placement. Mr. Carter indicated the staff recommended approval and believes that this was a good compromise on how to use a very difficult property.

Mr. Wiggins asked if the neighbors could see the business with the proposed fence and berm in place.

Mr. Carter stated he felt that the parking lot itself could not be seen, but the tops of the existing buildings could be seen.

Discussion followed on the parking lots, fencing, buffer, landscaping, and berm placement.

Mr. Edward E. Hall 112 Chisman Point Road, spoke regarding meetings he had with the County and residents. He stated that he tried to revise the plans to make neighbors in the subdivision happy. He stated he had not heard back from them since the meeting. He noted he had compromised and given up a lot of property.

Mr. Shepperd questioned the impact of the parking lot if it was restricted to employee parking only.

Mr. Hall indicated he had 17 employees who would park their cars back there, but there would be times when cars that were not drivable and awaiting repairs could be parked back there also if it was permitted.

Mr. Shepperd asked if he would be storing cars for any length of time.

Mr. Hall explained the time frame was approximately one week for an estimate to be made and to get the parts in before the car came inside for repair.

Discussion followed regarding employee parking, drainage issues, re-grading of the property, landscaping, fence height, lighting, and number of parking spaces.

Chairman Zaremba then called to order a public hearing on Application No. ZT/ZM-119-08 that was duly advertised as required by law. Proposed Ordinance No. 08-16(R) is entitled:

AN ORDINANCE TO AMEND THE YORK COUNTY ZONING MAP BY RECLASSIFYING APPROXIMATELY 17,405 SQUARE FEET OF LAND ON CATESBY LANE (ROUTE 608) FROM R13 (HIGH-DENSITY SINGLE-FAMILY RESIDENTIAL) TO R13 (HIGH-DENSITY SINGLE-FAMILY RESIDENTIAL) SUBJECT TO VOLUNTARILY PROFFERED CONDITIONS AND TO REZONE APPROXIMATELY 1.56 ACRES ON CATESBY LANE AND SECOND STREET (ROUTE 162) FROM R13 AND GB TO GB SUBJECT TO VOLUNTARILY PROFFERED CONDITIONS

Ms. Karen Berquist, 471 Catesby Lane, stated she was one of the three residents who were charged with working out this compromise. She stated her appreciation of all the parties involved working with Mr. Hall and the planning staff. Ms. Berquist commented this was not an easy task and that Mr. Hall had addressed their last concern, and she felt their needs were met.

Ms. Shannon Turnage, 476 Catesby Lane, spoke in opposition to Mr. Hall's application. She commented that the greatest impact will be on people who live in the neighborhood. She also cited points from the application and questioned whether this application was in the subdivision's best interest.

There being no one else present who wished to speak concerning the subject application, Chairman Zaremba closed the public hearing.

Mrs. Noll congratulated the citizens, Mr. Hall, and staff for working together. She stated she felt the renovations Ebby's had planned for the corridor will improve the looks tremendously, and she thanked everyone for what was accomplished.

Mr. Wiggins expressed his thanks to the neighbors and Ebby's for reaching a compromise. He also made comments on how the building improvements will improve the appearance of the building and the entire corridor.

Chairman Zaremba echoed Mrs. Noll's and Mr. Wiggins' comments. He stated that while both parties were not completely happy, they had compromised which allowed more to be accomplished.

February 17, 2009

Mr. Carter asked that the Board accept an amendment to the ordinance in the Be It Further Ordained clause that would reference the proffers dated February 17, 2009, instead of February 5, 2009, and this would make the ordinance an R-2.

Mrs. Noll moved the adoption of proposed Ordinance No. 08-16(R-2).

AN ORDINANCE TO AMEND THE YORK COUNTY ZONING MAP BY RECLASSIFYING APPROXIMATELY 17,405 SQUARE FEET OF LAND ON CATESBY LANE (ROUTE 608) FROM R13 (HIGH-DENSITY SINGLE-FAMILY RESIDENTIAL) TO R13 (HIGH-DENSITY SINGLE-FAMILY RESIDENTIAL) SUBJECT TO VOLUNTARILY PROFFERED CONDITIONS AND TO REZONE APPROXIMATELY 1.56 ACRES ON CATESBY LANE AND SECOND STREET (ROUTE 162) FROM R13 AND GB TO GB SUBJECT TO VOLUNTARILY PROFFERED CONDITIONS

WHEREAS, Edward E. Hall, Ebby’s Auto Painting and Collision, has submitted Application No. ZM-120-08, which requests amendment of the York County Zoning Map to reclassify from R13 (High-density Single-family Residential) and GB (General Business) to R13 and GB, subject to voluntarily proffered conditions, two parcels of land containing approximately 2.03 acres located at 464 Catesby Lane (Route 608) and 535 Second Street (Route 162) and further identified as Assessor’s Parcel Nos. 10-15 (GPIN F14a-1946-2534) and 10-3A (GPIN F14c-1816-2456); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission , with one member absent, was unable by virtue of a tied vote (3:3) to adopt the motion made to recommend approval and no further motions were made for action on the application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the 17th day of February, 2009, that Application No. ZM-120-08 be, and it is hereby, approved to amend the York County Zoning Map to reclassify from R13 (High-density Single-family Residential) and GB (General Business) to R13 and GB, subject to voluntarily proffered conditions, two parcels of land containing approximately 2.03 acres located at 464 Catesby Lane (Route 608) and 535 Second Street (Route 162) and further identified as Assessor’s Parcel Nos. 10-15 (GPIN F14a-1946-2534) and 10-3A (GPIN F14c-1816-2456) and more fully described as follows:

- (1) Reclassify from R13 (High-density single-family residential) to conditional R13 approximately 17,405 square feet of land located on a portion of property located at 464 Catesby Lane (Route 608) and further identified as a portion of Assessor’s Parcel No. 10-15 (GPIN# F14a-1946-2534) more fully described as follows:

Beginning at a point on the right-of-way line of Catesby Lane being the common corner between Parcel “1” and lot 98, Middletown Farms subdivision; thence from the point of beginning thus established, along the right-of-way line of Catesby Lane on a curve to the left with a radius of 50.00’ and an arc length of 52.55’ to the new zoning line; thence along the new zoning line, which is also the southern edge of a 10’ York County utility easement, S79-55-13E 68.90’ to a point; thence continuing along the southern edge of the utility easement, S56-

35-35E 191.74' to a point on the line with Jones; thence along the common line between Parcel "1" and the property of Jones S40-23-50W, 74.78' to a point on the line with Middletowne Farms subdivision; thence along the common line with Middletowne Farms subdivision N49-38-00W, 2.58'; thence along the common line with Middletowne Farms subdivision N57-07-00W, 231.53' to the point of beginning, containing 17,405 square feet.

- (2) Reclassify from R13 to conditional GB (General Business) the remaining area of Parcel No. 10-15 (GPIN F14a-1946-2534) more fully described as follows:

Beginning at a point on the right-of-way line of Catesby Lane, being the common corner between Parcel "1" and Lot 98, Middletowne Farms subdivision; thence from the point of beginning thus established, N30-22-00E, 83.36' to a point on the line with Julien; thence along the common property line with Julien and Parcel "C" (other property of Hall) S57-41-55E, 306.97' to a point on the property line with Jones; thence along the line with Jones S40-23-50W, 77.85' to a point on the new zoning boundary; thence along the new zoning boundary, which is also the southern edge of a 10' York County utility easement, N56-35-35W, 68.90' to a point on the right-of-way line of Catesby Lane; thence along the right-of-way line on a curve to the left with a radius of 50.00' and an arc length of 42.25' to the point of beginning, containing 23,796 square feet.

- (3) Reclassify from GB (General Business) to conditional GB approximately 1.03 acres of land located at 535 Second Street and further identified as Assessor's Parcel No. 10-3A (GPIN F14a-2151-2654).

The parcels are further described as "Portion of Parcel "1" to Be Rezoned From R13 to R13 With Proffers" , "Portion of Parcel "1" to be Rezoned From R13 to GB With Proffers," and "Parcel "C"" (to be rezoned from GB to GB with proffers) and shown on a plan titled "Land Use Plan, Ebby's Auto Painting and Collision Repair, for Rezoning Rear Parcel From R13 (Residential) to GB (General Business), York County, VA," prepared by Campbell Land Surveying, Inc., with an original date of January 10, 2008 and revised to January 29, 2009.

BE IT FURTHER ORDAINED that approval of this application shall be subject to the voluntarily proffered conditions set forth in the applicant's proffer statement, titled "Ebby's Auto Painting and Collision Repair, Inc. – Proffers," dated February 17, 2009 and signed by Edward E. Hall, a copy of which shall remain on file in the office of the Planning Division, and which, upon approval by the Board of Supervisors, shall be recorded in the office of the Clerk of the Circuit Court pursuant to the requirements of Section 24.1-114(e)(1) of the York County Zoning Ordinance.

On roll call the vote was:

Yea: (5) Wiggins, Hrichak, Shepperd, Noll, Zaremba
Nay: (0)

Mr. Wiggins then moved the adoption of proposed Resolution R08-126(R-2) that reads:

A RESOLUTION TO APPROVE A SPECIAL EXCEPTION TO AUTHORIZE EXPANSION OF A NONCONFORMING AUTO BODY WORK AND PAINTING FACILITY LOCATED AT 535 SECOND STREET AND 464 CATESBY LANE

WHEREAS, Edward E. Hall, Ebby's Auto Painting and Collision, has submitted Application No. SE-20-08, which requests a Special Exception, pursuant to Sections 24.1-801(a)(2) and 805(c) of the York County Zoning Ordinance, to authorize expansion of a nonconforming auto body work and painting facility on two parcels of land located at 535 Second Street (Route

162) and 464 Catesby Lane (Route 608) and further identified as Assessor's Map Nos. 10-3A (GPIN F14a-2151-2654) and 10-15 (GPIN F14a-1946-2534); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission, with one member absent, was unable by virtue of a tied vote (3:3) to adopt the motion made to recommend approval and no further motions were made for action on the application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 17th day of February, 2009, that Application No. SE-20-08 be, and it is hereby, approved to authorize expansion of a nonconforming auto body work and painting facility on parcels of land located at 535 Second Street (Route 162) and 464 Catesby Lane (Route 608) and further identified as Assessor's Parcel Nos. 10-3A (GPIN F14a-2151-2654) and 10-15 (GPIN F14a-1946-2534); subject to the following conditions:

1. This Special Exception shall authorize expansion of a nonconforming auto body work and painting facility on two parcels of land located at 535 Second Street (Route 162) and 464 Catesby Lane (Route 608) and identified as Assessor's Parcel Nos. 10-3A (GPIN F14a-2151-2654) and 10-15 (GPIN F14a-1946-2534).
2. A site plan, prepared in accordance with the provisions of Article V of the York County Zoning Ordinance, shall be submitted to and approved by the County prior to the commencement of any land disturbing or construction activities for the proposed use. Said site plan shall be in substantial conformance with the sketch plan submitted by the applicant titled "Land Use Plan, Ebby's Auto Painting and Collision Repair," dated January 10, 2008, revised to January 29, 2009, prepared by Campbell Land Surveying, Inc., and the landscape plan titled "Ebby's Auto Painting," dated January 2008, prepared by Kristine P. Hall, except as modified herein or as may be necessary to comply with site plan review requirements. In the event of any discrepancy between the number of parking spaces depicted on the concept plan and the number indicated in the statistical summary shown on the plan, the concept plan drawing shall control.
3. A 35-foot landscaped Transitional Buffer meeting the requirements of Section 24.1-243 of the Zoning Ordinance and the supplementary requirements set forth in this condition shall be established as shown on the above-referenced landscape plan but relocated to border the southern edge of the GB/R13 zoning line. Existing trees and shrubs shall be preserved where possible, and shall be supplemented with sufficient additional evergreen trees and shrubs to achieve landscape credits equivalent to a Type 50 Transitional Buffer. Minimum planting size of trees shall be no less than six feet in height and shrubs shall be no less than three feet in height. Tree species shall be varieties that will maintain branching at ground level such as Virginia Red Cedar or Arborvitae 'Green Giant' or equivalent species. Plantings shall be evenly dispersed throughout the buffer area.
4. An earthen berm with a minimum height of three-feet (3') (or equal to the depth of excavation/cut of the natural grade, if it is greater than 3 feet) shall be installed as described in the applicant's proffer statement dated February 17, 2009. Said berm shall be constructed with side slopes no steeper than 3:1, and the design shall be approved by the Environmental and Development Services Stormwater Engineering Division. The ten-foot high fence proffered by the applicant shall be installed as described in the ap-

plicant's proffer statement dated February 17, 2009. Fencing shall be installed such that the "finished" side of the fence shall face Middletowne Farms.

