

A G E N D A
JAMES CITY COUNTY BOARD OF SUPERVISORS
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
June 13, 2023
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE

E. PUBLIC COMMENT

F. CONSENT CALENDAR

1. Joint Exercise of Powers Agreement
2. Contract Awards - Grounds Maintenance Services

G. PUBLIC HEARING(S)

1. SUP-23-0003. 2884 Chickahominy Road Tourist Home
2. SUP-23-0009. 2868 Lake Powell Road Tourist Home
3. SUP-23-0010. 2884 Lake Powell Road Tourist Home
4. ORD-22-0004. Amendments to the Zoning Ordinance Regarding Community Recreation Facilities in Residential Districts

H. BOARD CONSIDERATION(S)

1. Z-23-0002. Colonial Heritage - Pickleball Proffer Amendment
2. Purchase of Property at 106 and 110 Catalpa Drive, 179 and 186 Clark Lane, and 6171, 6195, and 6197 Old Mooretown Road
3. Grant Award - \$475,000 - Homeownership Gap Funding - Virginia Housing
4. Grant Award \$485,500 - Virginia Economic Development Partnership, Virginia Business Ready Sites Program

I. BOARD REQUESTS AND DIRECTIVES

J. REPORTS OF THE COUNTY ADMINISTRATOR

K. CLOSED SESSION

1. Discussion of the award of a public contract involving the expenditure of public funds, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711(A)(29) of the Code of Virginia and pertaining to the contract between the County, the City of Williamsburg, and WJCC Schools.

L. ADJOURNMENT

1. Adjourn until 1 pm on June 27, 2023 for the Business Meeting

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Liz Parman, Deputy County Attorney

SUBJECT: Joint Exercise of Powers Agreement

ATTACHMENTS:

	Description	Type
☐	Memo	Cover Memo
☐	Ordinance	Ordinance
☐	Exhibit	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Attorney	Parman, Liz	Approved	6/2/2023 - 11:19 AM
Publication Management	Daniel, Martha	Approved	6/2/2023 - 11:28 AM
Legal Review	Kinsman, Adam	Approved	6/6/2023 - 10:02 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 10:03 AM
Board Secretary	Rinehimer, Bradley	Approved	6/6/2023 - 10:10 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 3:17 PM

MEMORANDUM

DATE: June 13, 2023

TO: The Board of Supervisors

FROM: Bradley J. Rinehimer, Assistant County Administrator
Liz Parman, Deputy County Attorney

SUBJECT: Joint Exercise of Powers Agreement

The Board adopted a resolution on March 28, 2023, authorizing the County Administrator to negotiate an agreement with York County for consolidation of its Emergency Communications Centers.

The Board adopted an Ordinance on April 25, 2023, authorizing the County Administrator (1) to execute an agreement or agreements, in accordance with Virginia Code Section 15.2-1300, by and between James City County and/or York County, Williamsburg City, and Poquoson for the joint operation of a Regional Emergency Communications Center; (2) to take those steps necessary and appropriate to merge the County's Emergency Communications Center with the Regional Emergency Communications Center managed by York County; and (3) upon execution of the aforementioned agreement or agreements and upon merger of the County's Emergency Communications Center with the Regional Communications Center managed by York County, to convert the County's Emergency Communications Center into a backup Emergency Communications Center as needed for the Regional Emergency Communications Center.

Attached is the Joint Exercise of Powers Agreement negotiated by and between the County Administrators of James City County and York County. The attached Ordinance approves the Joint Exercise of Powers Agreement in accordance with Virginia Code Section 15.2-1300.

BJR/LP/md
JtExerPwrAgrmt-mem

Attachment

ORDINANCE NO.: _____

JOINT EXERCISE OF POWERS AGREEMENT

WHEREAS, Virginia Code Section 15.2-1300 allows any two or more political subdivisions to enter into agreements with one another for joint action; and

WHEREAS, the County operates an Emergency Communications Center, a division of the Fire Department, to provide computer-aided dispatch services for Police, Fire, and Emergency Responders in the County; and

WHEREAS, York County manages a Regional Emergency Communications Center providing computer-aided dispatch services for Police, Fire, and Emergency Responders in York County, Williamsburg City, and Poquoson; and

WHEREAS, the Board adopted a resolution on March 28, 2023, authorizing the County Administrator to negotiate an agreement with York County for consolidation of Emergency Communications; and

WHEREAS, the Board adopted an Ordinance on April 25, 2023, authorizing the County Administrator (1) to execute an agreement or agreements, in accordance with Virginia Code Section 15.2-1300, by and between James City County and/or York County, Williamsburg City, and Poquoson for the joint operation of a Regional Emergency Communications Center; (2) to take those steps necessary and appropriate to merge the County's Emergency Communications Center with the Regional Emergency Communications Center managed by York County; and (3) upon execution of the aforementioned agreement or agreements and upon merger of the County's Emergency Communications Center with the Regional Communications Center managed by York County, to convert the County's Emergency Communications Center into a backup Emergency Communications Center as needed for the Regional Emergency Communications Center; and

WHEREAS, a Joint Exercise of Powers Agreement has been presented to the Board for approval in accordance with Virginia Code Section 15.2-1300; and

WHEREAS, this Ordinance to approve the Joint Exercise of Powers Agreement has been advertised in a newspaper having a general circulation in the County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the Joint Exercise of Powers Agreement and authorizes the County Administrator to enter into such additional agreements and memorandums of understanding, subject to approval as to form by the County Attorney, as are contemplated and set forth in the Joint Exercise of Powers Agreement.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

VOTES

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023.

JtExerPwrAgrmt-ord

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT dated this ____ day of _____, 2023, by and between YORK COUNTY, a political subdivision of the Commonwealth of Virginia (“York”), and JAMES CITY COUNTY, a political subdivision of the Commonwealth of Virginia (“James City”, together with York, the “Parties”), provides as follows:

WHEREAS, Section 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; and

WHEREAS, York and James City, by this Agreement, and the Cities of Poquoson (“Poquoson”) and Williamsburg (“Williamsburg”), under separate agreements with York County, agree to merge the James City County Emergency Communications Center with the Regional 9-1-1 Emergency Communications Center (“Regional 9-1-1 Center”, or the “Center”) managed by and located in York; and

WHEREAS, the Center handles all police, fire, and emergency dispatch calls for the four above-named localities.

NOW THEREFORE, for and in consideration of the terms and conditions herein contained and the mutual benefits accruing to each of the Parties, York and James City agree as follows:

1. **Commencement of Date:** On or about July 17, 2023 (“Commencement Date”), all James City dispatch calls, 9-1-1 calls and related operations including, but not limited to, all calls for police, fire, and emergency medical services, and all after-hours calls for social services, general services, and the James City Service Authority, shall be handled by the Regional 9-1-1 Center.
2. **9-1-1 Policy Board.** Operation of the Regional 9-1-1 Center shall be overseen by a nine (9) member advisory board (“Board” or “9-1-1 Policy Board”) composed of the Director of the Regional 9-1-1 Center, the Fire Chief and Sheriff of York County, the Fire Chief and Police Chief of Poquoson, the Fire Chief and Police Chief of Williamsburg, and the Fire Chief and Police Chief of James City. Each member shall have one vote. The Board shall be responsible for operational policies of the Center and shall review and recommend for or against all operating budgets and capital improvement program project proposals regarding the Center and its operation.
3. **Center Operations.** York shall be responsible for the day-to-day management and operation of the Center including, but not limited to, the employment and supervision of dispatchers, supervisors, and all other Center personnel, and for the maintenance of all facilities, software, and equipment. York shall be responsible for procuring all needed services, liability insurance, software, and equipment related to the effective operation of the Center. York shall operate the Center to meet the emergency communications needs of James City, Williamsburg, Poquoson, and York.

4. **James City Emergency Communication Center Employees.** York shall offer employment to all full-time James City Emergency Communications Center employees (each a “James City Employee”). Any James City Employee who accepts employment with York shall not be subject to employment probation and shall be allowed to immediately participate in employee benefits as allowed by York’s personnel policies.
5. **Funding.** The Parties shall jointly fund the Regional 9-1-1 Center pursuant to a memorandum of understanding detailing the financial contributions of each. Parties acknowledge the proportion of service for each locality will likely change over time. Therefore, funding will be reevaluated every five years.
6. **Capital Improvement Program Contribution.** Capital Improvement Program projects (“CIP Projects”) related to the operation of the Regional 9-1-1 Center shall be handled by York through its normal budgetary processes. James City’s obligation to contribute to a CIP Project, is contingent upon such CIP Project having been recommended by the 9-1-1 Policy Board and approved as a CIP project by James City.
7. **Term of Agreement, Renewals.** The initial term (“Initial Term”) of this Agreement shall begin on the Commencement Date and shall be for a term of five years. This Agreement shall renew for additional five-year term(s) (each a “Renewal Term”), at the end of the Initial Term and each Renewal Term, subject to all terms and conditions set forth herein and without further action of either Party.
8. **Data.** York shall make available, upon request, and during the normal course of business, in a format as agreed upon by the Parties, all data, information, and records related to calls to the Center originating from James City or responded to by James City personnel.
9. **Termination.** Either Party may terminate this Agreement by giving at least twelve (12) months prior written notice to the other Party. The above notwithstanding, with the written consent of both Parties, this Agreement may be terminated at any time. Upon termination, all real and personal property (“Property”) acquired for the Center shall remain the property of York. The Parties shall come to an agreement regarding the amount that York shall pay to James City for James City’s pro-rated, depreciated share of Property to which James City contributed.
10. **Notice.** Any notice, request, or demand required under this Agreement shall be delivered by U.S. First Class Mail to the following:

If to James City:

James City County Administrator
P.O. Box 8784
Williamsburg, VA 23187

With copy to:

James City County Attorney
P.O. Box 8784
Williamsburg, VA 23187

If to York:

York County Administrator
P.O. Box 532
Yorktown, VA 23690

York County Attorney
P.O. Box 532
Yorktown, VA 23690

11. **Miscellaneous.**

- A. Modification. This Agreement shall be subject to modification or amendment only by an instrument in writing signed by both Parties.
- B. Severability. If any clause or provision of this Agreement is held to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected.
- C. Assignment. Neither party may assign this Agreement.
- D. No third-party beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.
- E. This Agreement is subject to annual appropriations from each locality.
- F. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, James City and York have caused the signatures of their duly authorized administrators to be affixed below:

COUNTY OF YORK

COUNTY OF JAMES CITY

York County Administrator

James City County Administrator

Date

Date

Approved as to form:

Approved as to form:

York County Attorney

James City County Attorney

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Jo Anna Ripley, General Services Assistant Director

SUBJECT: Contract Awards - Grounds Maintenance Services at Williamsburg-James City County Courthouse and Courthouse Green Properties

ATTACHMENTS:

	Description	Type
☐	Grounds Maintenance Services Memo	Cover Memo
☐	Grounds Maintenance Services Resolution	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
General Services	Boone, Grace	Approved	5/30/2023 - 9:59 AM
Publication Management	Daniel, Martha	Approved	5/30/2023 - 10:03 AM
Legal Review	Kinsman, Adam	Approved	5/30/2023 - 12:19 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:01 AM
Board Secretary	Purse, Jason	Approved	6/6/2023 - 8:31 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 8:57 AM

MEMORANDUM

DATE: June 13, 2023

TO: The Board of Supervisors

FROM: Jo Anna Ripley, General Services Assistant Director

SUBJECT: Contract Awards - Grounds Maintenance Services at Williamsburg-James City County Courthouse and Courthouse Green Properties

An Invitation for Bid (IFB) was publicly advertised for qualified and experienced firms for Grounds Maintenance Services to include snow removal and landscape maintenance. One firm responded to the IFB by describing its qualifications, experience in performing similar work, and labor rate pricing. A team of staff members representing General Services evaluated the bid qualifications. Based on the questionnaire and labor rates, the lowest responsible and responsive firm was Town Scapes.

The initial contract term is one year with the option of four additional one-year renewals upon mutual consent of the parties. Individual project assignments will consist of creating a scope of work for each project. Projects with budgets of under \$50,000 will require only one quote from a contracted firm. Projects with budgets from \$50,001 to \$100,000 will require quotes from three of the contracted firms. A purchase order will be issued for each individual project assignment and will reference the contract terms and conditions. Project costs will be calculated using the labor rates and material discounts listed on the Attachment I enclosed.

Staff recommends adoption of the attached resolution authorizing award of the Grounds Maintenance Services contract to Town Scapes.

JAR/ap
CA-GMntCHGn-mem

Attachment

RESOLUTION

CONTRACT AWARDS - GROUNDS MAINTENANCE ANNUAL SERVICES

WHEREAS, an Invitation for Bid has been advertised and evaluated for annual Grounds Maintenance Services; and

WHEREAS, the firm Town Scapes was determined to be the best qualified to provide the required Grounds Maintenance Services.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract for annual Grounds Maintenance Services to the firm Town Scapes.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

VOTES

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023.

CA-GMntCHGn-res

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Terry Costello, Senior Planner

SUBJECT: SUP-23-0003. 2884 Chickahominy Road Tourist Home

ATTACHMENTS:

	Description	Type
▣	Staff Report	Staff Report
▣	Resolution	Resolution
▣	Location Map	Exhibit
▣	General Location Map	Exhibit
▣	Master Plan	Exhibit
▣	Applicant Narrative	Backup Material
▣	Applicant's Response to Chesapeake Bay Preservation Ordinance Violation	Backup Material
▣	Unapproved Minutes of the May 3, 2023 Planning Commission Meeting	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	5/23/2023 - 9:31 AM
Development Management	Holt, Paul	Approved	5/23/2023 - 9:31 AM
Publication Management	Daniel, Martha	Approved	5/23/2023 - 9:41 AM
Legal Review	Kinsman, Adam	Approved	5/24/2023 - 3:34 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:03 AM
Board Secretary	Rinehimer, Bradley	Approved	6/2/2023 - 11:23 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 8:59 AM

**SPECIAL USE PERMIT-23-0003. 2884 Chickahominy Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

SUMMARY FACTS

Applicant: Mr. James Carter of Hunter Law Firm

Landowners: Mr. Mario A. Medina and Ms. Gloria E. Suarez

Proposal: To allow for a tourist home rental of an entire four-bedroom home.