5. Site landscaping shall meet or exceed the minimum landscaping standards as set forth in Section 24.1-240 et. Seq. of the Zoning Ordinance and any supplementary requirements established herein.
6. In accordance with Section 24.1-244(b) of the Zoning Ordinance, all parking areas shall be located at least ten feet from the face of any building.
7. All roof drainage from existing and proposed buildings shall be directed to the proposed storm water detention area at the rear of the site.
8. Prior to site plan approval or any land disturbing activities on the subject parcels, a restricted access easement bordering the Catesby Lane right-of-way shall be established precluding vehicular ingress/egress to or from the subject parcels. Publicly authorized vehicles or equipment for maintenance of facilities within the public sewer easement located on the rear parcel (Assessor's Parcel No. 10-15) shall be exempt from this requirement.
9. The proposed building additions shall be substantially in conformance with architectural elevations submitted by the applicant titled "Ebby's Auto Painting and Collision Repair," dated May 20, 2004, and prepared by Ballinger & Associates Inc. Roofing material shall be architectural shingles, and siding shall be hardi-planking or its equivalent as approved by the Zoning Administrator.
10. All site lighting shall be designed with full cutoff fixtures and directed downward to prevent off-site glare onto abutting properties and the road right-of-way. Illumination levels shall not exceed 0.1 foot-candle at any residential property line and 0.5 at all other property lines. All lighting fixtures shall be consistent with the lighting recommended by the Illumination Engineering Society of North America (IESNA). Lighting for the proposed parking area on Parcel 10-15 (424 Catesby Lane) shall be limited to bollard-type fixtures no more than three feet (3') in height. A photometric plan detailing all proposed fixtures and ground illumination levels shall be submitted for approval by the Chief of Development and Compliance at the time of application for site plan approval.
11. In order to prevent parking or storage of vehicles or other materials within the County sewer easement bisecting Parcel 10-15 (424 Catesby Lane), the perimeter of the parking area located on said parcel shall be surrounded with guard rails or chain and bollard fencing. Land area located north of and between the proposed fencing and the parking area, relocated storage building, and storm water management area shall be maintained as green space, and shall be maintained with grass and/or landscaping. Parking or storage of vehicles shall be prohibited within this area.
12. No portion of the parking lot proposed to be constructed on the property located at 424 Catesby Lane (Assessor's Parcel No. 10-15) shall be used for the placement/storage of trash receptacles or dumpsters.
13. No portion of the subject properties shall be used for an automobile graveyard or junkyard as defined in Section 24.1-104 of the Zoning Ordinance or for outside storage of motor vehicle parts or supplies.
14. Prior to site plan approval, a landscape preservation easement covering that portion of the Catesby Lane parcel (Assessor's Parcel No. 10-15) to remain in the R13 zoning district as shown on the above-referenced sketch plan shall be prepared and submitted to the County Attorney for review and approval. Upon completion of the installation of proposed landscaping within the buffer area to the satisfaction of the Zoning Administrator, and prior to issuance of a certificate of occupancy, the approved easement shall

be recorded at the expense of the applicant in the name of the property owner as grantor and the County of York as grantee in the office of the Clerk of Circuit Court.

- 15. Except as modified herein, all conditions imposed under Resolution Nos. R94-245 and R99-4 shall remain in full force and effect.
- 16. A certified copy of this resolution shall be recorded at the expense of the applicant in the name of the property owner as grantor prior to application for site plan approval.

BE IT FURTHER RESOLVED that this Special Exception is severable and invalidation of any word, phrase, clause, sentence, or paragraph shall not invalidate the remainder.

On roll call the vote was:

Yea: (5) Hrichak, Shepperd, Noll, Wiggins, Zaremba
 Nay: (0)

CONSENT CALENDAR

Mrs. Noll moved that the Consent Calendar be approved as submitted, Item No. 7.

On roll call the vote was:

Yea: (5) Shepperd, Noll, Wiggins, Hrichak, Shepperd
 Nay: (0)

Thereupon, the following minutes of the York County Board of Supervisors were approved:

Item No. 7. APPROVAL OF MINUTES

The minutes of the following meetings of the York County Board of Supervisors were approved:

January 20, 2009, Regular Meeting
 January 27, 2009, Adjourned Meeting

CITIZENS COMMENT PERIOD

Mr. Dennis W. Parks, 106 Tides Run, appeared before the Board regarding his concerns with the late fees and penalties that has been added to his personal property tax. He stated when he had received his 2009 declaration of tangible personal property notice, it stated not to send the paper back unless there were changes to existing vehicles. He stated that about two weeks later he received a notice from the tax office; and in a conversation with one of the agents, he was advised that late fees had been added to the his tax bill. He explained in a phone conversation and later at a visit to the tax office that he had never received a bill. He stated he felt the late fees and penalties that had been applied were unfair, and he was told there was no recourse other than to bring the matter to the Board of Supervisors.

Chairman Zaremba explained to Mr. Parks that it was the Board's policy not to respond to citizens comments. He asked Mr. Parks to leave his information and someone from the County would contact him.

Mr. Robert DuCote, 108 Saxon Road, encouraged the Board to continue their relationship with the Williamsburg Regional Library on behalf of the citizens of the upper County. He stated the residents were fortunate to have access to a wonderful facility in Williamsburg that could be very hard to replicate in this time of budget constraints.

Mr. Ward C. Bourn, 108 Sheriffs Place, also encouraged the Board to continue the relationship with the Williamsburg Regional Library on a year-to-year or possibly an extended basis. He suggested that if the Board felt it was desirable to move ahead on York's own library needs, it might be better to take the money that had been earmarked for the Marquis Library and move ahead with the proposed expansion at the Yorktown Library which is currently slated for 2012/2013.

Mr. Bill Hicok, 105 Montague Circle, spoke of the petitions the Board had received in November supporting the continuation of full availability for residents of the upper County to the Williamsburg Regional Library. He suggested other ideas for negotiating with the Williamsburg Regional Library, and he encouraged the Board to continue the relationship so that the residents could again have full privileges.

Mrs. Kathryn Finn, 133 Little John Road, stated she and her former husband had been very heavy users of the Williamsburg Regional Library. She stated she felt that financially the County should not spend extra money to duplicate services that were already available to the upper County residents at the Williamsburg Regional Library. She thanked the Board for their consideration of the upper County's need for library services.

Chairman Zaremba expressed the Board's sympathy to Mrs. Finn on the recent loss of her husband. He stated Mr. Finn had been one of the pillars at the College of William & Mary with respect to his contribution to the young leaders of this country that had passed through his classroom.

Mrs. Finn stated her husband had felt it was a privilege to live in the community and had wanted to do his best to give back to the community.

COUNTY ATTORNEY REPORTS AND REQUESTS

Mr. Barnett reported that there were still some bills that had just been brought to his attention even though it was getting close to the end of the session for the General Assembly. He informed the Board he would get an updated list out to them by the end of the week. He noted the session could conceivably be extended with uncertainty of budget issues at this time. He stated most of the innovative legislation that would have affected voting in Virginia might have failed, but he would get updates to the Board as they occurred.

Mr. Zaremba asked when the General Assembly would adjourn.

Mr. Barnett stated they were currently scheduled to go through February 28th, but with the rise in the budgetary shortfall they could conceivably go into extra sessions or into a special session.

Chairman Zaremba asked if there was any speculation on the President's stimulus package coming to the state.

Mr. Barnett stated he believed it was scheduled to be signed by the President today and that it was expected to have a positive impact on state's budget.

COUNTY ADMINISTRATOR REPORTS AND REQUESTS

Mr. McReynolds stated he had no report but would be happy to answer any questions the Board might have.

MATTERS PRESENTED BY THE BOARD

Mrs. Noll congratulated Mr. McReynolds and staff on preparing an austere budget. She stated it was a "no frills budget" as there will be no pay raises or new hires. She noted this time of

year offers an opportunity to examine expenditures, and she addressed the donation to the Williamsburg Regional Library. She stated no other local jurisdiction charges for York County's citizens to have access to their library collection, and York does not charge non-residents of the County for the use of its library and never has. The amount of the required payment this year is \$425,000, and Mrs. Noll questioned whether or not the Board should fund the payment since the Board told them last year this would be the County's final contribution due to the proposed opening of a new library at the Marquis Shopping Center which did not occur. She expressed her opposition to continuing payments to the Williamsburg Regional Library in light of the recent difficult economic times and austere budget year. Mrs. Noll stated she felt the money could be used in other areas of the budget or for constructing an addition on the Yorktown library.

Mr. Shepperd thanked Mr. McReynolds for the budget presentation. He commented that Mr. McReynolds had heard the supervisors, understood the situation, and the presentation was very detailed and sufficient for this level. He noted the Board still had areas to review, and he briefly addressed Local Aid to the Commonwealth and the appropriate way to appeal real estate assessments. Mr. Shepperd said he would like to talk about extending the length of time to appeal a real estate assessment, which is currently set at 60 days, to six months.

Mr. Wiggins spoke in response to Mrs. Noll's comments regarding the library. He gave figures on constructing and maintaining a new library which was in excess of the current agreement with the Williamsburg Regional Library. He stated he did not understand why the Board had a problem paying to maintain an agreement with the Williamsburg library. Mr. Wiggins stated the County provides fire and life safety services to certain parts of Williamsburg as it was the responsible thing to do, and he hoped that an amicable agreement could be reached.

Chairman Zaremba spoke concerning the relationship York County has enjoyed with the Williamsburg Regional Library system exceeding 25 years. While it may initially have been a voluntary contribution that the County made, Mr. Zaremba stated that at some point there was recognition by the Board of Supervisors to meet its responsibilities. He stated he felt that it was unreasonable to expect citizens who live in Old Quaker Estates, Banbury Cross, Skimino Hills, and Skimino Landing estates to drive a distance for library services when there were two premier libraries within a quarter of a mile of their homes. He stated it did not make sense to discontinue paying for them now.

Meeting Adjourned. At 9:23 p.m. Chairman Zaremba declared the meeting adjourned sine die.

James O. McReynolds, Clerk
York County Board of Supervisors

Walter C. Zaremba, Chairman
York County Board of Supervisors

COUNTY OF YORK

MEMORANDUM

DATE: February 9, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Endorsement of Fair Housing Principles

On August 7, 1981, the York Board of Supervisors adopted Resolution R81-258 establishing a York Fair Housing and Equal Opportunity Program. That action endorsed the protected classes set out in state laws, which at that time assured equal opportunities for all citizens regardless of race, color, religion, national origin, or sex. On March 2, 1989, the General Assembly approved amendments to add the categories of elderliness, familial status, or handicap.

Since the program's inception, the Division of Housing and Neighborhood Revitalization has implemented it. It is designed to educate citizens and to promote voluntary compliance by the local housing industry with the practices and principles of equal housing opportunity. It has been customary for the Board to periodically reaffirm this endorsement. The month of April, which is National Fair Housing Month, is the preferred time to do so.

Recommendation

It is my recommendation that Resolution R09-22, reaffirming the commitment of the York Board of Supervisors to principles of Fair Housing and Equal Opportunity, be adopted.

Smith/4111

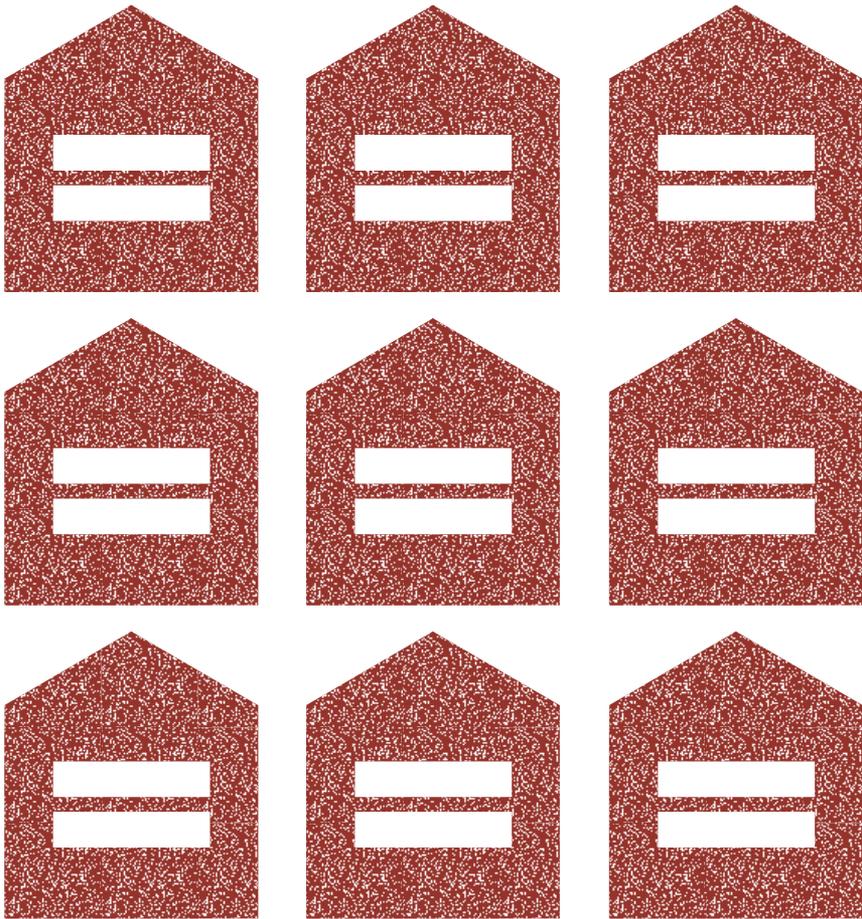
Attachments

- Fair Housing Handbook
- Proposed Resolution R09-22



Fair Housing

Equal Opportunity for All



Please visit our website: www.hud.gov/fairhousing

Fair Housing - Equal Opportunity for All

America, in every way, represents equality of opportunity for all persons. The rich diversity of its citizens and the spirit of unity that binds us all symbolize the principles of freedom and justice upon which this nation was founded. That is why it is extremely disturbing when new immigrants, minorities, families with children, and persons with disabilities are denied the housing of their choice because of illegal discrimination.

The Department of Housing and Urban Development enforces the Fair Housing Act and the other federal laws that prohibit discrimination and the intimidation of people in their homes, apartment buildings, and condominium developments - and nearly all housing transactions, including the rental and sale of housing and the provision of mortgage loans.

Equal access to rental housing and homeownership opportunities is the cornerstone of this nation's federal housing policy. Landlords who refuse to rent or sell homes to people based on race, color, national origin, religion, sex, familial status, or disability are violating federal law, and HUD will vigorously pursue them.

Housing discrimination is not only illegal, it contradicts in every way the principles of freedom and opportunity we treasure as Americans. The Department of Housing and Urban Development is committed to ensuring that everyone is treated equally when searching for a place to call home.



Alphonso Jackson
Secretary

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U.S. Department of Housing and Urban Development (HUD)
Secretary Alphonso Jackson
451 7th Street, S.W.
Washington, D.C. 20410-2000

The Fair Housing Act

The Fair Housing Act prohibits discrimination in housing because of:

- Race or color
- National origin
- Religion
- Gender
- Familial status (including children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18)
- Disability

What Housing Is Covered?

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker and housing operated by organizations and private clubs that limit occupancy to members.

What Is Prohibited?

In the Sale and Rental of Housing: No one may take any of the following actions based on race, color, religion, gender, disability, familial status, or national origin:

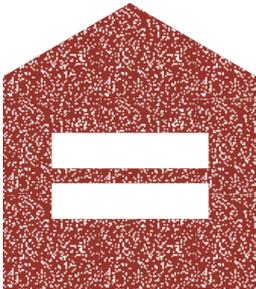
- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale or rental
- For profit, persuade, or try to persuade homeowners to sell or rent dwellings by suggesting that people of a particular race, etc. have moved, or are about to move into the neighborhood (blockbusting) or
- Deny any person access to, or membership or participation in, any organization, facility or service (such as a multiple listing service) related to the sale or rental of dwellings, or discriminate against any person in the terms or conditions of such access, membership or participation.

In Mortgage Lending: No one may take any of the following actions based on race, color, religion, gender, disability, familial status, or national origin:

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.

In Addition, it is a violation of the Fair Housing Act to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Make, print, or publish any statement, in connection with the sale or rental of a dwelling, that indicates a preference, limitation, or discrimination based on race, color, religion, gender, disability, familial status, or national origin. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.
- Refuse to provide homeowners insurance coverage for a dwelling because of the race, color, religion, gender, disability, familial status, or national origin of the owner and/or occupants of a dwelling
- Discriminate in the terms or conditions of homeowners insurance coverage because of the race, color, religion, gender, disability, familial status, or national origin of the owner and/or occupants of a dwelling
- Refuse to provide homeowners insurance, or imposing less favorable terms or conditions of coverage because of the predominant race, color, religion, gender, disability, familial status or national origin of the residents of the neighborhood in which a dwelling is located ("redlining")
- Refuse to provide available information on the full range of homeowners insurance coverage options available because of the race, etc. of the owner and/or occupants of a dwelling
- Make, print, or publish any statement, in connection with the provision of homeowners insurance coverage, that indicates a preference, limitation or discrimination based on race, color, religion, gender, disability, familial status or national origin.



Additional Protection If You Have a Disability

If you or someone associated with you:

- Have a physical or mental disability (including hearing, mobility and visual impairments, cancer, chronic mental illness, AIDS, AIDS Related Complex, or mental retardation) that substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability, your landlord may not:
 - Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the disabled person to fully use the housing. (Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move.)
 - Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing on an equal basis with nondisabled persons.

Example: A building with a “no pets” policy must allow a visually impaired tenant to keep a guide dog.

Example: An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

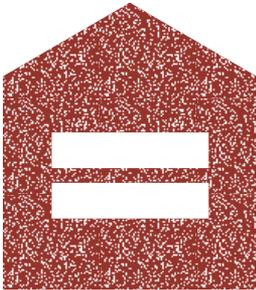
However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

Accessibility Requirements for New Multifamily Buildings: In buildings with four or more units that were first occupied **after** March 13, 1991, and that have an elevator:

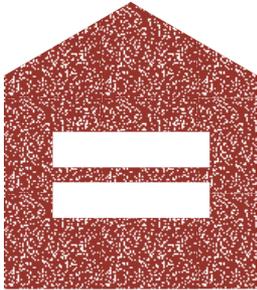
- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- All units must have:
 - An accessible route into and through the unit
 - Accessible light switches, electrical outlets, thermostats and other environmental controls
 - Reinforced bathroom walls to allow later installation of grab bars and
 - Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and was first occupied after March 13, 1991, these standards apply to ground floor units only.

These accessibility requirements for new multifamily buildings do not replace more stringent accessibility standards required under State or local law.



Housing Opportunities for Families with Children



The Fair Housing Act makes it unlawful to discriminate against a person whose household includes one or more children who are under 18 years of age ("*familial status*"). Familial status protection covers households in which one or more minor children live with:

- A parent;
- A person who has legal custody (including guardianship) of a minor child or children; or
- The designee of a parent or legal custodian, with the written permission of the parent or legal custodian.

Familial status protection also extends to pregnant women and any person in the process of securing legal custody of a minor child (including adoptive or foster parents).

Additional familial status protections:

You also may be covered under the familial status provisions of the Fair Housing Act if you experience retaliation, or suffer a financial loss (employment, housing, or realtor's commission) because:

- You sold or rented, or offered to sell or rent a dwelling to a family with minor children; or
- You negotiated, or attempted to negotiate the sale or rental of a dwelling to a family with minor children.

The "Housing for Older Persons" Exemption:

The Fair Housing Act specifically exempts some senior housing facilities and communities from liability for *familial status* discrimination. Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children, or may impose different terms and conditions of residency. In order to qualify for the "housing for older persons" exemption, a facility or community must prove that its housing is:

- Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist *elderly persons* (as defined in the State or Federal program); or

- Intended for, and solely occupied by persons *62 years of age or older*; or
- Intended and operated for occupancy by persons *55 years of age or older*.

In order to qualify for the "**55 or older**" housing exemption, a facility or community must satisfy each of the following requirements:

- at least *80 percent* of the occupied units must have at least one occupant who is 55 years of age or older; and
- the facility or community must publish and adhere to policies and procedures that demonstrate the *intent* to operate as "55 or older" housing; and
- the facility or community must comply with HUD's regulatory requirements for *age verification* of residents by reliable surveys and affidavits.

The "*housing for older persons*" exemption does not protect senior housing facilities or communities from liability for housing discrimination based on *race, color, religion, gender, disability, or national origin*. Further, "*55 or older*" housing facilities or communities that do permit residency by families with minor children cannot lawfully *segregate* such families in a particular section, building, or portion of a building.

If You Think Your Rights Have Been Violated

HUD is ready to help with any problem of housing discrimination. If you think your rights have been violated, you may write a letter or telephone the HUD office nearest you. You have one year after the discrimination allegedly occurred or ended to file a complaint with HUD, but you should file it as soon as possible.

What to Tell HUD:

- Your name and address
- The name and address of the person your complaint is against (the respondent)
- The address or other identification of the housing involved
- A short description of the alleged violation (the event that caused you to believe your rights were violated)
- The date(s) of the alleged violation.

Where to Write or Call: Send a letter to the HUD office nearest you, or if you wish, you may call that office directly. The TTY numbers listed for those offices are not toll free. Or you may call the toll free national TTY hotline at 1-800-927-9275.

For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont:

BOSTON REGIONAL OFFICE

(Complaints_office_01@hud.gov)

U.S. Department of Housing and Urban
Development

Thomas P. O'Neill Jr. Federal Building

10 Causeway Street, Room 308

Boston, MA 02222-1092

Telephone (617) 994-8300 or 1-800-827-5005

Fax (617) 565-7313 * TTY (617) 565-5453

For New Jersey and New York:

NEW YORK REGIONAL OFFICE

(Complaints_office_02@hud.gov)

U.S. Department of Housing and Urban
Development

26 Federal Plaza, Room 3532

New York, NY 10278-0068

Telephone (212) 542-7519 or 1-800-496-4294

Fax (212) 264-9829 * TTY (212) 264-0927

*For Delaware, District of Columbia, Maryland,
Pennsylvania, Virginia and West Virginia:*

PHILADELPHIA REGIONAL OFFICE

(Complaints_office_03@hud.gov)

U.S. Department of Housing and Urban
Development

The Wanamaker Building

100 Penn Square East

Philadelphia, PA 19107-9344

Telephone (215) 656-0663 or 1-888-799-2085

Fax (215) 656-3449 * TTY (215) 656-3450

*For Alabama, Florida, Georgia, Kentucky,
Mississippi, North Carolina, Puerto Rico,
South Carolina, Tennessee
and the U.S. Virgin Islands:*

ATLANTA REGIONAL OFFICE

(Complaints_office_04@hud.gov)

U.S. Department of Housing and Urban
Development

Five Points Plaza

40 Marietta Street, 16th Floor

Atlanta, GA 30303-2808

Telephone (404) 331-5140 or 1-800-440-8091

Fax (404) 331-1021 * TTY (404) 730-2654

*For Illinois, Indiana, Michigan, Minnesota,
Ohio and Wisconsin:*

CHICAGO REGIONAL OFFICE

(Complaints_office_05@hud.gov)