Location: 2884 Chickahominy Road

Tax Map/Parcel No.: 2230100007

Property Acreage: ± 5.05 acres

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

Staff Contact: Terry Costello, Senior Planner

PUBLIC HEARING DATES

Planning Commission: May 3, 2023, 6:00 p.m.

Board of Supervisors: June 13, 2023, 5:00 p.m.

FACTORS FAVORABLE

1. There is adequate off-street parking.
2. The applicant has acknowledged that should this application be approved; he will obtain the proper licensing and inspections through the County and will be subject to appropriate use-based taxes.
3. Lot sizes in the A-1, General Agricultural District, are larger than in other more densely populated residential areas. The size of the lot, the location from Chickahominy Road (over 700 feet), and the existing vegetation provide screening and buffering to most adjacent properties.
4. Impacts: See Impact Analysis on Pages 3-4.

FACTORS UNFAVORABLE

1. Staff finds the proposal is not fully consistent with the short-term rental recommendations of the *Our County, Our Shared Future: James City County 2045 Comprehensive Plan*.
2. Impacts: See Impact Analysis on Pages 3-4.

SUMMARY STAFF RECOMMENDATION

Per the Impact Analysis noted below, staff finds the proposed use will not negatively impact surrounding property or development nor is it expected to negatively impact Level of Service (LOS) for roads or other public services. While staff believes that this location is generally considered appropriate for this use, staff finds the proposal not fully consistent with the Comprehensive Plan recommendations for short-term rentals. Staff, therefore, cannot recommend approval of this application. Should the Board of Supervisors approve this

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

**SPECIAL USE PERMIT-23-0003. 2884 Chickahominy Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

application, staff has included proposed conditions for consideration (Attachment No. 1).

PLANNING COMMISSION RECOMMENDATION

At its May 3, 2023, meeting, the Planning Commission recommended approval of this application by a vote of 5-1.

PROPOSED CHANGES MADE SINCE THE PLANNING COMMISSION MEETING

None.

PROJECT DESCRIPTION

Mr. James Carter of Hunter Law Firm has applied for a Special Use Permit (SUP) to allow for a short-term rental of an existing four-bedroom house as a tourist home. The proposal includes no changes to the size or footprint of the house.

The Zoning Ordinance defines a tourist home as “a dwelling where lodging or lodging and meals are provided for compensation for up to five rooms which are open to transients.” The proposed conditions limit the number of bedrooms available for rental to a maximum of four bedrooms.

The property has an existing driveway that takes access from Chickahominy Road. There is an existing parking area that is sufficient to accommodate guests. The four-bedroom home is on public water and a private sewer system. In previous tourist home applications, staff calculated the number of occupants to be two people per bedroom. Therefore, proposed Condition No. 3 states that the maximum number of occupants per contract, including children, is eight.

PLANNING AND ZONING HISTORY

- There have been no legislative cases associated with the residence that was built in 2018.
- Information was discovered that the Property was being listed as a short-term rental. A letter was sent to the owner in December 2022. The owner has since changed the listing to a 30-day minimum rental and has applied for an SUP to operate a tourist home (short-term rental).
- Information was received from Newport News Waterworks concerning work occurring within the Resource Protection Area. Staff determined there is a violation to Chapter 23, Chesapeake Bay Preservation Ordinance. Staff is currently working with the applicant and the owners of the Property to remedy the violation.

SURROUNDING ZONING AND DEVELOPMENT

- The property is not located within any major or minor subdivision.
- The properties surrounding this parcel to the south, east, and west are all zoned R-8, Rural Agricultural. The property to the north is Little Creek Reservoir and is zoned Public Lands.

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

SPECIAL USE PERMIT-23-0003. 2884 Chickahominy Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing

Impacts/Potentially Unfavorable Conditions	Status <i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i>	Considerations/Proposed Mitigation of Potentially Unfavorable Conditions
<u>Public Transportation: Vehicular</u>	<u>No Mitigation Required</u>	- The proposal is not anticipated to generate traffic exceeding a typical residential use. - The subject property is located on a local road. However, staff believes that the road is adequate for this use.
<u>Public Transportation: Bicycle/Pedestrian</u>	<u>No Mitigation Required</u>	- Per the Adopted Regional Bikeways Map, Chickahominy Road is shown as a shared roadway and per the Pedestrian Accommodation's Master Plan, this area is shown as a sidewalk. There are no changes to the existing footprint of the building and bicycle and pedestrian accommodations are not required per Section 24-35(c)(2) of the Zoning Ordinance.
<u>Public Safety</u>	<u>No Mitigation Required</u>	- Fire Station 1 on Forge Road serves this area of the County and is approximately 2.5 miles from the proposed tourist home. - Staff finds this project does not generate impacts that require mitigation to the County's Fire Department facilities or services.
<u>Public Schools</u>	<u>No Mitigation Required</u>	- N/A since no residential dwelling units are proposed.
<u>Public Parks and Recreation</u>	<u>No Mitigation Required</u>	- N/A since no residential dwelling units are proposed.
<u>Public Libraries and Cultural Centers</u>	<u>No Mitigation Required</u>	- Staff finds this project does not generate impacts that require mitigation.
<u>Groundwater and Drinking Water Resources</u>	<u>No Mitigation Required</u>	- The property is served by public water and a private septic system. - The proposal does not generate impacts that require mitigation to groundwater or drinking water resources.

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

SPECIAL USE PERMIT-23-0003. 2884 Chickahominy Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing

Impacts/Potentially Unfavorable Conditions	Status <i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i>	Considerations/Proposed Mitigation of Potentially Unfavorable Conditions
<u>Watersheds, Streams, and Reservoirs</u> Project is located in the Yarmouth Creek Watershed.	<u>Mitigated</u>	- The Stormwater and Resource Protection Division has reviewed this application and had no objections. No new impervious surface is proposed as part of this SUP request. Should exteriorly site improvements be made in the future, those improvements would be subject to additional environmental review at that time.
<u>Cultural/Historic</u>	<u>No Mitigation Required</u>	- The subject property has been previously disturbed and has no known cultural resources on-site.
<u>Nearby and Surrounding Properties</u>	<u>Mitigated</u>	- Traffic is anticipated to be typical of a residential home, the subject property must adhere to the County's Noise Ordinance, and the proposed SUP conditions will restrict commercial signage and exterior lighting. Future expansions of the use would require an SUP amendment.
<u>Community Character</u>	<u>No Mitigation Required</u>	- Chickahominy Road is not designated as a Community Character Corridor and this parcel is not located within a Community Character Area.
<u>Covenants and Restrictions</u>	<u>No Mitigation Required</u>	- The applicant has verified that he is not aware of any covenants or restrictions on the property that prohibit the proposed use.

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

**SPECIAL USE PERMIT-23-0003. 2884 Chickahominy Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

2045 COMPREHENSIVE PLAN

The site is designated Rural Lands on the 2045 Comprehensive Plan Land Use Map. All surrounding properties to the south, east, and west are designated Rural Lands. The reservoir property to the north is designated Reservoir and Community Character Conservation, Open Space or Recreation.

Per the adopted Comprehensive Plan, appropriate primary uses includes traditional agricultural and forestal activities, but also innovative agriculture, horticulture, silviculture, specialty or niche farming, commercial and noncommercial equine opportunities, agri-tourism, rural-based public or commercial recreation, rural-support businesses, and certain public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings. Staff finds this use to generally fit within these categories as nearby lodging options which could support agri-tourism and eco-tourism uses in Rural Lands.

Per the adopted Comprehensive Plan language, uses in Rural Lands should reflect and enhance the rural character of the County. Particular attention should be given to locating structures and uses outside of sensitive areas, and maintaining existing topography, vegetation, trees, and tree lines to the maximum extent possible, especially along roads and uses.

Per the Impact Analysis noted above, staff finds the proposed use will not negatively impact surrounding property or development nor is it expected to negatively impact LOS for roads or other public services.

Specific to short-term rentals, the adopted Comprehensive Plan states that, if located within a residential context, short-term rentals should serve to complement the residential character of the area rather than altering its nature. Therefore, while every location can be considered

uniquely, short-term rentals are most appropriately located subject to the following development standards:

- Be located on lands designated Rural Lands, Neighborhood Commercial, Community Commercial, Mixed Use, or Economic Opportunity.

This property is designated Rural Lands on the adopted 2045 Comprehensive Plan Land Use Map.

- Be located on the edge or corner of an existing platted subdivision, rather than internal to it.

This parcel is not located within an existing platted subdivision.

- Be located on a major road.

Chickahominy Road is a minor collector road up until the intersection with Cranston's Mill Pond Road and is classified as a local road beyond that. Local and minor collector roads are not considered major roads.

- Be operated in a manner such that the property owner will continue to live and reside on the property during the rental.

The owners of the property currently live in Danville, Virginia. The caretaker for the property, Ms. Jessica Dellenbach, resides at 2584 Little Creek Dam Road, which is less than a mile from this property.

Staff finds the proposal is inconsistent with the recommendations of the 2045 Comprehensive Plan.

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

**SPECIAL USE PERMIT-23-0003. 2884 Chickahominy Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

STAFF RECOMMENDATION

Per the Impact Analysis noted above, staff finds the proposed use will not negatively impact surrounding property or development nor is it expected to negatively impact LOS for roads or other public services. While staff believes that this location may be considered appropriate for this use, staff finds the proposal not fully consistent with the Comprehensive Plan recommendations for short-term rentals. Staff, therefore, cannot recommend approval of this application. Should the Board of Supervisors approve this application, staff has included proposed conditions for consideration (Attachment No. 1).

TC/ap
SUP23-3_2884ChkRdTH

Attachments:

1. Resolution
2. Location Map
3. General Location Map
4. Master Plan
5. Applicant Narrative
6. Applicant's Response to Chesapeake Bay Preservation Ordinance Violation
7. Unapproved Minutes of the May 3, 2023, Planning Commission Meeting

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

RESOLUTION

CASE NO. SUP-23-0003. 2884 CHICKAHOMINY ROAD TOURIST HOME

WHEREAS, the Board of Supervisors of James City County, Virginia, has adopted by Ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. James Carter has applied for an SUP to allow for the operation of a tourist home within a single-family dwelling located at 2884 Chickahominy Road and further identified as James City County Real Estate Tax Map Parcel No. 2230100007 (the "Property"); and

WHEREAS, the Planning Commission, following its public hearing on May 3, 2023, recommended approval of Case No. SUP-23-0003 by a vote of 5-1; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-23-0003; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2045 Comprehensive Plan Land Use Map designation for the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after consideration of the factors in Section 24-9 of the James City County Code, does hereby approve the issuance of Case No. SUP-23-0003 as described herein with the following conditions:

1. Master Plan. This SUP shall permit a tourist home on property located at 2884 Chickahominy Road and further identified as James City County Real Estate Tax Map Parcel No. 2230100007 (the "Property"). The use and layout of the Property shall be generally as shown on the document entitled "JCC SUP-23-0003, 2884 Chickahominy Road Tourist Home" and date stamped April 12, 2023 (the "Master Plan"), with any deviations considered per Section 24-23(a)(2) of the Zoning Ordinance, as amended. This condition does not restrict improvements typical of a residential property as determined by the Director of Planning.
2. Commencement. Evidence of a business license and updated Certificate of Occupancy shall be provided to the Director of Planning within twelve (12) months from the issuance of the SUP, or this SUP shall automatically be void.
3. Number of Rental Room Occupants. There shall be no more than four (4) bedrooms available for rent to visitors and no more than eight (8) rental occupants total at any one time.
4. Contracts per Rental Period. There shall not, during any period of time, be simultaneous rentals of the Property under separate contracts.
5. Signage. No signage related to the use of the rental of rooms shall be permitted on the Property.

6. Parking. Off-site parking for this use shall be prohibited. No oversized commercial vehicles associated with rental occupants, such as, but not limited to, buses, commercial trucks, and trailers shall be allowed to park on the Property.
7. Compliance Review. On or before November 28, 2025, the owner of the Property must submit a letter to the Director of Planning requesting either continuance or cancellation of the SUP. If the owner requests cancellation of the SUP or does not submit the required letter, the Director of Planning shall initiate proceedings for the Board of Supervisors to revoke the SUP pursuant to Section 24-12 of the County Code. If the owner of the Property requests continuance of the SUP, the owner must also submit a statement certifying that the use and Property are in compliance with all SUP conditions. The Director of Planning shall then prepare a memorandum setting forth any and all complaints received by staff since issuance of the SUP and any violations of the SUP conditions. The Director of Planning shall place the compliance review on the Board of Supervisors' February 2026 Board meeting as a Public Hearing item at no cost to the Property owner. Following the public hearing, the Board of Supervisors shall determine whether to initiate proceedings to revoke the SUP due to incompatibility with the surrounding neighborhood, violation of the SUP conditions, or any other reason related to the health, safety, and welfare of the community or may instead set a new compliance review date.
8. Severance Clause. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

VOTES

AYE NAY ABSTAIN ABSENT

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023

SUP23-3_2884ChkRdTH-res

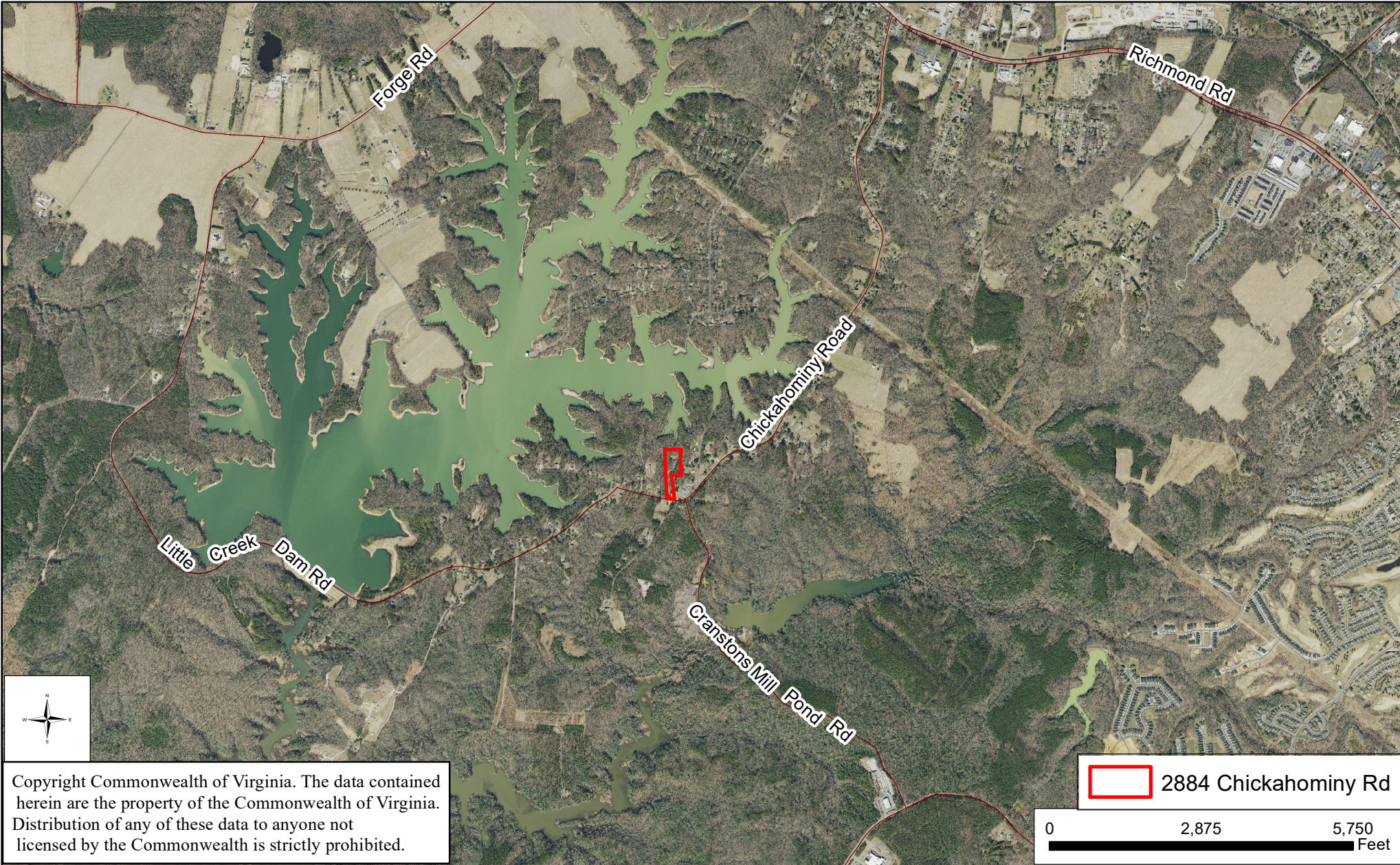
JCC SUP-23-0003 2884 Chickahominy Road

Tourist Home



JCC SUP-23-0003 2884 Chickahominy Road

Tourist Home



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2884 Chickahominy Rd

0 2,875 5,750 Feet

SUP-23-0003, 2884 Chickahominy Rd Tourist Home



Property Information

2230100007

Mario A. Medina & Gloria E. Suarez

2884 Chickahominy Road
Toano, VA 23168

Zoning: R8 Rural Residential
2045 Comp Plan: Rural Lands
Legal Acreage: 5.05

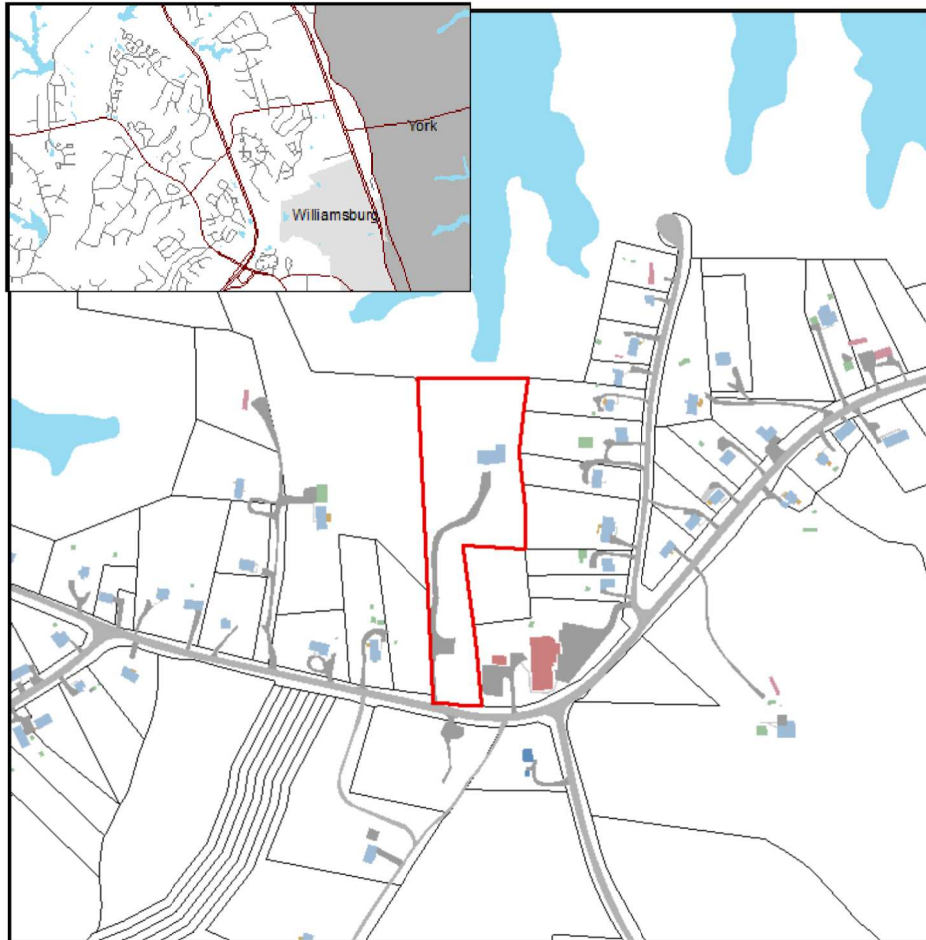
General Notes

1. Site is served by public water and private sewer.
2. Property is not located in a FEMA Flood zone.
3. Property does contain Resource Protected Area at the rear of the property.
4. Property has an existing driveway.
5. A minimum of four parking spots shall be provided (one parking spot per bedroom).

Sheet Index

1. Cover Page
2. Location Page
3. Site Details

April 12, 2023



Adjacent Properties

2120100001 Newport News Waterworks 700 Town Center Ste 400 Newport News, VA 23606 PL Public Lands	2230100012 Jonathan & Tammy Jackson 2920 Browns Drive Toano, VA 23168 R8 Rural Residential
2230100004 Andrew E. Meekins Sr 2812 Chickahominy Rd Toano, VA 23168 R8 Rural Residential	2230100013 Chiffone Hawkins, William Hawkins & Elizabeth Hawkins 2924 Browns Dr Toano, VA 23168 R8 Rural Residential
2230100006 Thomas E. Meekins c/o Kim Hawkins 2730 Little Creek Dam Rd Toano, VA 23168	2230100014 Trible L & Jean A. Jones PO Box 131 Toano, VA 23168 R8 Rural Residential
2230100009A Chickahominy Baptist Church P O Box 506 Toano, VA 23168	2230100015 Beverly Investments LLC 215 McLaws Cir Ste 2B Williamsburg, VA 23185 R8 Rural Residential
2230100009B CBC World Ministry/ Chickahominy Bapt 2900 Chickahominy Rd Toano, VA 23168	2230100030 Chickahominy Community Improvement c/o Linda Wallace PO Box 634 Toano, VA 23168 R8 Rural Residential
2230100015 Beverly Investments LLC 215 McLaws Cir Ste 2B Williamsburg, VA 23185 R8 Rural Residenti	

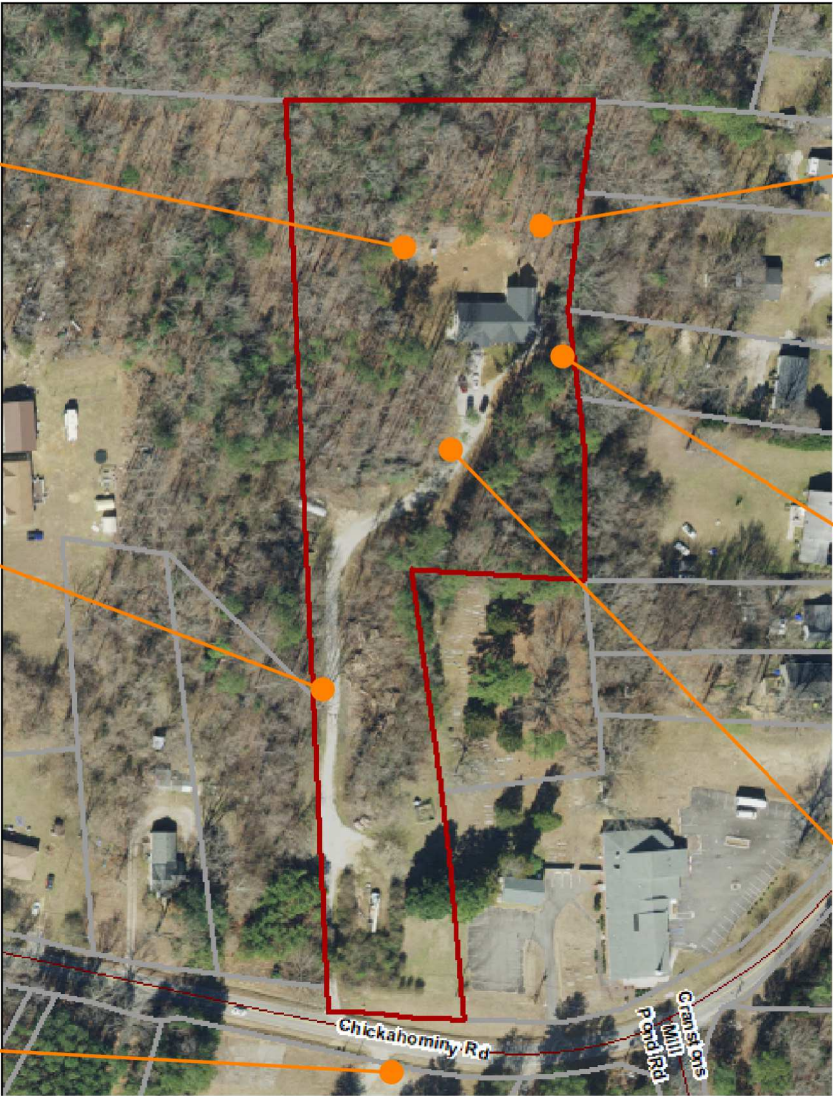
Maps Not to Scale

JCC SUP-23-0003 2884 Chickahominy Road

Tourist Home



JCC SUP-23-0003
2884 Chickahominy Road Tourist Home





HUNTER LAW FIRM

Thomas L. Hunter P.C.

Reply To:

February 13, 2023

Mr. John Rogerson
Senior Zoning Administrator, James City County
101 Mounts Bay Rd., Bldg A
Williamsburg VA 23187

Re : Suarez Special Use Permit, 2884 Chickahominy Rd.

Dear Mr. Rogerson:

Allow me to provide a brief narrative of the property Located at 2884 Chickahominy Rd., so that the planning commission may fully understand the intent, import, and impact of this application for a Special Use Permit.

The property in question is a wooded flag lot of approximately 5 acres, bounded on the right side by Chickahominy Baptist Church. There are five properties along Chickahominy Rd. prior to reaching the church that share a Western border with this property. Given that the most proximate neighbor is a church which is occupied on a limited basis, its wooded nature, and its distance from the other properties it shares a border with, to date there has been zero interactions with the proximate landowners, and there have been zero incidents of disturbance. This situation is not likely to change. In addition, this property backs up to the Newport News Waterworks Little Creek Reservoir watershed and has a significant access to the associated wetlands. This unique access feature is a boon for any eco-tourist who desires seclusion, scenery, and natural habitat of waterfowl and other indigenous aquatic fauna in their backyard during a bucolic stay in James City County.

My clients the Suarez family purchased the property in April of 2022. This was a newly built residence. The original home on the property was demolished and a new residence was built by the previous owners, approximately 3000 Sq. Ft, with an assessed value of \$379,000.00

The original intention was for the daughter of the Suarez family to reside there while she attended William and Mary. Instead their daughter chose to attend school in Ireland, thus leaving the house unoccupied. The original owners of the property had the home listed on VRBO, and the Suarez's continued according to their established operating plan – they continued utilizing the services of a resident manager who resided approximately 3200 feet away, Mrs. Jessica Dellenbach of 2584 Little Creek Dam Rd., Toano VA 23168. Given her proximity to the property it is easy for the owners (who reside in Danville) to keep a close and watchful eye on the premises, even though they reside 5 hours away. Also as a property owner herself, Mrs. Dellenbach has a vested interest in maintaining the nature, quality, and standards of the neighborhood.