U.S. Department of Housing and Urban
Development

Ralph H. Metcalfe Federal Building

77 West Jackson Boulevard, Room 2101

Chicago, IL 60604-3507

Telephone (312) 353-7796 or 1-800-765-9372

Fax (312) 886-2837 * TTY (312) 353-7143

*For Arkansas, Louisiana, New Mexico,
Oklahoma and Texas:*

FORT WORTH REGIONAL OFFICE

(Complaints_office_06@hud.gov)

U.S. Department of Housing and Urban
Development

801 North Cherry, 27th Floor

Fort Worth, TX 76102-6803

Telephone (817) 978-5900 or 1-888-560-8913

Fax (817) 978-5876/5851 * TTY (817) 978-5595

Mailing Address:

U.S. Department of Housing and Urban
Development

Post Office Box 2905

Fort Worth, TX 76113-2905

For Iowa, Kansas, Missouri and Nebraska:

KANSAS CITY REGIONAL OFFICE

(Complaints_office_07@hud.gov)

U.S. Department of Housing and Urban
Development

Gateway Tower II,

400 State Avenue, Room 200, 4th Floor

Kansas City, KS 66101-2406

Telephone (913) 551-6958 or 1-800-743-5323

Fax (913) 551-6856 * TTY (913) 551-6972

*For Colorado, Montana, North Dakota,
South Dakota, Utah and Wyoming:*

DENVER REGIONAL OFFICE

(Complaints_office_08@hud.gov)

U.S. Department of Housing and Urban
Development

1670 Broadway

Denver, CO 80202-4801

Telephone (303) 672-5437 or 1-800-877-7353

Fax (303) 672-5026 * TTY (303) 672-5248

For Arizona, California, Hawaii and Nevada:

SAN FRANCISCO REGIONAL OFFICE

(Complaints_office_09@hud.gov)

U.S. Department of Housing and Urban
Development

600 Harrison Street, Third Floor

San Francisco, CA 94107-1387

Telephone (415) 489-6548 or 1-800-347-3739

Fax (415) 489-6558 * TTY (415) 489-6564

For Alaska, Idaho, Oregon and Washington:

SEATTLE REGIONAL OFFICE

(Complaints_office_10@hud.gov)

U.S. Department of Housing and Urban
Development

Seattle Federal Office Building

909 First Avenue, Room 205

Seattle, WA 98104-1000

Telephone (206) 220-5170 or 1-800-877-0246

Fax (206) 220-5447 * TTY (206) 220-5185

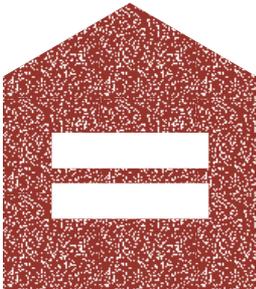
If after contacting the local office nearest you, you still have questions - you may contact HUD further at:

U.S. Department of Housing and Urban
Development
Office of Fair Housing and Equal Opportunity
451 7th Street, S.W, Room 5204
Washington, DC 20410-2000
Telephone 1-800-669-9777
Fax (202) 708-1425 * TTY 1-800-927-9275

If You Are Disabled: HUD also provides:

- A TTY phone for the deaf/hard of hearing users (see above list for the nearest HUD office)
- Interpreters
- Tapes and braille materials
- Assistance in reading and completing forms

What Happens When You File A Complaint?



HUD will notify you in writing when your complaint is accepted for filing under the Fair Housing Act. HUD also will:

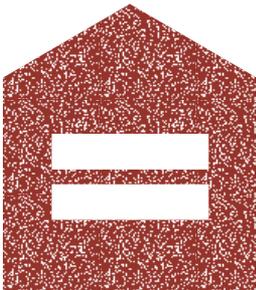
- Notify the alleged violator ("respondent") of the filing of your complaint, and allow the respondent time to submit a written answer to the complaint.
- Investigate your complaint, and determine whether or not there is reasonable cause to believe that the respondent violated the Fair Housing Act.
- Notify you and the respondent if HUD cannot complete its investigation within 100 days of filing your complaint, and provide reasons for the delay.

Fair Housing Act Conciliation: During the complaint investigation, HUD is required to offer you and the respondent the opportunity to voluntarily resolve your complaint with a HUD Conciliation Agreement. A HUD Conciliation Agreement provides individual relief for you, and protects the public interest by deterring future discrimination by the respondent. Once you and the respondent sign a HUD Conciliation Agreement, and HUD approves the Agreement, HUD will cease investigating your complaint. If you believe that the respondent has violated ("breached") your Conciliation Agreement, you should promptly notify the HUD Office that investigated your complaint. If HUD determines that there is reasonable cause to believe that the

respondent violated the Agreement, HUD will ask the U.S. Department of Justice to file suit against the respondent in Federal District Court to enforce the terms of the Agreement.

Complaint Referrals to State or Local Public Fair Housing Agencies: If HUD has certified that your State or local public fair housing agency enforces a civil rights law or ordinance that provides rights, remedies and protections that are "*substantially equivalent*" to the Fair Housing Act, HUD must promptly refer your complaint to that agency for investigation, and must promptly notify you of the referral. The State or local agency will investigate your complaint under the "*substantially equivalent*" State or local civil rights law or ordinance. The State or local public fair housing agency must start investigating your complaint within 30 days of HUD's referral, or HUD may retrieve ("reactivate") the complaint for investigation under the Fair Housing Act.

Does the U.S. Department of Justice Play a Role?

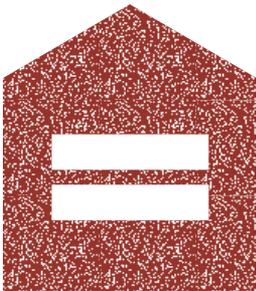


If you need immediate help to stop or prevent a severe problem caused by a Fair Housing Act violation, HUD may be able to assist you as soon as you file a complaint. HUD may authorize the U.S. Department of Justice to file a Motion in Federal District Court for a 10-day Temporary Restraining Order (TRO) against the respondent, followed by a Preliminary Injunction pending the outcome of HUD's investigation. A Federal Judge may grant a TRO or a Preliminary Injunction against a respondent in cases where:

- Irreparable (irreversible) harm or injury to housing rights is likely to occur without HUD's intervention, and
- There is substantial evidence that the respondent has violated the Fair Housing Act.

Example: An owner agrees to sell a house, but, after discovering that the buyers are black, pulls the house off the market, then promptly lists it for sale again. The buyers file a discrimination complaint with HUD. HUD may authorize the U.S. Department of Justice to seek an injunction in Federal District Court to prevent the owner from selling the house to anyone else until HUD investigates the complaint.

What Happens After A Complaint Investigation?



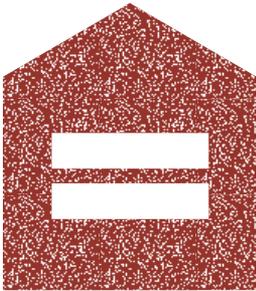
Determination of Reasonable Cause, Charge of Discrimination, and Election: When your complaint investigation is complete, HUD will prepare a Final Investigative Report summarizing the evidence gathered during the investigation. If HUD determines that there is reasonable cause to believe that the respondent(s) discriminated against you, HUD will issue a Determination of Reasonable Cause and a Charge of Discrimination against the respondent(s). You and the respondent(s) have Twenty (20) days after receiving notice of the Charge to decide ("elect") whether to have your case heard by a HUD Administrative Law Judge (ALJ) or to have a civil trial in Federal District Court.

HUD Administrative Law Judge Hearing: If neither you nor the respondent elects to have a Federal civil trial before the 20-day Election Period expires, HUD will promptly schedule a Hearing for your case before a HUD Administrative Law Judge. The ALJ Hearing will be conducted in the locality where the discrimination allegedly occurred. During the ALJ Hearing, you and the respondent(s) have the right to appear in person, to be represented by legal counsel, to present evidence, to cross-examine witnesses, and to request subpoenas in aid of discovery of evidence. HUD attorneys will represent you during the ALJ Hearing at no cost to you; however, you may also choose to intervene in the case and retain your own attorney. At the conclusion of the Hearing, the HUD ALJ will issue a Decision based on findings of fact and conclusions of law. If the HUD ALJ concludes that the respondent(s) violated the Fair Housing Act, the respondent(s) can be ordered to:

- Compensate you for actual damages.
- Provide permanent injunctive relief.
- Provide appropriate equitable relief (for example, make the housing available to you).
- Pay your reasonable attorney's fees.
- Pay a civil penalty to HUD to vindicate the public interest by discouraging future discriminatory housing practices. The maximum civil penalties are: **\$11,000.00** for a first violation of the Act; **\$32,500.00** if a previous violation has occurred within the preceding five-year period; and **\$60,000.00** if two or more previous violations have occurred within the preceding seven-year period.

Civil Trial in Federal District Court: If either you or the respondent elects to have a Federal civil trial for your complaint, HUD must refer your case to the U.S. Department of Justice for enforcement. The U.S. Department of Justice will file a civil lawsuit on your behalf in the U.S. District Court in the circuit in which the discrimination allegedly occurred. You also may choose to intervene in the case and retain your own attorney. Either you or the respondent may request a jury trial, and you each have the right to appear in person, to be represented by legal counsel, to present evidence, to cross-examine witnesses, and to request subpoenas in aid of discovery of evidence. If the Federal Court decides in your favor, a Judge or jury may order the respondent(s) to:

- Compensate you for actual damages.
- Provide permanent injunctive relief.
- Provide appropriate equitable relief (for example, make the housing available to you).
- Pay your reasonable attorney's fees.
- Pay punitive damages to you.
- Pay a civil penalty to the U.S. Treasury to vindicate the public interest, in an amount not exceeding **\$55,000.00** for a first violation of the Act and in an amount not exceeding **\$110,000.00** for any subsequent violation of the Act.



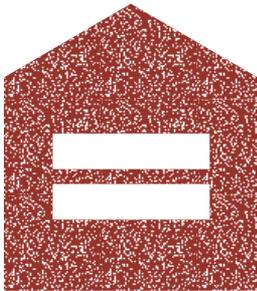
Determination of No Reasonable Cause and

Dismissal: If HUD finds that there is no reasonable cause to believe that the respondent(s) violated the Act, HUD will dismiss your complaint with a Determination of No Reasonable Cause. HUD will notify you and the respondent(s) of the dismissal by mail, and you may request a copy of the Final Investigative Report.

Reconsiderations of No Reasonable Cause

Determinations: The Fair Housing Act provides no formal appeal process for complaints dismissed by HUD. However, if your complaint is dismissed with a Determination of No Reasonable Cause, you may submit a written request for a reconsideration review to: Director, FHEO Office of Enforcement, U.S. Department of Housing and Urban Development, 451-7th Street, SW, Room 5206, Washington, DC 20410-2000.

In Addition



**Department of Housing
and Urban Development**
Room 5204
Washington, DC 20410-2000

You May File a Private Lawsuit: Even if HUD dismisses your complaint, the Fair Housing Act gives you the right to file a private civil lawsuit against the respondent(s) in Federal District Court. You must file your lawsuit within two (2) years of the most recent date of alleged discrimination. The time during which HUD was processing your complaint is not counted in the 2-year fil-

ing period. You must file your lawsuit at your own expense; however, if you cannot afford an attorney, the Court may appoint one for you.

Even if HUD is still processing your complaint, you may file a private civil lawsuit against the respondent, unless: (1) you have already signed a HUD Conciliation Agreement to resolve your HUD complaint; or (2) a HUD Administrative Law Judge has commenced an Administrative Hearing for your complaint.

Other Tools to Combat Housing Discrimination:

- If there is noncompliance with the order of an Administrative Law Judge, HUD may seek temporary relief, enforcement of the order or a restraining order in a United States Court of Appeals.
- The Attorney General may file a suit in Federal District Court if there is reasonable cause to believe a pattern or practice of housing discrimination is occurring.

For Further Information:

The purpose of this brochure is to summarize your right to fair housing. The Fair Housing Act and HUD's regulations contain more detail and technical information. If you need a copy of the law or regulations, contact the HUD Fair Housing Office nearest you. See the list of HUD Fair Housing Offices on pages 7-9.