Peninsula
□ 910 W. Mercury Blvd.
Suite 2A
Hampton, VA 23666
Phone: (757) 825-0400
Fax: (757) 825-9389

□ 12610 Patrick Henry Dr.
Suite B
Newport News, VA 23602
Phone: (757) 825-0400
Fax: (757) 872-3232

Middle Peninsula
□ 6834 Coleman's Crossing Ave.
Suite C
Hayes, VA 23072
Phone: (804) 694-0560
Fax: (757) 825-9389

Southside
□ 3800 Poplar Hill Rd.
Suite G
Chesapeake, VA 23321
Phone: (757) 393-1110
Fax: (757) 393-7764

Founder/CEO
Thomas L. Hunter

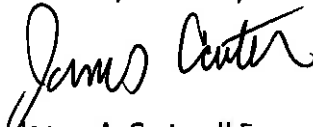
Managing Partner
Sara A. Lynch

Associates
John R. Pritchard, III
Mark A. Stallings
Larry W. Lockwood, Jr.
Kristof G. Koletar
James A. Carter
Matthew J. Barbero

At the present the Suarez family has taken their property off the rental market until they can fully comply with all JCC Codes and Regulations. Thus has caused a serious financial impact upon my clients but they received your Cease and Desist letter, took it very seriously, removed their property from the market and retained counsel to address the outstanding issues because they desire to be in full compliance with the County in all regards. They are good citizens of the Commonwealth and have purchased a newly renovated property which adds to the value of the community. They have had zero problems during their rental phase with disturbing neighbors or increased traffic. They have a resident manager who is a resident and property owner within the same neighborhood, who seeks to maintain order, decorum, and property values as they affect her residence as well. This property is a uniquely situated out-of-the-way eco-tourism destination which adds to the appeal of James City County as a whole. As such we request their application for a conditional use permit be granted.

I am available at the number above to address any concerns you may have. Feel free to reach out to me at any time. I look forward to working with you to resolve this matter.

Sincerely I Remain,



James A. Carter, II Esq.



HUNTER LAW FIRM

Thomas L. Hunter P.C.

Reply To:

May 18, 2023

Michael Woolson
Section Chief, Stormwater and Resource Protection Division
101-E Mounts Bay Rd.,
Williamsburg VA 23188

Via 1st Class mail and Email: Email Michael.Woolson@jamestowncityva.gov
Re: 2884 Chickahominy Rd., Toano VA 23188

Dear Mr. Woolson:

My clients, Gloria Suarez and Joseph Medina have received your communication regarding the necessity for remediation of foliage in the RPA surrounding the Little Creek Dam Reservoir operated by Newport News Waterworks. My clients agree to comply fully with the remedies outlined, and to that end have retained Williams Tree Service to effectuate compliance. I will be meeting with Barbara on Tues. May 23, 2023 to confirm the scope and timelines for completion of the project. It should be taken care of as soon thereafter as practicable by their company. My clients would like to state for the record that they were not the persons who removed the trees – it was done by the previous owner prior to sale. Nonetheless they understand the necessity of compliance with the CBPO, and are acting to remedy the situation as soon as possible.

I will contact you again once we have determined a final timeline for the process to be completed, based on the availability of Williams Tree Service. I thank you for your patience, and will be in touch soon.

Sincerely I remain,

James A. Carter, II
James A. Carter, II Esq.

Peninsula
910 W. Mercury Blvd.
Suite 2A
Hampton, VA 23666
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Matthew J. Barbero

**Unapproved Minutes of the May 3, 2023
Planning Commission Regular Meeting**

SUP-23-0003. 2884 Chickahominy Road Tourist Home

Ms. Terry Costello, Senior Planner, stated that Mr. James Carter of Hunter Law Firm has applied for a Special Use Permit (SUP) to allow the short-term rental of a four-bedroom single-family home at 2884 Chickahominy Road. Ms. Costello stated that the property is zoned R-8 Rural Residential, is designated Rural Lands on the 2045 Comprehensive Plan Land Use Map and is located outside the Primary Service Area (PSA). Ms. Costello stated that the property is served by public water and private sewer. Ms. Costello stated that if granted, this SUP would allow for short-term rentals throughout the year. Ms. Costello further stated that no changes to the footprint of the home are proposed.

Ms. Costello stated that staff finds some favorable factors for this application, such as the presence of adequate off-street parking, that the applicant has stated that he will obtain the proper licensing and inspections.

Ms. Costello stated that staff finds the proposed use will not negatively impact surrounding property or development nor is it expected to negatively impact levels of service for roads and other public services.

Ms. Costello stated that while staff believes the location is generally considered appropriate for this use, staff finds that the proposal is not fully consistent with the adopted 2045 Comprehensive Plan recommendations for short-term rentals, therefore, staff is unable to recommend approval of this application.

Ms. Costello stated that should the Planning Commission recommend approval of this application; staff has included proposed conditions for consideration.

Mr. Polster opened the Public Hearing.

Mr. James A. Carter, Hunter Law Firm, 910 West Mercury Boulevard, Suite 2A, Applicant, addressed the Commission in support of the application.

Mr. Polster inquired if the former owners were the ones to initially use the property as a short-term rental.

Ms. Costello stated that staff did not become aware of the short-term rental until December 2022 and the notice of violation was sent to the current property owners.

Mr. Carter stated that the caretaker was working for the previous owner and the current owner simply continued business as normal.

Mr. Polster inquired if the current owner had any indication that there might be a problem with using the property as a short-term rental.

Mr. Carter stated that the current owner did not know there was any reason for concern and adopted the business model used by the previous owner.

Mr. Polster inquired if staff finds the caretaker living on or near the property to be acceptable.

Ms. Costello stated that staff evaluates the applications strictly on the basis of the performance standard in the Comprehensive Plan.

Mr. O'Connor inquired about which rental platform was being used by the current property owners.

Mr. Carter stated that it was VRBO.

Mr. O'Connor noted that most of the short-term rental platforms make it clear that the property owner should be aware of and comply with local regulations.

Mr. Carter stated that he could not confirm or deny whether the current owner was aware of the regulations. Mr. Carter further stated that he believed they simply continued operation of the rental under the same model as the previous owner.

As no one further wished to speak, Mr. Polster closed the Public Hearing.

Mr. Polster opened the floor for discussion by the Commission.

Mr. Krapf stated that his perspective is that the performance standards were developed to address concerns about short-term rentals within established neighborhoods and the impact of transient occupancy. Mr. Krapf further stated that he tries to differentiate short-term rental properties based on whether it is within a neighborhood or not and whether the use would impact a residential area. Mr. Krapf further stated that with the new SUP conditions that allow for periodic review to ensure the property owner is in compliance. Mr. Krapf further stated that having a property manager within a reasonable distance of the property is a good guarantee that the property will be monitored. Mr. Krapf stated that he will support the application.

Mr. Haldeman made a motion to recommend approval of the application with the proposed conditions.

On a roll call vote, the Commission voted to recommend approval of SUP-23-0003. 2884 Chickahominy Road Tourist Home. (5-1)

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Terry Costello, Senior Planner

SUBJECT: SUP-23-0009. 2868 Lake Powell Road Tourist Home

ATTACHMENTS:

	Description	Type
▣	Staff Report	Staff Report
▣	Resolution	Resolution
▣	Location Map	Exhibit
▣	Master Plan	Exhibit
▣	Neighbor Support	Backup Material
▣	Unapproved Minutes of the May 3, 2023 Planning Commission Meeting	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	5/23/2023 - 9:32 AM
Development Management	Holt, Paul	Approved	5/23/2023 - 9:32 AM
Publication Management	Pobiak, Amanda	Approved	5/23/2023 - 9:45 AM
Legal Review	Kinsman, Adam	Approved	5/24/2023 - 3:34 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:04 AM
Board Secretary	Rinehimer, Bradley	Approved	6/2/2023 - 11:22 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 9:33 AM

**SPECIAL USE PERMIT-23-0009. 2868 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

SUMMARY FACTS

Applicant: Ms. Mary Waltrip

Landowners: Mr. Dudley and Ms. Rebecca Waltrip

Proposal: To allow for a tourist home of up to five rooms in a single-family dwelling.

Location: 2868 Lake Powell Road

Tax Map/Parcel No.: 4810100046

Property Acreage: ± .89 acres

Zoning: R-2, General Residential

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

Staff Contact: Terry Costello, Senior Planner

PUBLIC HEARING DATES

Planning Commission: May 3, 2023, 6:00 p.m.

Board of Supervisors: June 13, 2022, 5:00 p.m.

FACTORS FAVORABLE

1. There is adequate off-street parking.
2. The applicant has acknowledged that, should this application be approved, she will obtain the proper licensing and inspections through the County and will be subject to appropriate use-based taxes.
3. The owner will reside on-site during the time of the rentals.
4. Impacts: See Impact Analysis on Pages 3-4.

FACTORS UNFAVORABLE

1. Staff finds the proposal inconsistent with the short-term rental recommendations of the *Our County, Our Shared Future: James City County 2045 Comprehensive Plan*.
2. Impacts: See Impact Analysis on Pages 3-4.

SUMMARY STAFF RECOMMENDATION

Staff finds the proposal to be incompatible with surrounding development and not consistent with the recommendations of the 2045 Comprehensive Plan. Staff, therefore, does not recommend approval of this application. Should the Board of Supervisors approve this application, staff has included proposed conditions for consideration (Attachment No. 1).

PLANNING COMMISSION RECOMMENDATION

At its May 3, 2023, meeting, the Planning Commission recommended denial of this application by a vote of 4-2.

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

**SPECIAL USE PERMIT-23-0009. 2868 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

**PROPOSED CHANGES MADE SINCE THE PLANNING
COMMISSION MEETING**

None.

PROJECT DESCRIPTION

Ms. Mary Waltrip has applied for a Special Use Permit (SUP) to allow for the rental of up to five rooms located within an existing seven-bedroom single-family dwelling. The proposal includes no changes to the size or footprint of the home.

The Zoning Ordinance defines a tourist home as a “dwelling where lodging or lodging and means are provided for compensation for up to five rooms which are open to transients.” The proposed conditions limit the number of bedrooms available for rental to a maximum of five bedrooms.

The property has an existing driveway off a private 20-foot access road. The property has an existing parking area sufficient to accommodate guests. The seven-bedroom home is on private water and public sewer. In previous tourist home applications, staff calculated the number of occupants to be two people per bedroom. Therefore, proposed Condition No. 3 states that the maximum number of occupants per contract, including children, is 10. The owner is aware that the maximum number of bedrooms permitted to be used as a short-term rental is five.

PLANNING AND ZONING HISTORY

- There have been no legislative cases associated with the residence. The original three-bedroom home was built in 1997. A four-bedroom modular home was added to the existing home in 2006. (A kitchen was removed in the original dwelling as part of the addition so as not to create a duplex.)
- Information was discovered that the Property was being listed as a short-term rental. A letter was sent to the owner in December 2022. The applicant has stated that she is changing the listing to a 30-day minimum rental and has applied for a SUP to operate a tourist home (short-term rental).

SURROUNDING ZONING AND DEVELOPMENT

- The property is not located within any major or minor subdivision.
- The properties surrounding this parcel to the north are zoned R-2, General Residential and R-8, Rural Residential.
- Properties to the south, east, and west are zoned R-2, General Residential.
- Properties to the north, south, east, and west are all designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map.
- The property is within one mile of the Williamsburg-Jamestown Airport.

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

SPECIAL USE PERMIT-23-0009. 2868 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing

Impacts/Potentially Unfavorable Conditions	Status <i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i>	Considerations/Proposed Mitigation of Potentially Unfavorable Conditions
<u>Public Transportation: Vehicular</u>	<u>No Mitigation Required</u>	- The proposal is not anticipated to generate traffic exceeding a typical residential use. - The subject property is located off a private access road that takes access from Lake Powell Road. No changes anticipated to the Level of Service on Lake Powell Road.
<u>Public Transportation: Bicycle/Pedestrian</u>	<u>No Mitigation Required</u>	- Per the Adopted Regional Bikeways Map and Pedestrian Accommodations Master Plan, Lake Powell Road is an existing shared roadway. - There are no changes to the existing footprint of the building and bicycle and pedestrian accommodations are not required per Section 24-35(c)(2) of the Zoning Ordinance.
<u>Public Safety</u>	<u>No Mitigation Required</u>	- Fire Station 3 on John Tyler Highway serves this area of the County and is approximately 2.1 miles from the proposed tourist home property. - Staff finds this project does not generate impacts that require mitigation to the County's Fire Department facilities or services.
<u>Public Schools</u>	<u>No Mitigation Required</u>	- N/A since no residential dwelling units are proposed.
<u>Public Parks and Recreation</u>	<u>No Mitigation Required</u>	- N/A since no residential dwelling units are proposed.
<u>Public Libraries and Cultural Centers</u>	<u>No Mitigation Required</u>	- Staff finds this project does not generate impacts that require mitigation.
<u>Groundwater and Drinking Water Resources</u>	<u>No Mitigation Required</u>	- The property receives private water and public sewer. - The proposal does not generate impacts that require mitigation to groundwater or drinking water resources.