HUD-1686-1-FHEO
February 2006
Previous Editions Obsolete



**Department of Housing
and Urban Development**
Room 5204
Washington DC, 20410-2000

HUD-1686-1-FHEO
January 2006



BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION ENDORSING THE PRINCIPLES OF FAIR HOUSING AS SET FORTH IN TITLE 36, CHAPTER 5.1 OF THE CODE OF VIRGINIA (1950) AS AMENDED

WHEREAS, the Commonwealth of Virginia has, through Section 36-96.1 of the Code of Virginia (1950, as amended), established a policy to: “provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity and general welfare of all inhabitants of the Commonwealth may be protected and insured”; and

WHEREAS, Section 36-96.8 et.seq., of the Code of Virginia (1950 as amended) empowers the Virginia Real Estate Board to receive complaints and conduct investigations of alleged violations of the Fair Housing Law;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this _____ day of _____, 2009 that the Board does hereby reaffirm its endorsement of the principles of the Virginia Fair Housing Law and does hereby state that it is the policy of the York County Board of Supervisors that said principles are, and continue to be, adhered to in this County.

COUNTY OF YORK

MEMORANDUM

DATE: March 3, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Housing Choice Voucher Program (Formerly Known as the Rental Subsidy Program) / Annual Funding Renewal

Background

Nationally, the U.S. Department of Housing and Urban Development (HUD) provides funding for subsidy programs that assist low-income citizens in renting privately owned housing. In Virginia, these HUD funds are managed on a statewide basis by the Virginia Housing Development Authority (VHDA).

York County has operated rental subsidy program since 1979. These services represent an important and critically needed resource for York's lower income residents. The programs are implemented by the Housing and Neighborhood Revitalization Division of the County's Community Services Department. VHDA issues rent payments directly to owners, consequently, the County's budget reflects only the administrative reimbursements that York receives to defray the cost of implementing the program. Total rent, utilities, and administrative payments for FY2010 are projected to be in excess of \$2,121,328.

There is no new competition for funds annually. The program is renewed annually through the execution of an agreement between the County and VHDA. York has budget authority that will assist approximately 270 families through the Housing Choice Voucher Program.

Section 8 Housing Choice Voucher Program

These funds subsidize low-income families in renting privately owned dwellings dispersed throughout the County.

- The program administration involves processing of tenant eligibility, recruiting suitable dwellings, negotiation of rents, dwelling inspections and identification of repairs, preparation of leases, contracts, requests for subsidy checks, and a variety of landlord/tenant counseling services.

There is currently a waiting list in excess of 635 families for the rental subsidy program.

York County Board of Supervisors

March 3, 2009

Page 2

Recommendation

It is my recommendation that the Board adopt proposed Resolution R09-26, which authorizes the County Administrator to take all actions necessary to accept federal funds and continue this important service to York's lower income residents.

Smith/4111

Attachment:

- Proposed Resolution R09-26

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO TAKE ALL ACTIONS NECESSARY TO ACCEPT FUNDING AND CONTINUE TO IMPLEMENT THE HOUSING CHOICE VOUCHER PROGRAM, FORMERLY KNOW AS THE RENTAL SUBSIDY PROGRAM, FUNDED THROUGH THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE VIRGINIA HOUSING DEVELOPMENT AUTHORITY

WHEREAS, The Board of Supervisors has a long standing commitment to assisting the County’s low and moderate income citizens in meeting essential housing needs; and

WHEREAS, the Housing Choice Voucher Program funded and administered through the U.S. Department of Housing and Urban Development and the Virginia Housing Development Authority (VHDA) provide annual outside funding that assists eligible County citizens;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this _____ day of _____ 2009, that the County Administrator be, and he is hereby, authorized to accept funding in the amounts offered the County by the Virginia Housing Development Authority, execute and necessary grant agreement, contracts or other documents with VHDA, and to participate fully in the Section 8 Housing Choice Voucher Program for FY2010; provided that all documents shall be approved as to form by the County Attorney.

COUNTY OF YORK

MEMORANDUM

DATE: March 3, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Grant Application for Emergency Home Repair Program

Background

The Emergency Home Repair Program is funded through the Virginia Department of Housing and Community Development. The County's program is administered by the Division of Housing and Neighborhood Revitalization of the Community Services Department.

These funds provide low-level grant assistance to eliminate safety or health hazards in homes of income eligible residents of the County. The requirement for matching funds is achieved through the programs and resources currently budgeted or administered by the County.

The attached proposed resolution authorizes the County Administrator to take all actions necessary to continue this program.

Recommendation

I recommend adoption of proposed Resolution R09-27 to continue the Emergency Home Repair Program for FY2010.

Smith/4111

Attachment:

- Proposed Resolution R09-27

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.,

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO TAKE ALL ACTIONS NECESSARY TO CONTINUE TO IMPLEMENT THE EMERGENCY HOME REPAIR PROGRAM AND TO ACCEPT AND APPROPRIATE ANY GRANT FUNDS AWARDED TO THE COUNTY BY THE VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

WHEREAS, the York County Board of Supervisors has a long standing commitment to assisting the County’s low income citizens in meeting essential housing needs; and

WHEREAS, the County has administered an Emergency Home Repair Program since 1989 and this program represents a valuable resource for the County’s citizens; and

WHEREAS, the requirement for matching funds can be achieved through program and resources currently budgeted or administered by the County;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this _____ day of _____, 2009, that the County Administrator be, and he is hereby, authorized to accept funding in the amounts offered the County by the Virginia Department of Housing and Community Development, execute any necessary grant agreements, related contracts, or other documents, subject to approval as to form by the County Attorney, and to do all things necessary to implement the Emergency Home Repair Program.

BE IT FURTHER RESOLVED that the County Administrator is authorized to accept any subsequent offer of funding that would not exceed available resources for any required matches and to increase amounts appropriated in the FY2010 budget if and when funds become available and to advise the Board of all such actions in writing.

COUNTY OF YORK

MEMORANDUM

DATE: March 5, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: CDBG Application Request for Barlow Road Community Project

The Housing Division of Community Services has worked with Housing Partnerships Incorporated (HPI), and the community along the Barlow Road area of the County since September of 2008 in pursuit of broader funding for the housing issues they are confronting. You may recall that in December of 2008, a letter responding to our request for a Planning Grant was received from the Virginia Department of Housing and Community Development (DHCD). The letter encouraged studying the feasibility of using Community Development Block Grant (CDBG) funding in the area.

Both HPI and the CS/Housing Division have worked closely with residents of the community. A community meeting was held at Ukrops on Mooretown Road and then again at Mt. Pilgrim Baptist Church on Barlow Road. These meetings were well attended and the residents were able to voice their concerns about living conditions in their area.

Their primary concerns were:

- deteriorating wells
- deteriorating septic systems through out the neighborhood
- aging housing stock
- aging occupants on fixed incomes

Indoor Plumbing Rehabilitation (IPR) funds have been used to assist four families off of Barlow Road in the past two years. Each residence had a failed well and septic system. In each case the clients' septic system was hand built in an era before Health Department oversight. These systems are woefully inadequate. The soil in this area will not support conventional septic systems and two alternative systems have already been installed. Alternative systems are highly effective in conditions where there is poor soil; however, they must be designed for each lot and are very expensive.

An application for CDBG funds in this area allows us to approach the housing needs in a more comprehensive manner. Many of the homes in the area show signs of unmitigated wear primarily due to the age of the housing stock. A CDBG project will allow households to use the funding to bring each participating residence up to the Federal Housing and Urban Development (HUD) Housing Quality Standard (HQS). While they

are minimal standards, they do address the provision of water and sewer along with electrical upgrades and weatherization.

These funds in this application will be used to cover the following six activities:

- (1) Assessment of existing potable water source and the provision of new wells where necessary.
- (2) Assessment of existing septic system and installation of a new system where necessary.
 - a. In all cases a conventional septic system will be the replacement sought. On those sites where a conventional system is not feasible, an alternative septic system will be designed and installed.
- (3) Rehabilitation of housing structures to bring them into conformance with HQS. Initial inspections show that at present, two homes will have to be replaced with new structures.
- (4) Procurement of an Authorized Onsite Soil Evaluator (AOSE).
- (5) Procurement of a Well Installation Contractor.
- (6) Demolition of one abandoned structure.

The following project budget has been established based on cost estimates from past work and inspections of the houses we propose to assist.

Budget	CDBG	Local Match	Total Grant
Cost Estimates: November 10, 2008			
Admin	\$80,000	\$29,900	\$109,900
A&E			
Onsite Soil Evaluator	\$6,000		\$6,000
Septic Installation - Alternative	\$200,000		\$200,000
Septic Installation - Conventional	\$24,000		\$24,000
Deep Well Installation	\$96,000		\$96,000
Housing Rehabilitation			
Substantial Rehab	\$210,000	\$60,000	\$270,000
Substantial Rehab Demolition		\$27,000	\$27,000
Rehabilitation	\$270,000		\$270,000
Accessibility	\$10,000	\$15,000	\$25,000
Walk-in Shower	\$8,000		\$8,000
Wheel Chair Ramp	\$6,000		\$6,000
Weatherization			
Blower Door		\$2,400	\$2,400
Lead Test-Clearance Test	\$2,400		\$2,400
Demolition		\$18,000	\$18,000
York County Match		\$100,000	\$100,000

Total Cost:	\$912,400	\$252,300	\$1,164,700
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The application will be for CDBG funds in the amount of \$912,400 to meet the needs of the community. The total project budget is calculated to be \$1,164,700.

The requirement for matching funds is achieved through the programs and resources currently budgeted or administered by the County. The CS/Housing Division will apply \$100,000 of the approved Rehabilitation budget in the project area. The remaining Grant Match is achieved with either direct program expenditures or in-kind donations from HPI volunteers and material donations.

Participation in the Rehabilitation program is completely voluntary. Coordination with the neighborhood seems to indicate that there will be at least 12 households participating. Though voluntary, the work performed in the project area will be secured against each property with a lien held in the name of Housing Partnerships Incorporated. Fifty percent of the cost of the work will be forgiven before placing the lien; the remaining amount will be forgiven in equal increments over 10 years. Repayment amounts can not consist of more than 30% of the household's adjusted gross income. These payments will be made to HPI in monthly installments with zero percent interest. Household income for all participants is verified annually by HPI to determine if the household's income has increased enough to effect a payment or declined to a point where a payment is no longer feasible.

The activities of the grant are scheduled to be carried out over 24 months.

Recommendation

I recommend approval of R09-28 authorizing the County Administrator to submit a Community Development Block Grant Application and all necessary documents to request and accept funds in the amount of \$912,400.

Smith/4111

Attachment:

- Proposed Resolution R09-28

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the _____ day of _____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO SUBMIT THE NECESSARY DOCUMENTS FOR FUNDING FROM THE VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, AND TO REQUEST AND ACCEPT THESE FUNDS FOR REHABILITATION ACTIVITIES FOR THE BARLOW ROAD HOUSING PRESERVATION PROGRAM

WHEREAS, pursuant to two public hearings, the County of York wishes to apply for \$912,400 of Virginia Community Development Block Grant funds with a local match of \$252,300 of which \$102,900 are in-kind contributions for the rehabilitation of 10 Low or Moderate Income (LMI) houses in Magisterial District 1, along Barlow Road; and

WHEREAS, the rehabilitation activities will include repairs to occupied homes necessary to meet the Federal Department of Housing and Urban Development, Housing Quality Standards, and the evaluation of property for the sighting and placement of potable wells and septic systems; and

WHEREAS, the Virginia Department of Housing and Community Development requires a resolution whereby the Board of Supervisors authorizes the County Administrator to sign and submit all appropriate policies, assurances, and certifications necessary to request and receive, funding.

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this _____ day of _____, 2009, that the County Administrator is hereby directed and authorized to implement these policies, and to execute any necessary grant agreements, related contracts, or other documents, subject to approval as to form by the County Attorney, to provide such additional information as may be required by the terms

of the grant agreement, and to take all necessary actions to accept and implement the grant.