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

SPECIAL USE PERMIT-23-0009. 2868 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing

Impacts/Potentially Unfavorable Conditions	Status <i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i>	Considerations/Proposed Mitigation of Potentially Unfavorable Conditions
<u>Watersheds, Streams, and Reservoirs</u> Project is located in the Mill Creek Watershed.	<u>No Mitigation Required</u>	- The Stormwater and Resource Protection Division has reviewed this application and had no objections. No new impervious surface is proposed as part of this SUP request. Should exterior site improvements be made in the future, those improvements would be subject to additional environmental review at that time.
<u>Cultural/Historic</u>	<u>No Mitigation Required</u>	- The subject property has been previously disturbed and has no known cultural resources on-site.
<u>Nearby and Surrounding Properties</u>	<u>Mitigated</u>	- Traffic is anticipated to be typical of a residential home, the subject property must adhere to the County's Noise Ordinance, and the proposed SUP conditions will restrict commercial signage and exterior lighting. Future expansions of the use would require an SUP amendment.
<u>Community Character</u>	<u>No Mitigation Required</u>	- Lake Powell Road is not a Community Character Corridor, and this parcel is not located within a Community Character Area.
<u>Covenants and Restrictions</u>	<u>No Mitigation Required</u>	- The applicant has verified that she is not aware of any covenants or restrictions on the property that prohibit the proposed use.

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

**SPECIAL USE PERMIT-23-0009. 2868 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

2045 COMPREHENSIVE PLAN

The property is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map. Per the adopted Comprehensive Plan, recommended uses include single-family and multifamily units, accessory units, cluster or cottage homes on small lots, recreation areas, and limited commercial.

Specific to short-term rentals, the adopted Comprehensive Plan states that, if located within a residential context, short-term rentals should serve to complement the residential character of the area rather than altering its nature. Therefore, while every location can be considered uniquely, short-term rentals are most appropriately located subject to the following development standards:

- Be located on lands designated Rural Lands, Neighborhood Commercial, Community Commercial, Mixed Use, or Economic Opportunity.

This property is designated Low Density Residential, which is not one of the recommended land use designations.

- Be located on the edge or corner of an existing platted subdivision, rather than internal to it.

This parcel is not located within an existing platted subdivision but is within a grouping of closely spaced residential lots.

- Be located on a major road.

This property takes access from a 20-foot private right-of-way for ingress and egress. This access is off Lake Powell Road which is a major collector road. The private access crosses two lots until the entrance of the property.

- Be operated in a manner such that the property owner will continue to live and reside on the property during the rental.

It is staff's understanding that the property owner will reside in the residence at the times of the rentals.

Staff finds the proposal is inconsistent with the recommendations of 2045 Comprehensive Plan.

STAFF RECOMMENDATION

Staff finds the proposal incompatible with surrounding zoning and development and not consistent with the recommendations of the adopted 2045 Comprehensive Plan.

Staff, therefore, does not recommend approval of the proposed SUP. Should the Board of Supervisors approve this application, staff has included proposed conditions for consideration (Attachment No. 1).

TC/ap
SUP23-9_2868LkPwllTH

Attachments:

1. Resolution
2. Location Map
3. Master Plan
4. Neighbor Support
5. Unapproved Minutes of the May 3, 2023, Planning Commission Meeting

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

RESOLUTION

CASE NO. SUP-23-0009. 2868 LAKE POWELL ROAD TOURIST HOME

WHEREAS, the Board of Supervisors of James City County, Virginia, has adopted by Ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Ms. Mary Waltrip has applied for an SUP to allow for the operation of a tourist home within a single-family dwelling located at 2868 Lake Powell Road and further identified as James City County Real Estate Tax Map Parcel No. 4810100046 (the "Property"); and

WHEREAS, the Planning Commission, following its public hearing on May 3, 2023, recommended denial of Case No. SUP-23-0009 by a vote of 4-2; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-23-0009; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2045 Comprehensive Plan Land Use Map designation for the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after consideration of the factors in Section 24-9 of the James City County Code, does hereby approve the issuance of Case No. SUP-23-0009 as described herein with the following conditions:

1. Master Plan. This SUP shall permit a tourist home on property located at 2868 Lake Powell Road and further identified as James City County Real Estate Tax Map Parcel No. 4810100046 (the "Property"). The use and layout of the Property shall be generally as shown on the document entitled "JCC SUP-23-0009, 2868 Lake Powell Road Tourist Home" and date stamped April 14, 2023 (the "Master Plan"), with any deviations considered per Section 24-23(a)(2) of the Zoning Ordinance, as amended. This condition does not restrict improvements typical of a residential property as determined by the Director of Planning.
2. Commencement. Evidence of a business license and updated Certificate of Occupancy shall be provided to the Director of Planning within twelve (12) months from the issuance of the SUP, or this SUP shall automatically be void.
3. Number of Rental Room Occupants. There shall be no more than five (5) bedrooms available for rent to visitors and no more than ten (10) rental occupants total at any one time.
4. Contracts per Rental Period. There shall not, during any period of time, be simultaneous rentals of the Property under separate contracts.
5. Signage. No signage related to the tourist home shall be permitted on the Property.

6. Parking. Off-site parking for this use shall be prohibited. No oversized commercial vehicles associated with rental occupants, such as, but not limited to, buses, commercial trucks, and trailers shall be allowed to park on the Property.
7. Compliance Review. On or before November 28, 2025, the owner of the Property must submit a letter to the Director of Planning requesting either continuance or cancellation of the SUP. If the owner requests cancellation of the SUP or does not submit the required letter, the Director of Planning shall initiate proceedings for the Board of Supervisors to revoke the SUP pursuant to Section 24-12 of the County Code. If the owner of the Property requests continuance of the SUP, the owner must also submit a statement certifying that the use and Property are in compliance with all SUP conditions. The Director of Planning shall then prepare a memorandum setting forth any and all complaints received by staff since issuance of the SUP and any violations of the SUP conditions. The Director of Planning shall place the compliance review on the Board of Supervisors' February 2026 Board meeting as a Public Hearing item at no cost to the Property owner. Following the public hearing, the Board of Supervisors shall determine whether to initiate proceedings to revoke the SUP due to incompatibility with the surrounding neighborhood, violation of the SUP conditions, or any other reason related to the health, safety, and welfare of the community or may instead set a new compliance review date.
8. Severance Clause. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

VOTES

AYE NAY ABSTAIN ABSENT

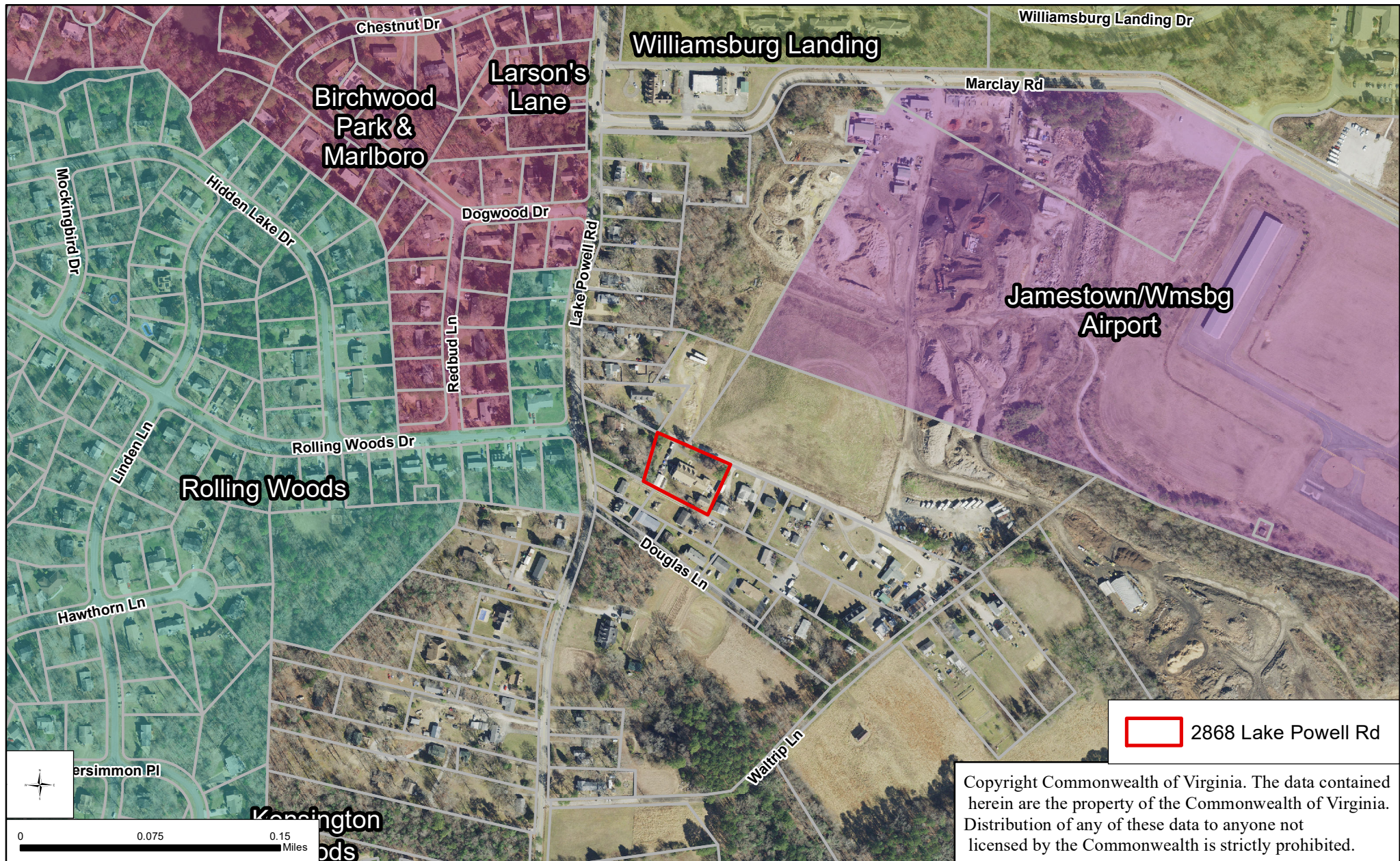
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Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023.

SUP23-9_2868LkPwllTH-res

JCC SUP-23-0009

2868 Lake Powell Rd Tourist Home



SUP-23-0009, 2868 Lake Powell Rd Tourist Home

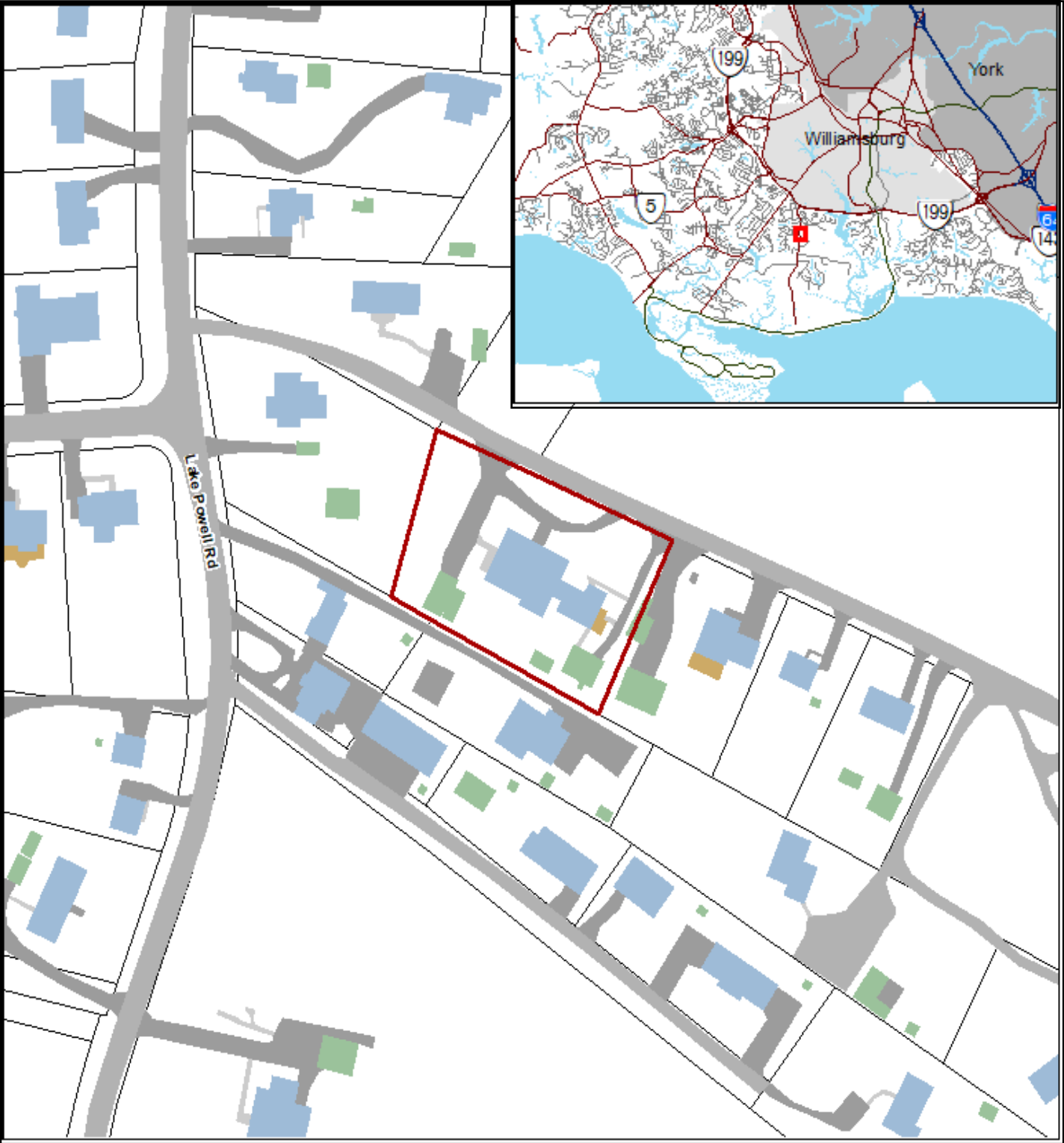
Property Information

4810100046
Dudley S. & Rebecca R Waltrip
2868 Lake Powell Road
Williamsburg, VA 23185
Zoning: R2 General Residential
2045 Comp Plan: Low Density
Residential
Legal Acreage: .89

General Notes

1. Site is served by a private well and public sewer.
2. Property is not located in a FEMA Flood zone.
3. Property does not contain Resource Protected Area.
4. Property has an existing driveway.
5. A minimum of five parking spots shall be provided (one parking spot per bedroom).