BE IT FURTHER RESOLVED that the County Administrator is hereby authorized to accept any subsequent offer of funding that would not exceed available resources for any required matches if and when funds become available and to advise the Board of all such actions in writing.

BE IT STILL FURTHER RESOLVED that the County Administrator be and is hereby authorized on behalf of the County to assume the status of a responsible official under the National Environmental Policy Act of 1969, and the regulations which implement such Act.

COUNTY OF YORK

MEMORANDUM

DATE: February 6, 2009 (BOS meeting 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Proposed addendum to lease of sports complex property from the City of Newport News

By an agreement dated April 26, 2005, the County leased certain property owned by the City of Newport News near the intersection of Oriana Road and Route 17 for the purpose of construction of the County's new sports complex, scheduled to open in just a few weeks. At the time of the initial lease agreement, the actual boundaries of the sports complex were not determined, and by Addendum One dated May 22, 2007, the parties confirmed the boundaries of the site to be 180.52 acres. Now, a proposed Addendum Two to the agreement has been recommended by staffs of both the County and the City of Newport News, to clarify language in the original lease agreement which was sufficiently ambiguous that the City and the County had disagreed as to its meaning relative to the calculation of rent to be paid by the County to the City. The amount of the annual base rent had been established as 6.5% of the assessed value of the property contained within the sports complex site. The question was whether the assessed value to which the percentage rate would be applied was the full assessed value computed as if the property were taxable, or a reduced assessed value computed pursuant to Code of Virginia § 58.1-3663. Referenced statute provides in part that a governmental owner of watershed or waterworks property located in another jurisdiction shall pay a real property tax to the jurisdiction in which the property is located, based however upon a reduced assessment calculated as the proportion that the gross revenues of the Newport News Waterworks derived from consumers outside of the City limits bears to the gross revenues derived from the entire waterworks operation.

In resolving the ambiguity, the City and the County agreed to modify and clarify the original lease agreement in two particulars. The first is to agree that the calculation of the County's rent would be 6.5% of the full true market value of the property, unreduced by the statute. However, in exchange for that concession, the City for its part agreed to eliminate the requirement for "Additional Rent" to be paid by the County in the amount of taxes paid by the City to the County on the property.

The net effect of the two changes is to simplify the calculation of the rent to be paid annually to the City, with an insignificant difference in the amount of rent as compared to what would have been paid had the County's original understanding of the lease agreement prevailed, that is, with the base rent being calculated as 6.5% of the reduced assessed value, plus the additional rent. By oral agreement, the County has been paying rent as stated in the proposed Addendum Two for the last two years, and the approval and execution of Addendum Two is, therefore, essentially a "housekeeping" task.

York County Board of Supervisors

February 6, 2009

Page 2

I recommend the approval of the attached resolution which will authorize the County Administrator to execute proposed Addendum Two to the lease agreement between the City of Newport News and the County of York.

swh

Attachment

- Proposed Addendum to Agreement of Lease
- Resolution R09-31

**ADDENDUM TWO TO AGREEMENT OF LEASE
FOR CONSTRUCTION AND MAINTENANCE OF A PUBLIC PARK**

THIS ADDENDUM TWO, is made as of this 10th day of February, 2009, to the Agreement of Lease for Construction and Maintenance of a Public Park, dated April 26, 2005 (the Lease), between the City of Newport News, Virginia (the City) and the County of York (the Lessee).

In consideration of the mutual promises and covenants set out herein and in the original Lease and Addendum One, the parties hereby agree that paragraph 3. Rent in the Lease, shall be amended to read as set forth below:

3. Rent.

Prior to the time that the final plans and designs for the Facility shall have been completed, the Lessee shall pay to the City as Additional Rent an amount equal to any real property taxes paid during any year by the City to the County of York on all of the Property described above, such amount to be prorated for partial years. Such amount shall be paid to the City within thirty (30) days of the payment of any such taxes to the County of York, except that the payment of rent for the initial partial calendar year of the Lease term shall be paid on or before July 1, 2005.

Upon the completion of the Lessee's final plans and drawings for the Facility, and any adjustment in the description of the Property subject to this Agreement, and award of the construction contract, or January 1, 2007, whichever date is sooner, the Lessee shall thereafter

pay to the City as Regular Rent an amount equal to six and one-half percent (6.5%) of the assessed value of the Property as so adjusted, assessed at the Property's full market value for tax purposes, prior to any adjustment pursuant to Code of Virginia Section 58.1-3663 due to the Property's continued inclusion as watershed property as part of the City's water resource development system. The assessment shall be established by the York County Tax Assessor from time to time in accordance with the reassessment cycle in effect in the County of York. The City shall have all rights to challenge and contest any such assessment as are afforded by applicable statutes to any owner of land located in the Commonwealth of Virginia. Regular Rent shall be paid annually in a single installment on a calendar year basis, payment being made to the City on or before July 1 of every calendar year commencing in 2007. The rent payment for the final year of the lease term shall be pro-rated as necessary for a partial year, unless the City shall have extended the term of the lease for an additional term prior to the time that such payment shall be due.

All other provisions of the Lease and Addendum One thereto remain in full force and effect.

WITNESS the following signatures and seals:

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

COUNTY OF YORK, VIRGINIA

By: _____

Title: _____

APPROVED AS TO FORM:

County Attorney

sdm7916

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE PROPOSED ADDENDUM TWO TO THE AGREEMENT OF LEASE FOR CONSTRUCTION AND MAINTENANCE OF A PUBLIC PARK DATED APRIL 26, 2005, BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND THE COUNTY OF YORK RELATIVE TO THE CALCULATION OF RENT TO BE PAID BY THE COUNTY TO THE CITY.

WHEREAS, by an Agreement of Lease for Construction and Maintenance of a Public Park, dated April 26, 2005, modified by Addendum One dated May 22, 2007, the County leased from the City of Newport News certain real estate located in the County and contained within the City's watershed for Harwood Mills Reservoir, 180.52 acres, more or less, for the purpose of the construction of a sports complex; and

WHEREAS, it has been discovered that there were certain ambiguities regarding the calculation of the rent to be paid by the County to the City for the use of the property; and

WHEREAS, proposed Addendum Two to the agreement resolves the ambiguity in a satisfactory manner, and with insignificant fiscal impact to the County, satisfactorily clarifying the terms and conditions of the agreement relative to the payment of rent, such that it is in the public interest that the said Addendum Two be executed.

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the ____ day of _____, 2009, that the County Administrator is authorized

to execute that certain Addendum Two to Agreement of Lease for Construction and Maintenance of a Public Park consistent with the draft attached to the County Administrator's memorandum of February 6, 2009, approved as to form by the County Attorney, clarifying that the regular rent to be paid by the County to the City shall be calculated as 6.5% of the assessed value of the property prior to any adjustment in the assessed value pursuant to Code of Virginia § 58.1-3663, and deleting the provision for additional rent to be paid by the County to the City in an amount equal to any taxes paid by the City to the County on the subject property pursuant to Code of Virginia § 58.1-3603.

COUNTY OF YORK

MEMORANDUM

DATE: March 5, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

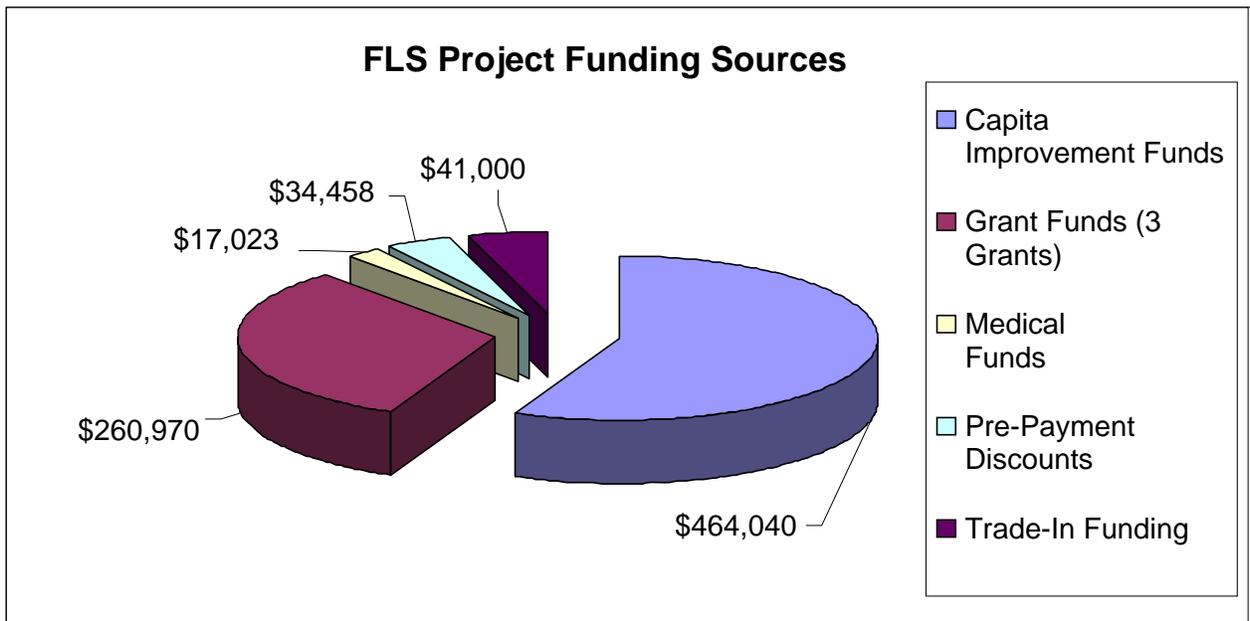
SUBJECT: Approval of Procurement Action

The attached proposed Resolution R09-39 provides for the approval of County purchases by the Board of Supervisors in accordance with its policy for procurements of over \$30,000 and its policy for the acceptance of grant funds.

The Board's approval is requested for procurement of fire and rescue apparatus with associated equipment, including resuscitation devices and advanced life support airway equipment. Authority to accept and appropriate multiple grant awards is also requested.

This proposed procurement, totaling \$817,493, includes the purchase of two replacement medic units (ambulances), which are part of the ongoing replacement plan as approved by the Board of Supervisors, a firefighting water tanker for the lower end of the County, and associated equipment. This procurement has been reviewed by the Fleet Manager who concurs with the recommendation.

Funding for this procurement comes from a variety of sources. The chart below depicts the breakout of funding sources. It should be noted that staff has devoted much time and effort to put together a package which results in significant savings and cost avoidance to the County in order to meet operational needs at the lowest possible expenditure of County tax dollars.



In consideration of the current economic times, staff evaluated whether or not to delay this procurement. It was determined that it would be in the County's best interest to move forward for a variety of reasons including: the current operational need for the equipment; the loss of significant grant funds should the equipment not be purchased now; the current trade in offer (for apparatus previously taken out of service); and the current availability of payment options. A delay would result in a significantly higher cost to the County if the purchase were made at a later date.

If adopted, proposed resolution R09-39 will authorize the procurement of the fire and rescue equipment as described above, and appropriate the two Rescue Squad Assistance Fund grant awards of \$74,155 and \$38,367.

These procurements have been conducted in accordance with State procurement laws and/or County procurement policy, and I recommend they be approved through the adoption of proposed Resolution R09-39.

Kopczynski/3612:ese

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of ____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO COMPLETE THE PURCHASE OF FIRE AND RESCUE APPARATUS AND ASSOCIATED EQUIPMENT, ACCEPTING AND APPROPRIATING VIRGINIA RESCUE SQUAD ASSISTANCE FUNDS IN THE AMOUNT OF \$112,523, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO DO ALL THINGS NECESSARY TO PROCURE RESUSCITATION DEVICES AND ADVANCED LIFE SUPPORT AIRWAY EQUIPMENT

WHEREAS, it is the policy of the Board of Supervisors that all procurements of goods and services by the County involving the expenditure of \$30,000 or more be submitted to the Board for its review and approval; and

WHEREAS, the County Administrator has determined that the following procurements are necessary and desirable, they involve the expenditure of \$30,000 or more, and that all applicable laws, ordinances, and regulations have been complied with; and

WHEREAS, the York County Department of Fire and Life Safety sought and has been awarded grant funding from two separate applications in the total amount of \$112,523; and

WHEREAS, \$74,155 of the grant funds were awarded for use toward the purchase of medic units (ambulances); and

WHEREAS, \$38,368 of the grant funds were awarded for use toward the purchase of resuscitation devices and advanced life support airway equipment; and

WHEREAS, funds previously appropriated, including Virginia Department of Fire Programs Aid to Locality grant funds, are available to provide the additional funds necessary and to further support these initiatives; and

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this ____ day of _____, 2009, that \$112,523 in State Rescue Squad Assistance Fund Grants are hereby appropriated and that the County Administrator be, and hereby is, authorized to conclude procurement arrangements for the following:

	<u>AMOUNT</u>
Fire and Rescue Apparatus and Associated Equipment	\$741,951
Resuscitation Devices	\$ 45,201
Advanced Life Support Airway Equipment	\$ 30,341

COUNTY OF YORK

MEMORANDUM

DATE: March 4, 2009 (BOS Mtg. 3/17/09)
TO: York County Board of Supervisors
FROM: James O. McReynolds, County Administrator 
SUBJECT: York-Williamsburg 911 Dispatch Operations Consolidation

Over the course of the past several months, County and Williamsburg staff members have been working toward the possible consolidation of the Williamsburg 911 dispatch operations with the County's. A memorandum of understanding (MOU) to accomplish this is attached for your review and consideration. The effective date of the consolidation is proposed to be July 1, 2009, and, if approved, it will remain in effect as long as the parties mutually agree to its extension.

The terms and conditions of the MOU call for the City to reimburse York County for the cost of the dispatchers added to the County staff, one-time costs associated with the consolidation, and reimbursement for the building addition necessary to accommodate the expanded operation. The MOU also provides that the City will bear their proportion of future capital costs necessary to sustain dispatch operations.

In addition, the State Wireless Board has awarded \$1,427,000 of grant funding for the purchase of technology required to support this effort and consolidation of Poquoson's 911 dispatch operations with the County's. A grant award of this amount from the Wireless Board is unprecedented. A team from York County, and the Cities of Williamsburg and Poquoson, led by Terry Hall, York County's Manager of Emergency Communications, made a presentation that emphasized the importance of regionalism and the benefits of the consolidated operations.

The City currently has thirteen dispatchers on staff. The County will offer employment to all thirteen, and the City will reimburse the County for all salary, benefit, and training expenses for the thirteen dispatchers until, through attrition, the number is reduced to nine, and the costs billed to the City will be reduced accordingly. The proposal calls for the additional staff to be transferred to the County on July 1, 2009. The attached resolution contains language to appropriate the \$725,673 to be received from the City for support of these personnel during Fiscal Year 2009.

The consolidation will require expansion of the 911 Emergency Communications Building to accommodate the increase in staff. In addition to the one-time payment referenced in the preceding paragraph, the City of Williamsburg has agreed to pay \$45,000 in annual installments to the County to cover the cost of the addition to the County's 911 Emergency Dispatch Center.

For this project to move forward, it will be necessary to appropriate the required funds. If approved, the proposed appropriation actions provide staff with the authority to accept and spend the grant funds, construct and furnish the addition, and appropriate the funds

associated with the transfer of the City employees to the County on July, 1. The annual payments from the City for the building expansion will be deposited to the County Capital Fund to reimburse the cost of construction.

Please find below a recap of the total budget for the capital portion of the project:

Construction Budget			
Revenue		Expenditures	
VA Wireless Board Grants	\$ 1,427,000	Architectural & Engineering Fees	\$ 125,000
City of Williamsburg	\$ 1,451,684	Construction	\$ 959,842
	\$ -	Technology & Equipment	\$ 1,502,000
	\$ -	Contingency	\$ 291,842
Total Project Revenues	<u>\$ 2,878,684</u>	Total Project Costs	<u>\$ 2,878,684</u>

I recommend that the Board adopt proposed Resolution R09-38 to authorize consolidation of City of Williamsburg's 911 Emergency Dispatch Operation into York County's Emergency Dispatch Center, appropriate \$2,878,684 for the expansion of the communications center and, to become effective July 1, 2009, appropriate \$725,673 for the personnel and support costs referenced above.

White/3737

Attachment:

- Memorandum of Understanding
- Proposed Resolution R09-38

**York County and City of Williamsburg
9-1-1 Dispatch Center
Memorandum of Understanding**

THIS AGREEMENT dated this 24th day of February, 2009 by and between YORK COUNTY, a political subdivision of the Commonwealth of Virginia ("County") and the CITY OF WILLIAMSBURG, a municipal corporation chartered and existing under the laws of the Commonwealth of Virginia ("City") provides as follows:

WHEREAS, Sec. 15.2-1300 of the Code of Virginia (1950), as amended allows any two or more political subdivisions to enter into agreements with one another for joint action pursuant to the provisions of such Code Section: and

WHEREAS, County and City by this Agreement and the City of Poquoson under separate agreement with County will merge their separate 9-1-1 dispatch centers to create a Regional 9-1-1 Dispatch Center to be located in and operated by County (the "Regional Dispatch Center") which will handle all police, fire and emergency medical dispatch calls for the three localities; and

WHEREAS, County's 9-1-1 Dispatch Center is overseen by a 9-1-1 Policy Board composed of County's Director of Financial & Management Services, Fire Chief, and Sheriff and as part of this Agreement, such Board will be expanded to include representatives of City and the City of Poquoson; and

WHEREAS, City currently employs thirteen (13) dispatchers and City and County have concluded that with increased operating efficiencies of the Regional Dispatch Center nine (9) dispatchers will be sufficient to handle City's calls: and

WHEREAS, pursuant to this Agreement, on or about July 1, 2009 City will discontinue operation of its 9-1-1 Dispatch Center and all of City's dispatch calls will thereafter be handled by the Regional Dispatch Center; and

WHEREAS, as more particularly provided herein, County will offer employment to City's thirteen (13) dispatchers to work as dispatchers in the Regional Dispatch Center with City reimbursing County for the cost of said dispatchers and with the further understanding that if the number of City dispatchers employed by County upon closing of City's Dispatch Center exceeds nine (9), then the number of dispatchers allocable to City will be reduced by attrition to a total of nine (9) dispatchers; and

NOW THEREFORE, WITNESSETH that for and in consideration of the agreements herein contained and the mutual benefits accruing to each of the parties, County and City agree as follows:

1. Commencement of Dispatch Services. On or about June 30, 2009, or as soon as is operationally feasible, City shall close its 9-1-1 dispatch facility whereupon all City dispatch calls shall be handled by the Regional Dispatch Center.

2. Employment of City dispatchers. When both parties have signed this Agreement, City shall give notice of pending employment termination to all of City's Dispatchers and provide County with contact and current compensation information for each dispatcher. County's Human Resources department shall forthwith contact each dispatcher, not exceeding a maximum of thirteen (13), and extend County's offer employment as a dispatcher at the Regional Dispatch Center at the same rate of pay, and any Career Enhancement Supplements shall become part of their annual salary. Any City Dispatcher who accepts employment with County shall not be subject to employment probation and shall be allowed to immediately participate in fringe benefits as allowed by County Policy. Within thirty (30) days of County's employment of a City Dispatcher, City shall pay to such Dispatcher any accumulated vacation leave in excess of eighty (80) hours and accumulated sick leave in excess of eighty (80) hours accrued to such Dispatcher under City's employee policies. Within thirty (30) days of employment by County of a City dispatcher, City shall also reimburse County for any vacation leave and sick leave of less than eighty (80) hours each as have been accrued by such Dispatcher under City's employee policies. Such reimbursed vacation and sick leave shall carry over and County shall recognize and honor such accrued vacation and sick leave. All other terms and conditions as they pertain to the use and pay out of leave shall be done in accordance with County policy.

3. Employment and ancillary cost reimbursements by City. During FY 2010 City shall reimburse County at the following in the amount of Fifty Five Thousand Eight Hundred Twenty One Dollars (\$55,821.00) per dispatcher (which includes a \$10,000.00 ancillary operating cost reimbursement) for each City Dispatcher employed by County pursuant to paragraph number 2 of this Agreement. Compensation to County will not begin until the day the consolidation occurs. The reimbursements here provided for shall be pro-rated on a monthly basis and reduced accordingly if consolidation does not occur during July 2009.

Inasmuch as nine (9) dispatchers will be needed to handle City's dispatch calls, the parties agree that if more than nine (9) City Dispatchers are employed by County pursuant to paragraph 2, thereafter each termination of employment of a Regional Dispatch Center Dispatcher, whether or not previously a City Dispatcher, shall reduce City's per-dispatcher cost reimbursement obligation not to exceed the number of City Dispatchers employed in excess of nine (9). Upon each termination, City's obligation to pay further installments under paragraph 7 of this Agreement in reimbursement for such position shall cease. County shall forthwith notify City in writing of Dispatcher terminations until such reduction in number of Dispatchers is complete.

Beginning with FY 2011 and for each Fiscal Year thereafter, the amount of City's annual per-dispatcher compensation reimbursement paid during the immediately preceding fiscal year shall be increased for the upcoming fiscal year by an amount equivalent to any percentage increase, not to exceed five percent (5%),

that has occurred in the Consumer Price Index for All Items for All Urban Consumers (Series Id: UUR0300SA0,CUUS0300SA0), as published by the United States Department of Labor, Bureau of Labor Statistics, for the 12-month period ending December 31 of such immediately preceding fiscal year.

4. City's contribution toward enlargement of dispatch center. In order to accommodate additional dispatchers needed to handle City's and Poquoson's dispatch calls, County must increase the size of its dispatch center building located at 301 Goodwin Neck Rd by 2200± square feet. City shall pay to County Forty Five Thousand Dollars (\$45,000.00) as reimbursement for City's proportionate share of the cost of said addition during each fiscal year in which this Agreement remains in force until such time as the cost incurred for the building addition has been repaid. After the building costs have been fully satisfied, this payment will cease.
5. First year implementation cost reimbursement. For FY 2010, in addition to monies paid under paragraphs 3 and 4 City shall pay to County a one-time implementation cost reimbursement in the amount of One Hundred Sixty Two Thousand Five Hundred Dollars \$162,500.00. Said amount shall be due and payable in full not later than July 31 2009.
6. CIP Projects: City's contribution. CIP Projects related to the operation of the Regional Dispatch Center shall be handled through County's normal budgetary processes. City's obligation to contribute to CIP Projects other than contributions toward the cost of Regional Dispatch Center expansion provided for in paragraph 4, are contingent upon such Projects having been recommended by the 9-1-1 Board and approved as CIP projects through the budgetary process of County and City. The portion of any CIP cost in which City will participate is the portion of such cost remaining after application of any grants and other funding from sources other than County, City and Poquoson (the "Net CIP Cost"). City's proportionate share of the Net CIP Cost shall be a fraction of such Net Cost determined as follows: the denominator shall be the total number of Regional Dispatch Center personnel, including all dispatchers, supervisory and other personnel and the numerator shall be the nine (9).
7. Payment. All payments due from City hereunder, other than the implementation cost reimbursement provided for in paragraph 5 shall be made in equal quarterly payments in arrears during each fiscal year. Payments shall be due on the last day of each fiscal quarter, beginning September 30, 2009.
8. 9-1-1 Board. Operation of the Regional Dispatch Center shall be overseen by a seven (7) member advisory board (the "9-1-1 Board") composed of County's Director of Financial & Management Services, Fire Chief and Sheriff and the Police Chiefs and Fire Chiefs of City and of the City of Poquoson. On all issues that come before the 9-1-1 Board, County shall have three (3) votes and City and the City of Poquoson shall each have two (2) votes. The 9-1-1 Board shall be

responsible for operational policies of the Center and shall review and recommend for or against all operating budget and CIP Project budget proposals regarding the Center and its operation.