April 14, 2023



Maps Not to Scale

Adjacent Properties

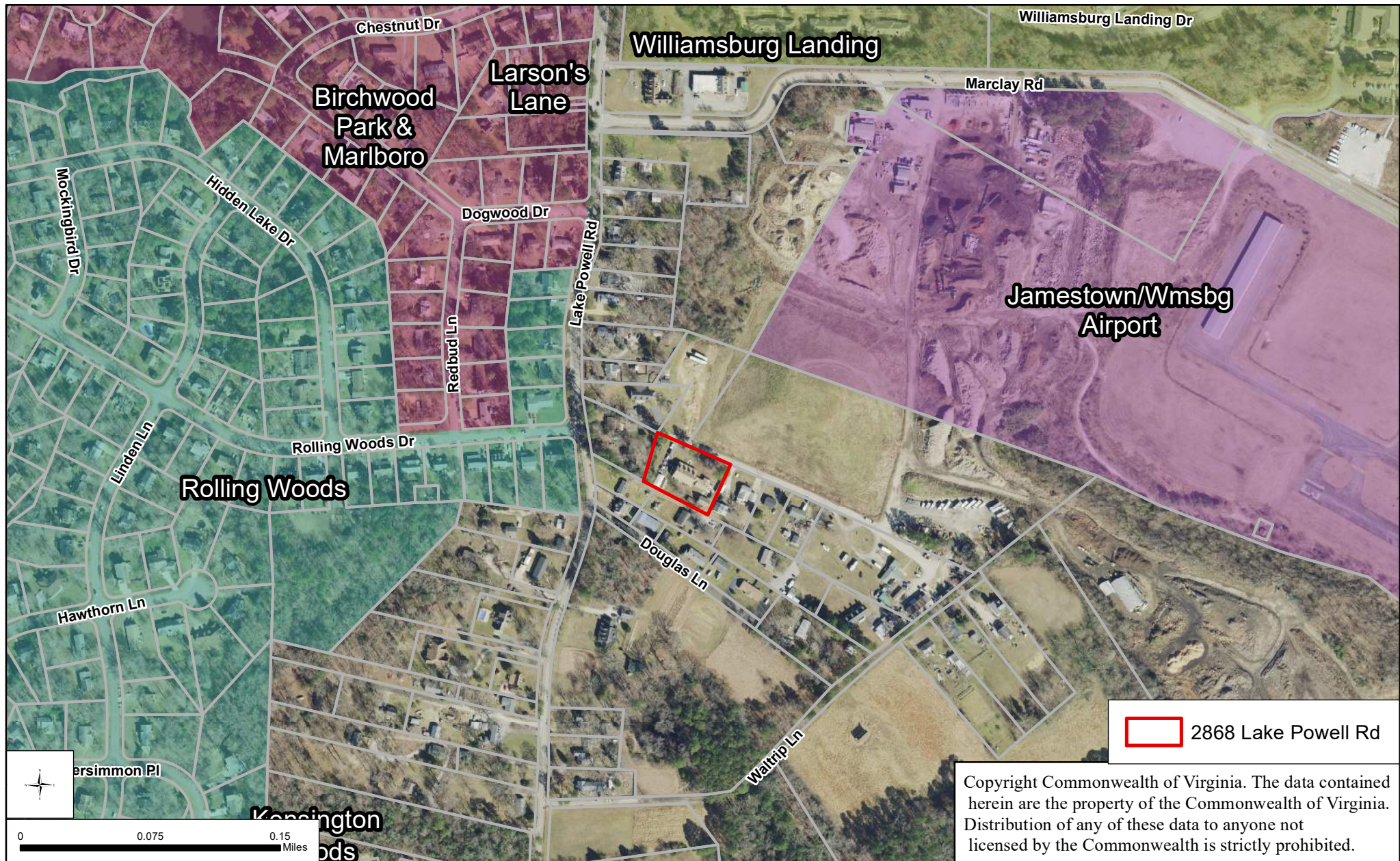
4810100042A T & L Rentals Inc. 100 Lands End Dr Williamsburg, VA 23185 R2 General Residential	4810100048 Tracey S. & Angela L. Douglas 2862 Lake Powell Rd Williamsburg, VA 23185 R2 General Residential
4810100044 Aaron & Emily Martel 2886 Lake Powell Rd Williamsburg, VA 23185 R2 General Residential	4820100006 Larry T. & Dudley L. Waltrip 100 Marclay Rd Williamsburg, VA 23185 R2 General Residential
4810100045 Daryl Eubank 9800 Wilcox Neck Rd Charles City, VA 23030 R2 General Residential	4820100007C Dudley S. Waltrip Jr. 2870 Lake Powell Rd Williamsburg, VA 23185 R2 General Residential
4810100047 Tracy S. Douglas 2862 Lake Powell Rd Williamsburg, VA 23185 R2 General Residential	

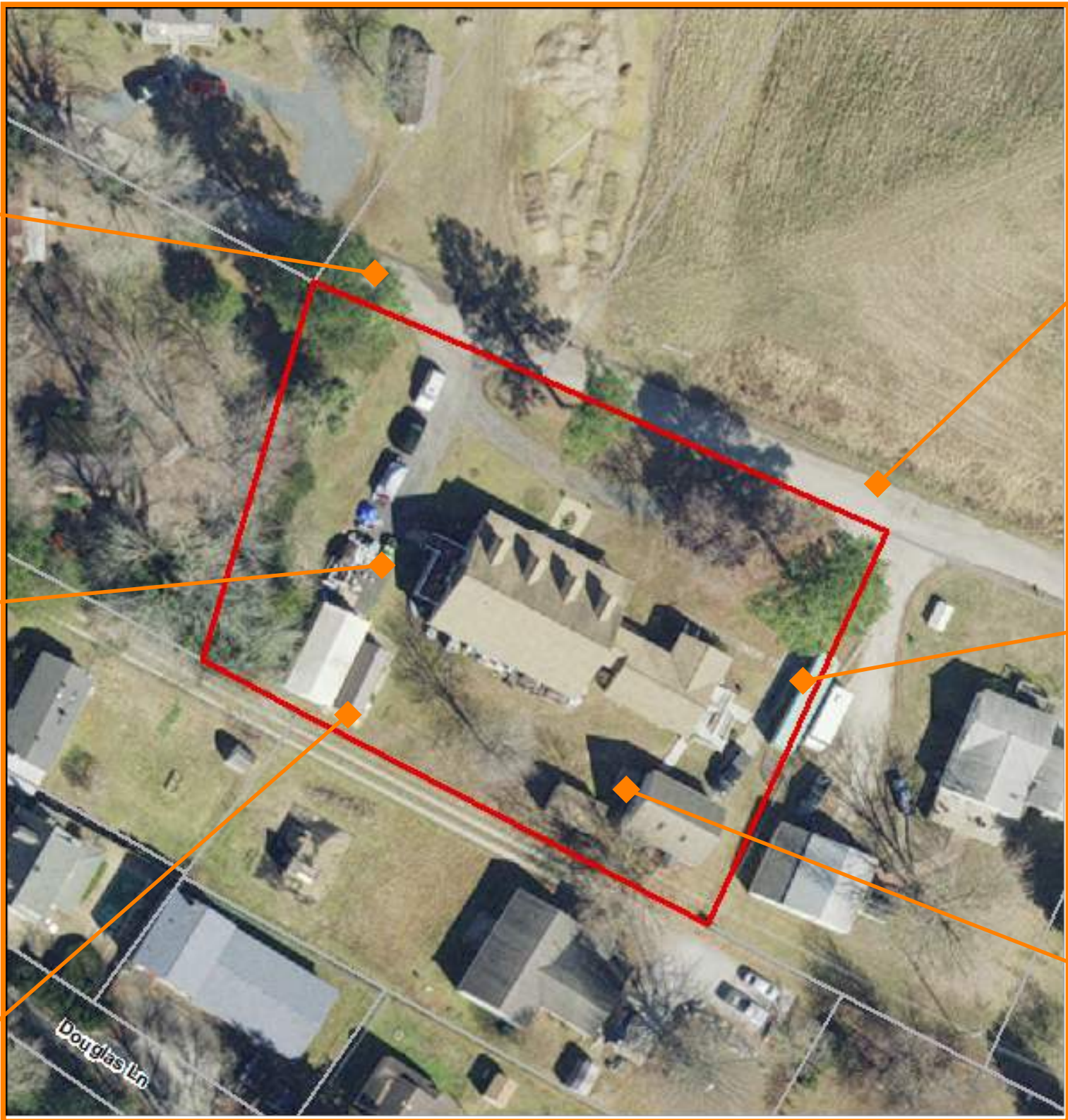
Sheet Index

1. Cover Page
2. Location Page
3. Site Details

JCC SUP-23-0009

2868 Lake Powell Rd Tourist Home





To Whom It May Concern,

All of us that live on the lane past 2868 Lake Powell Road are in full agreement of a SUP for an AirB&B. There hasn't been any noise or problems at all while guests have been staying there so far.

We are all excited to support our Grandma.

Lucy Mason
Ronny Ward

Lucy Mason + Ronny Ward
2878 Lake Powell Road

D. Waltrip

Dalton Waltrip
2870 Lake Powell Road

Hunter Waltrip

Hunter Waltrip
2874 Lake Powell Road

**Unapproved Minutes of the May 3, 2023
Planning Commission Regular Meeting**

SUP-23-0009. 2868 Lake Powell Road Tourist Home

Ms. Terry Costello, Senior Planner, stated that Ms. Mary Waltrip has applied for an SUP to allow the short-term rental of up to five bedrooms in a single-family home at 2868 Lake Powell Road. Ms. Costello the property is zoned R-2, General Residential, is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map and is located inside the PSA. Ms. Costello stated that the property is served by private water and public sewer. Ms. Costello stated that if granted, this SUP would allow for short-term rentals throughout the year. Ms. Costello further stated that no changes to the footprint of the home are proposed.

Ms. Costello stated that staff finds some favorable factors for this application, such as the presence of adequate off-street parking and that the owner will live onsite. Ms. Costello further stated that staff finds the proposed use will not negatively impact levels of service for roads and other public services.

Ms. Costello stated that staff finds the proposal to be incompatible with surrounding development and not consistent with the recommendations for short-term rentals in the 2045 Comprehensive Plan. Ms. Costello stated that staff therefore does not recommend approval of this application. Ms. Costello stated that should the Planning Commission wish to recommend approval; staff has included proposed conditions for consideration.

Mr. Polster opened the Public Hearing.

Ms. Lisa Waltrip, 2868 Lake Powell Road, Applicant, addressed the Commission in support of the application.

Mr. Tracy Douglas, 2862 Lake Powell Road, addressed the Commission in support of the application.

Ms. Emily Martel, 2886 Lake Powell Road, addressed the Commission in support of the application.

As no one further wished to speak, Mr. Polster closed the Public Hearing.

Mr. Haldeman made a motion to recommend denial of the application.

On a roll call vote, the Commission voted to recommend denial of SUP-23-0009. 2868 Lake Powell Road Tourist Home. (4-2)

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Terry Costello, Senior Planner

SUBJECT: SUP-23-0010. 2884 Lake Powell Road Tourist Home

ATTACHMENTS:

	Description	Type
▣	Staff Report	Staff Report
▣	Resolution	Resolution
▣	Location Map	Exhibit
▣	Master Plan	Exhibit
▣	Narrative	Backup Material
▣	Neighbor Support	Backup Material
▣	Unapproved Minutes of the May 3, 2023 Planning Commission Meeting	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	5/23/2023 - 9:32 AM
Development Management	Holt, Paul	Approved	5/23/2023 - 9:32 AM
Publication Management	Pobiak, Amanda	Approved	5/23/2023 - 9:51 AM
Legal Review	Kinsman, Adam	Approved	5/24/2023 - 3:34 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:04 AM
Board Secretary	Rinehimer, Bradley	Approved	6/2/2023 - 11:21 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 9:34 AM

**SPECIAL USE PERMIT-23-0010. 2884 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

SUMMARY FACTS

Applicant: Ms. Deana L. Waltrip
Landowner: Ms. Deana L. Waltrip
Proposal: To allow for a tourist home of up to four rooms in a single-family dwelling.
Location: 2884 Lake Powell Road
Tax Map/Parcel No.: 4820100009B
Property Acreage: ± .76 acres
Zoning: R-2, General Residential
Comprehensive Plan: Low Density Residential
Primary Service Area: Inside
Staff Contact: Terry Costello, Senior Planner

PUBLIC HEARING DATES

Planning Commission: May 3, 2023, 6:00 p.m.
Board of Supervisors: June 13, 2022, 5:00 p.m.

FACTORS FAVORABLE

1. There is adequate off-street parking.
2. The applicant has acknowledged that should this application be approved, she will obtain the proper licensing and inspections through the County and will be subject to appropriate use-based taxes.
3. Impacts: See Impact Analysis on Pages 3-4.

FACTORS UNFAVORABLE

1. Staff finds the proposal inconsistent with the short-term rental recommendations of the *Our County, Our Shared Future: James City County 2045 Comprehensive Plan*.
2. Impacts: See Impact Analysis on Pages 3-4.