9. Grant applications. Both parties agree that no application shall be made for any Regional 9-1-1 grant that would affect the other or the Regional Dispatch Center without the consent of the other party and without approval of the 9-1-1 Board. Regional 9-1-1 grants applications shall be jointly submitted.
10. Term of Agreement; Renewals. The initial term of this Agreement shall be for one fiscal year commencing July 1, 2009 and ending June 30, 2010. Unless terminated as hereinafter provided, this Agreement shall renew without further action of either party at the end of each fiscal year, subject to all terms and conditions set forth herein.
11. Termination. Either party may terminate this Agreement as of the end of any fiscal year by giving at least twelve (12) months' prior written notice to the other party. The above notwithstanding, with the consent of both parties, this Agreement may be terminated at a time other than the end of a fiscal year.
12. Miscellaneous.
 - A. This Agreement shall be subject to modification or amendment only by an instrument in writing signed by the party to be charged with such amendment.
 - B. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under any law applicable to the terms hereof, then the remainder of this Agreement shall not be affected thereby, and in lieu of each such clause or provision of this Agreement that is illegal, invalid or unenforceable, such clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid and enforceable.
 - C. Neither party may assign this Agreement without the consent of the other.
 - D. This agreement is subject to annual appropriations from each locality.

IN WITNESS WHEREOF, the County and the City have caused the signature of their duly authorized officers to be affixed below.

COUNTY OF YORK

By _____

CITY OF WILLIAMSBURG

By _____

Approved as to form:

County Attorney

City Attorney

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the _____ day of _____, 2009:

Present

Vote

Walter C. Zaremba
Donald E. Wiggins
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried _____, the following resolution was adopted:

A RESOLUTION TO AUTHORIZE THE CONSOLIDATION OF THE CITY OF WILLIAMSBURG 911 EMERGENCY DISPATCH CENTER INTO THE COUNTY OF YORK 911 EMERGENCY DISPATCH CENTER AND AUTHORIZE THE COUNTY ADMINISTRATOR TO DO ALL THINGS NECESSARY TO COMPLETE THE CONSOLIDATION, AND APPROPRIATE THE FUNDS NECESSARY FOR THE CONSOLIDATION

WHEREAS, the County of York and the City of Williamsburg have proposed to enter into a Memorandum of Understanding dated February 24, 2009, for the consolidation of the 911 Dispatch Operations; and

WHEREAS, the consolidation will take place on or about July 1, 2009, and the first year personnel and support costs will be \$725,673 to which the City of Williamsburg has agreed; and

WHEREAS, the cost to construct, furnish and outfit with technology an addition to the York 911 Emergency Communications Center required by the consolidation will be \$2,878,684;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this _____ of _____, 2009, that the consolidation of the County of York and the City of Williamsburg's 911 dispatch operations consistent with the above-

referenced Memorandum of Understanding is hereby approved, and the County Administrator is hereby authorized to do all things necessary to complete the consolidation.

BE IT FURTHER RESOLVED that \$725,673 is hereby appropriated in the General Fund for the personnel and support cost to be added to the County's budget as a result of the consolidation, such appropriation to become effective on July 1, 2009.

BE IT STILL FURTHER RESOLVED that \$2,878,684 be, and it is hereby, appropriated in the County's Capital Fund for the purpose of constructing and equipping the addition to the Communications Center.

COUNTY OF YORK

MEMORANDUM

DATE: March 6, 2009 (BOS Mtg. 3/17/09)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator



SUBJECT: Proposed Closure of VDOT Williamsburg Residency and Equipment Shop

The Commissioner of the Virginia Department of Transportation has announced proposals to restructure various VDOT operations and facilities and among those is a proposal to eliminate the Williamsburg Residency office and the Williamsburg and Pine Chapel (Hampton) Equipment Shops. As a result, the functions of these facilities would be transferred either to the Hampton Roads District office in Suffolk or to the Waverly Residency located in Sussex County – which then would have responsibility for VDOT services and operations in James City, York, Surry and Sussex Counties. This proposal is part of the Commissioner’s “Blueprint” for statewide organizational and staffing changes that would reduce the number of residencies from 44 to 29 and the number of equipment shops from 73 to 37.

Currently, the Williamsburg Residency serves James City and York Counties and also has responsibility for the Peninsula’s interstate system as well as coordination and consultation on various issues with the Peninsula cities (all of which maintain the streets/roads with their boundaries). The Williamsburg Equipment Shop (and Pine Chapel shop in Hampton, which is also proposed to be closed) provide equipment maintenance and repair services for the full range of vehicles and equipment that VDOT uses in its operations.

In staff’s opinion, it is important that a residency and equipment shop be maintained on the Peninsula and that the Commissioner be urged to limit his considerations to the following alternatives:

- Retain the Williamsburg Residency and Equipment Shop and merge the Waverly and Franklin Residencies; or
- Retain each of the existing Residencies (Williamsburg, Waverly, and Franklin).

Clearly, the Commissioner and the Commonwealth Transportation Board must make organizational and operational changes in order to address the difficult economic conditions. However, I do not believe those actions, however drastic they must be, should remove the Residency and Equipment Shop presence from the Peninsula. We offer the following considerations in support of this opinion:

1. Closing the Williamsburg Residency would leave the entire Virginia Peninsula without the convenient and necessary services that the Residency provides. Even assuming that a number of Residency functions are shifted to

the District Offices as proposed, there will continue to be permitting and other issues that will be handled at the Residency level. Requiring our citizens, contractors, business owners and others to travel to Waverly is unacceptable in terms of both distance and time (even on good traffic days). If the uncertainty of bridge, tunnel, and ferry travel is added to the equation, the situation is, of course, much worse.

2. These concerns are equally, if not more, significant with respect to the Equipment Shop. Given the frequent congestion and traffic delays on the bridge and tunnel connections to the Peninsula it would be prudent to maintain the equipment repair capability provided by the Williamsburg Equipment Shop. Even if one assumes that some equipment servicing/repair could be handled by a mobile parts/service vehicle based in Waverly, undoubtedly there would be many instances when vehicles or equipment would have to be driven (or towed) across the James River to the Waverly Shop at a great cost in terms of time and lost productivity. Furthermore, we have serious concerns about whether the Waverly Shop would meet the Commissioner's criterion of being within a 60-minute radius of the Area Headquarters that would remain on the Peninsula (e.g., Seaford AHQ, Croaker AHQ).
3. The Commissioner's Residency Consolidation Criteria also includes *population* and *square miles of coverage* as an evaluation factor. With a combined 2008 population of 126,763 in James City and York Counties – 6.6 times the combined population of Surry and Sussex (19,164) – the Williamsburg Residency clearly serves and is closer to many more people than the Waverly Residency. It is also worth noting that VDOT maintains 194 interstate highway lane miles on the Peninsula in the cities of Hampton and Newport News (with a combined population of 325,182 residents).

Moreover, we believe density of population and development should be considered as well. While the combined land area of Surry and Sussex Counties (769 square miles) is three times the combined area of York and James City Counties (247 square miles), the density of development – measured in housing units per square mile – shows the number of housing units per square mile in York and James City (168) to be nearly 17 times the combined density of Surry and Sussex (10 housing units/sq. mile).

We believe that total population and development density both have a strong degree of correlation to the amount of interaction between residential/business sectors and VDOT and that the opportunities for successful and efficient interaction are enhanced by proximity. In other words, keep the services closer to the majority of the customers.

4. Development activity in 2007 (the most recent year for which full-year statistics are available) in York and James City Counties (measured in number of residential building permits) was nearly six times the level of

activity in Surry and Sussex combined. Development activity generates needs for developer, builder, and homeowner interaction with VDOT personnel. For example, the Williamsburg Residency issued about 500 permits in calendar year 2008 for work within the VDOT right-of-way. While we don't have figures for the number of permits issued in Surry and Sussex Counties, we are confident that it is far fewer.

It should also be noted that the new Chapter 527 regulations require VDOT review of intensive development projects located within 3,000 feet of a state-controlled highway (or within 3,000 feet of a connection to a state limited access highway). This means many development projects in the adjoining cities – Newport News, Hampton, Williamsburg, and Poquoson – must be analyzed by VDOT personnel even though the cities maintain the roads. For example, in just the past six months or so the County has participated in pre-scoping meetings on several Newport News development projects within 3,000 feet of VDOT-maintained roads in the County. A Residency presence would be beneficial to this process.

5. We note that the Virginia Peninsula, with its well-documented congestion and bridge/tunnel-related access issues, is the only one of the three Tidewater peninsulas (four, if the Eastern Shore is counted) that will not have a Residency and Equipment Shop presence under the proposed consolidation plan. Northern Neck counties (King George, Westmoreland, Northumberland, Lancaster and Richmond) on the north side of the Rappahannock River are proposed to be served by a residency on that side of the river. Middle Peninsula counties (Gloucester, King and Queen, Mathews, Middlesex, King William and Essex) situated between the Rappahannock and York Rivers are proposed to be served by a Residency and Equipment Shop located in Saluda (on the Middle Peninsula). However, the Virginia Peninsula, with the densely-populated James City and York Counties and the critical I-64 corridor would be dependent on Residency and Equipment Shop services and operations on the south side of the James River. In short, we believe that the accessibility constraints associated with the geography of the Virginia Peninsula demand a Residency and Equipment Shop presence at the current location in Williamsburg, even if that requires an exception to other goals, such as equalizing lane miles within the various residencies.
6. On the issue of lane miles within the proposed Residencies, we would note that consolidating the Franklin and Waverly Residencies (one of the alternatives listed above) would encompass a relatively large 5,130 lane miles of responsibility on the south side of the James River. However, under the "Blueprint" that has been proposed, six (6) other combined/consolidated residencies still would have greater responsibilities in terms of lane miles. Furthermore, even though the Williamsburg Residency would then encompass a relatively low 1,862 lane miles of responsibility (including the interstate miles in Newport News and

Hampton), we believe the unique geographical considerations support that deviation.

A letter outlining these concerns and considerations has been prepared for the Chairman's signature. James City County officials are expressing their concerns as well. In addition, I recommend that the Board adopt the attached proposed resolution to document its position on this issue.

Should you have questions or need additional information, please let me know.

Carter/3337

Attachment: Proposed Resolution No. R09-40

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2009:

Present

Vote

Walter C. Zaremba, Chairman
Donald E. Wiggins, Vice Chairman
Sheila S. Noll
George S. Hrichak
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO SUPPORT THE RETENTION OF THE VIRGINIA DEPARTMENT OF TRANSPORTATION WILLIAMSBURG RESIDENCY OFFICE, EQUIPMENT SHOP, AND THE FUNCTIONS AND SERVICES PROVIDED BY THE RESIDENCY ADMINISTRATOR AND STAFF OF THAT OFFICE

WHEREAS, it has come to the attention of the York County Board of Supervisors that consideration is being given to the closure of the Virginia Department of Transportation Williamsburg Residency office and the Williamsburg Equipment Shop due to budget considerations; and

WHEREAS, the proposal announced for consideration would involve transfer of some functions to the Hampton Roads District Office and the consolidation of others into a Residency based in Waverly that would encompass Sussex, Surry, James City and York Counties; and

WHEREAS, this proposed change would create a void on the Virginia Peninsula and in the Counties of James City and York that would result in elimination or degradation of services to residents, businesses and localities and, undoubtedly, would be detrimental to management, maintenance and operation of the transportation network and systems in the two counties as well as the ongoing coordination and consultation with the Peninsula cities; and

WHEREAS, the Board understands the necessity of VDOT management and organizational actions to deal with current economic conditions but believes that if Resi-

gency consolidation must occur in the Hampton Roads District it should be done in a way that maintains a Residency presence in Williamsburg and does not result in citizens, businesses, local governments on either side of the James River having to travel across the river – either by bridge or ferry – to reach their respective residency office and the services it provides;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the ____ day of _____, 2009 that it does hereby urge the Commissioner of the Virginia Department of Transportation and the Commonwealth Transportation Board to retain the Williamsburg Residency office, equipment shop, and the functions and services provided by the Residency Administrator and staff of that office so that the transportation-related issues and needs of York County, James City County and the entire Virginia Peninsula can continue to be addressed effectively and efficiently.