SUMMARY STAFF RECOMMENDATION

Staff finds the proposal to be incompatible with surrounding development and not consistent with the recommendations of the 2045 Comprehensive Plan. Staff, therefore, does not recommend approval of this application. Should the Board of Supervisors approve this application, staff has included proposed conditions for consideration (Attachment No. 1).

PLANNING COMMISSION RECOMMENDTION

At its May 3, 2023, meeting, the Planning Commission recommended denial of this application by a vote of 4-2.

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

**SPECIAL USE PERMIT-23-0010. 2884 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

**PROPOSED CHANGES MADE SINCE THE PLANNING
COMMISSION MEETING**

None.

PROJECT DESCRIPTION

Ms. Deana Waltrip has applied for a Special Use Permit (SUP) to allow for the rental of an entire four-bedroom residence. The proposal includes no changes to the size or footprint of the home.

The Zoning Ordinance defines a tourist home as a “dwelling where lodging or lodging and means are provided for compensation for up to five rooms which are open to transients.” The proposed conditions limit the number of bedrooms available for rental to a maximum of four bedrooms.

The property has an existing driveway off a private 20-foot access road. The property has an existing parking area sufficient to accommodate guests. The seven-bedroom home is on private water and public sewer. In previous tourist home applications, staff calculated the number of occupants to be two people per bedroom. Therefore, proposed Condition No. 3 states that the maximum number of occupants per contract, including children, is 10.

PLANNING AND ZONING HISTORY

- There have been no legislative cases associated with the residence that was built in 2007.

SURROUNDING ZONING AND DEVELOPMENT

- The property is not located within any major or minor subdivision;

however, the lot was created as part of a family subdivision.

- The properties surrounding this parcel to the north and west are zoned R-2, General Residential.
- Properties surrounding this parcel to the south are zoned R-2, General Residential and R-8, Rural Residential.
- Properties surrounding this parcel to the east are zoned R-8, Rural Residential.
- Properties to the north, south, east, and west are all designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map.
- The property is within one mile of the Williamsburg-Jamestown Airport.

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

SPECIAL USE PERMIT-23-0010. 2884 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing

Impacts/Potentially Unfavorable Conditions	Status <i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i>	Considerations/Proposed Mitigation of Potentially Unfavorable Conditions
<u>Public Transportation: Vehicular</u>	<u>No Mitigation Required</u>	- The proposal is not anticipated to generate traffic exceeding a typical residential use. - The subject property is located off a private access road that takes access from Lake Powell Road. No changes anticipated to the Level of Service on Lake Powell Road.
<u>Public Transportation: Bicycle/Pedestrian</u>	<u>No Mitigation Required</u>	- Per the Adopted Regional Bikeways Map and Pedestrian Accommodations Master Plan, Lake Powell Road is an existing shared roadway. - There are no changes to the existing footprint of the building and bicycle and pedestrian accommodations are not required per Section 24-35(c)(2) of the Zoning Ordinance.
<u>Public Safety</u>	<u>No Mitigation Required</u>	- Fire Station 3 on John Tyler Highway serves this area of the County and is approximately 2.1 miles from the proposed tourist home property. - Staff finds this project does not generate impacts that require mitigation to the County's Fire Department facilities or services.
<u>Public Schools</u>	<u>No Mitigation Required</u>	- N/A since no residential dwelling units are proposed.
<u>Public Parks and Recreation</u>	<u>No Mitigation Required</u>	- N/A since no residential dwelling units are proposed.
<u>Public Libraries and Cultural Centers</u>	<u>No Mitigation Required</u>	- Staff finds this project does not generate impacts that require mitigation.
<u>Groundwater and Drinking Water Resources</u>	<u>No Mitigation Required</u>	- The property receives private water and public sewer. - The proposal does not generate impacts that require mitigation to groundwater or drinking water resources.

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

SPECIAL USE PERMIT-23-0010. 2884 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing

Impacts/Potentially Unfavorable Conditions	Status <i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i>	Considerations/Proposed Mitigation of Potentially Unfavorable Conditions
<u>Watersheds, Streams, and Reservoirs</u> Project is located in the Mill Creek Watershed.	<u>No Mitigation Required</u>	- The Stormwater and Resource Protection Division has reviewed this application and had no objections. No new impervious surface is proposed as part of this SUP request. Should exterior site improvements be made in the future, those improvements would be subject to additional environmental review at that time.
<u>Cultural/Historic</u>	<u>No Mitigation Required</u>	- The subject property has been previously disturbed and has no known cultural resources on-site.
<u>Nearby and Surrounding Properties</u>	<u>Mitigated</u>	- Traffic is anticipated to be typical of a residential home, the subject property must adhere to the County's Noise Ordinance, and the proposed SUP conditions will restrict commercial signage and exterior lighting. Future expansions of the use would require an SUP amendment.
<u>Community Character</u>	<u>No Mitigation Required</u>	- Lake Powell Road is not a Community Character Corridor, and this parcel is not located within a Community Character Area.
<u>Covenants and Restrictions</u>	<u>No Mitigation Required</u>	- The applicant has verified that she is not aware of any covenants or restrictions on the property that prohibit the proposed use.

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

**SPECIAL USE PERMIT-23-0010. 2884 Lake Powell Road Tourist Home
Staff Report for the June 13, 2023, Board of Supervisors Public Hearing**

2045 COMPREHENSIVE PLAN

The property is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map. Per the adopted Comprehensive Plan, recommended uses include single-family and multifamily units, accessory units, cluster or cottage homes on small lots, recreation areas, and limited commercial.

Specific to short-term rentals, the adopted Comprehensive Plan states that, if located within a residential context, short-term rentals should serve to complement the residential character of the area rather than altering its nature. Therefore, while every location can be considered uniquely, short-term rentals are most appropriately located subject to the following development standards:

- Be located on lands designated Rural Lands, Neighborhood Commercial, Community Commercial, Mixed Use, or Economic Opportunity.

This property is designated Low Density Residential, which is not one of the recommended land use designations.

- Be located on the edge or corner of an existing platted subdivision, rather than internal to it.

This parcel is not located within an existing platted subdivision but is within a grouping of closely spaced residential lots and is part of a family subdivision.

- Be located on a major road.

This property takes access from a 20-foot private right-of-way for ingress and egress. This access is off Lake Powell Road which is a major collector road. The private access crosses several lots until the entrance of the property.

- Be operated in a manner such that the property owner will continue to live and reside on the property during the rental.

It is staff's understanding that the property owner will not reside on this property but will reside in a nearby house at the times of the rentals.

Staff finds the proposal is inconsistent with the recommendations of 2045 Comprehensive Plan.

STAFF RECOMMENDATION

Staff finds the proposal incompatible with surrounding zoning and development and not consistent with the recommendations of the adopted 2045 Comprehensive Plan.

Staff, therefore, does not recommend approval of the proposed SUP. Should the Board of Supervisors approve this application, staff has included proposed conditions for consideration (Attachment No. 1).

TC/md
SUP23-10_2884LkPwTH

Attachments:

1. Resolution
2. Location Map
3. Master Plan
4. Narrative
5. Neighbor Support
6. Unapproved Minutes from the May 3, 2023, Planning Commission Meeting

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

RESOLUTION

CASE NO. SUP-23-0010 2884 LAKE POWELL ROAD TOURIST HOME

WHEREAS, the Board of Supervisors of James City County, Virginia, has adopted by Ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Ms. Deana Waltrip has applied for an SUP to allow for the operation of a tourist home within a single-family dwelling located at 2884 Lake Powell Road, and further identified as James City County Real Estate Tax Map Parcel No. 4820100009B (the “Property”); and

WHEREAS, the Planning Commission, following its public hearing on May 3, 2023, recommended denial of Case No. SUP-23-0010 by a vote of 4-2; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-23-0010; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2045 Comprehensive Plan Land Use Map designation for the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after consideration of the factors in Section 24-9 of the James City County Code, does hereby approve the issuance of Case No. SUP-23-0010 as described herein with the following conditions:

1. Master Plan. This SUP shall permit a tourist home on property located at 2884 Lake Powell Road and further identified as James City County Real Estate Tax Map Parcel No. 4820100009B (the “Property”). The use and layout of the Property shall be generally as shown on the document entitled “JCC SUP-23-0010, 2884 Lake Powell Road Tourist Home” and date stamped April 14, 2023 (the “Master Plan”), with any deviations considered per Section 24-23(a)(2) of the Zoning Ordinance, as amended. This condition does not restrict improvements typical of a residential property as determined by the Director of Planning.
2. Commencement. Evidence of a business license and updated Certificate of Occupancy shall be provided to the Director of Planning within twelve (12) months from the issuance of the SUP, or this SUP shall automatically be void.
3. Number of Rental Room Occupants. There shall be no more than four (4) bedrooms available for rent to visitors and no more than eight (8) rental occupants total at any one time.
4. Contracts per Rental Period. There shall not, during any period of time, be simultaneous rentals of the Property under separate contracts.
5. Signage. No signage related to the tourist home shall be permitted on the Property.
6. Parking. Off-site parking for this use shall be prohibited. No oversized commercial vehicles associated with rental occupants, such as, but not limited to, buses, commercial trucks, and trailers shall be allowed to park on the Property.

7. Compliance Review. On or before November 28, 2025, the owner of the Property must submit a letter to the Director of Planning requesting either continuance or cancellation of the SUP. If the owner requests cancellation of the SUP or does not submit the required letter, the Director of Planning shall initiate proceedings for the Board of Supervisors to revoke the SUP pursuant to section 24-12 of the County Code. If the owner of the Property requests continuance of the SUP, the owner must also submit a statement certifying that the use and Property are in compliance with all SUP conditions. The Director of Planning shall then prepare a memorandum setting forth any and all complaints received by staff since issuance of the SUP and any violations of the SUP conditions. The Director of Planning shall place the compliance review on the Board of Supervisors' February 2026 Board meeting as a Public Hearing item at no cost to the Property owner. Following the public hearing, the Board of Supervisors shall determine whether to initiate proceedings to revoke the SUP due to incompatibility with the surrounding neighborhood, violation of the SUP conditions, or any other reason related to the health, safety, and welfare of the community or may instead set a new compliance review date.
8. Severance Clause. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

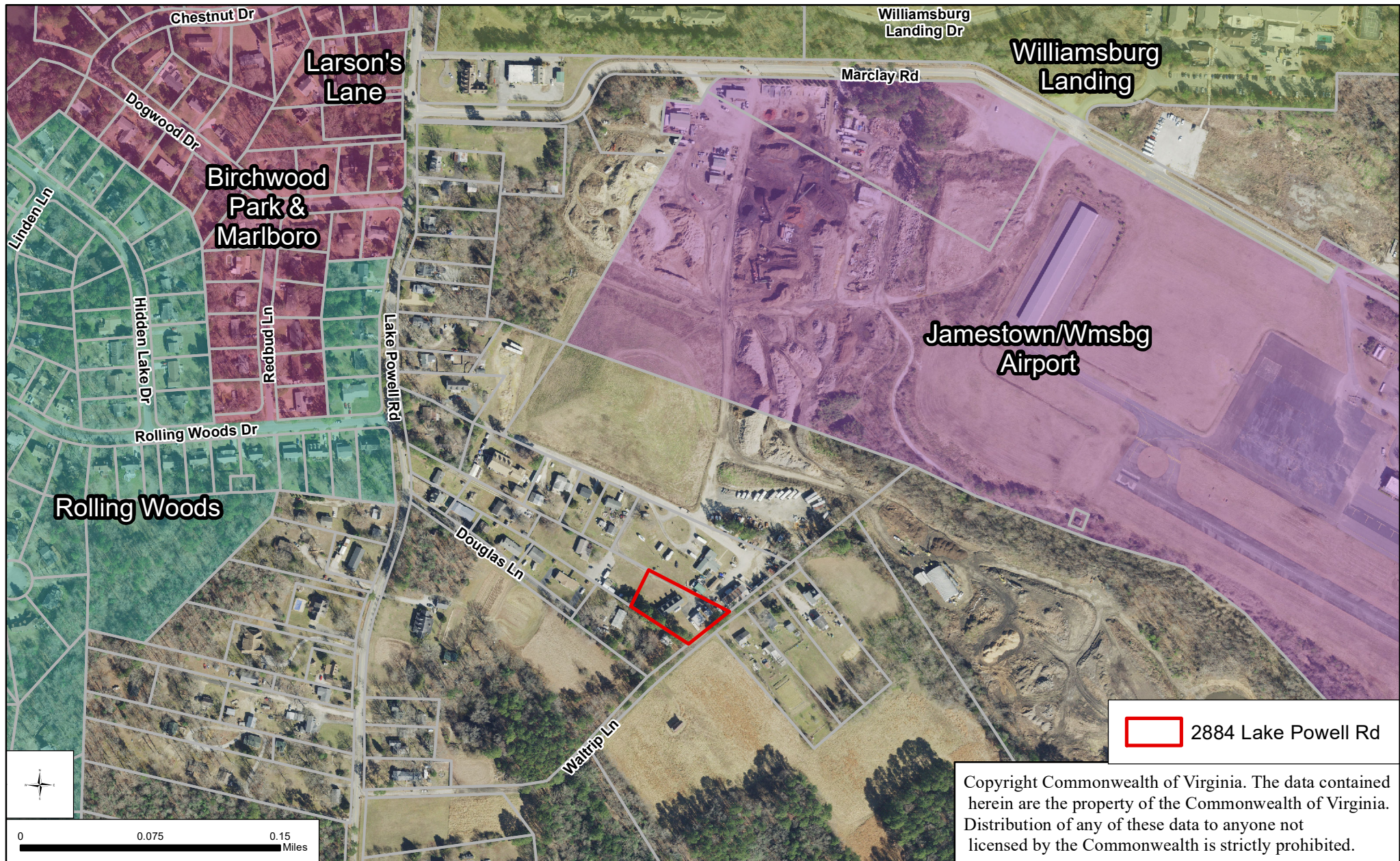
VOTES

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
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Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023.

JCC SUP-23-0010

2884 Lake Powell Rd Tourist Home



 2884 Lake Powell Rd

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SUP-23-0010, 2884 Lake Powell Rd Tourist Home

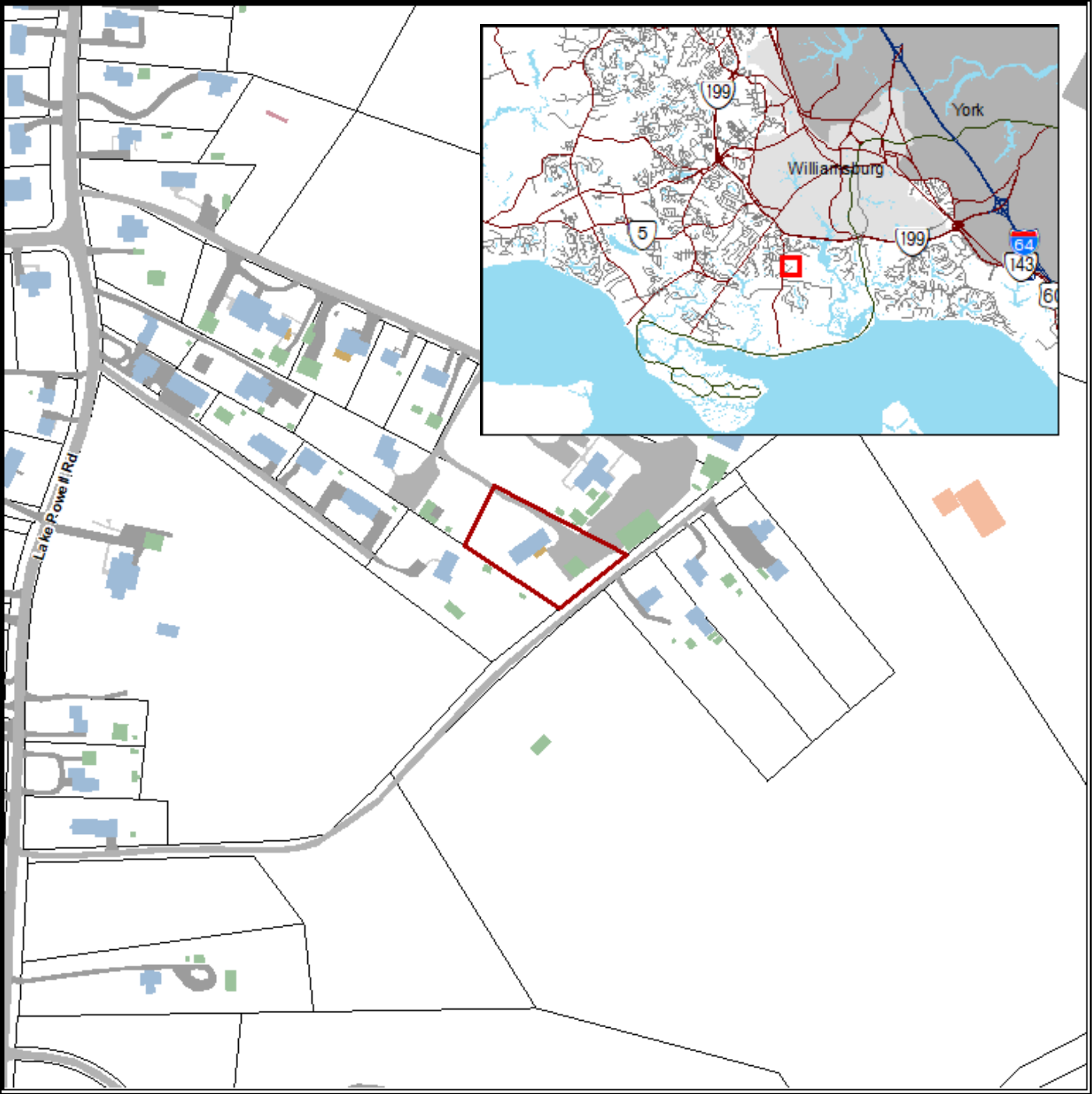
Property Information

4820100009B
Deana L. Waltrip
2884 Lake Powell Road
Williamsburg, VA 23185
Zoning: R2 General Residential
2045 Comp Plan: Low Density
Residential
Legal Acreage: .76

General Notes

1. Site is served by a private well and public sewer.
2. Property is not located in a FEMA Flood zone.
3. Property does not contain Resource Protected Area.
4. Property has an existing driveway.
5. A minimum of four parking spots shall be provided (one parking spot per bedroom).

April 14, 2023



Maps Not to Scale

Adjacent Properties

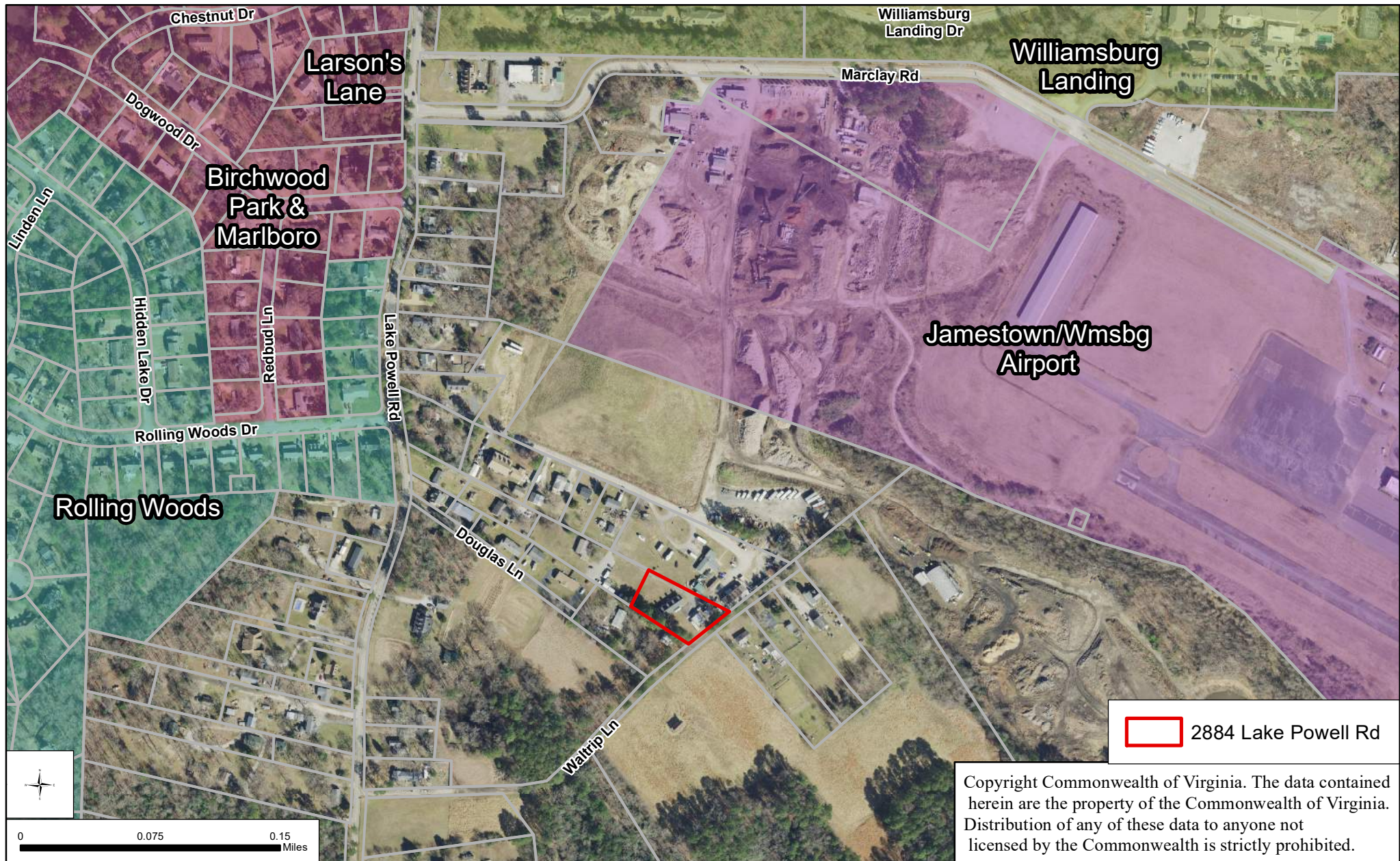
4820100008 Dudley S. Waltrip Jr. 2892 Lake Powell Rd Williamsburg, VA 23185 R2 General Residential	4840100002 Mary H. & Lloyd M. Waltrip 150 Waltrip Ln Williamsburg, VA 23185 R8 Rural Residential
4820100009A Brian C. Waltrip 2882 Lake Powell Rd Williamsburg, VA 23185 R2 General Residential	4840100005 Williamsburg Winery LTD 5800 Wessex Hundred Williamsburg, VA 23185 R8 Rural Residential
4840100001 Tracy S. Douglas 2862 Lake Powell Rd Williamsburg, VA 23185 R2 General Residential	

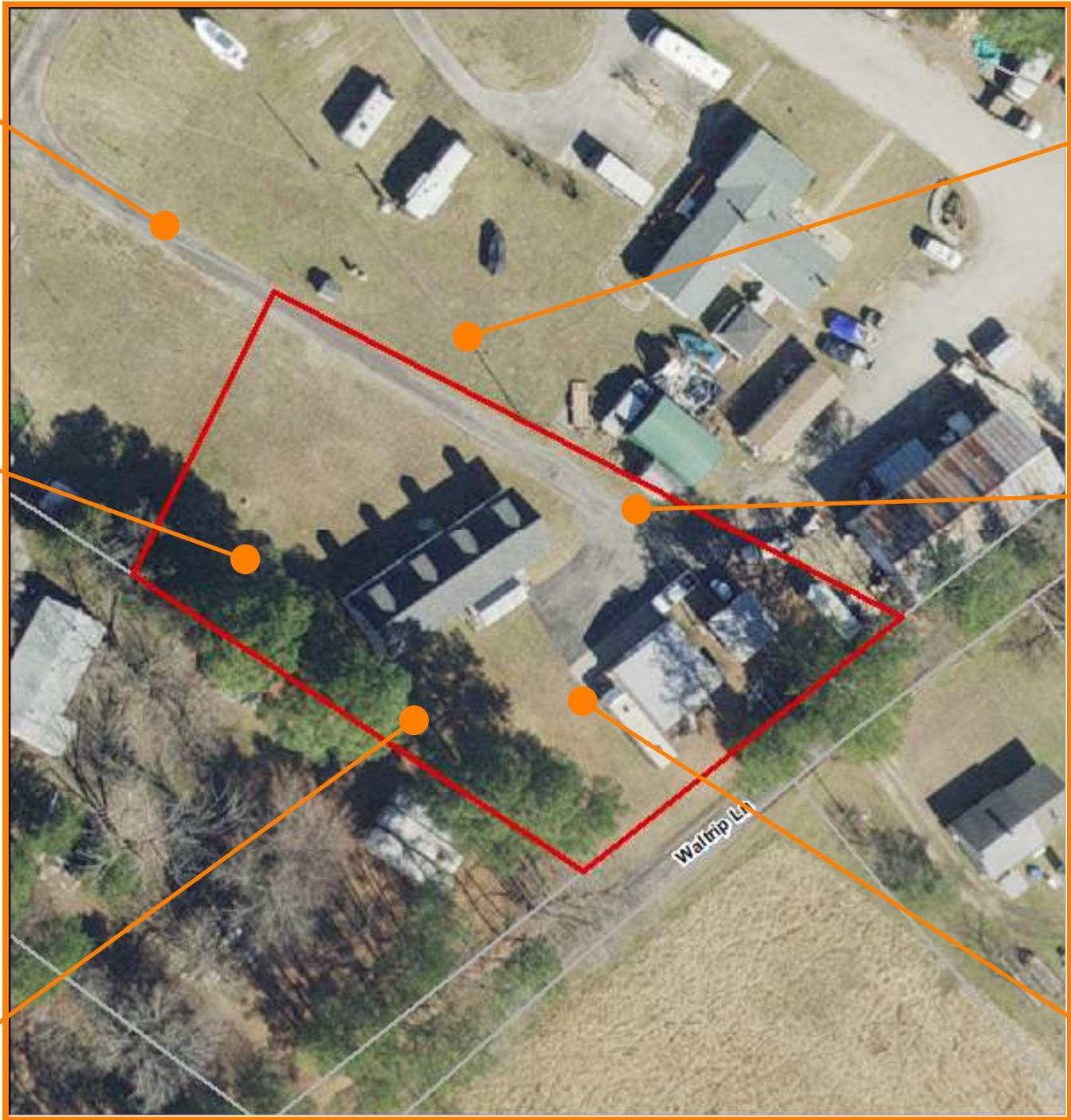
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2. Location Page
3. Site Details

JCC SUP-23-0010

2884 Lake Powell Rd Tourist Home





Short Term Rental Narrative for
2884 Lake Powell Rd, Williamsburg VA, 23185

My name is Dena Waltrip and I live at the above address, I am a lifelong resident of James City County and an employee of James City Service Authority for over 22 & ½ years. My oldest child lives in Toano and my youngest is serving in the Air Force which now also makes me an empty nester.

My home is located on a private drive off Lake Powell Rd. I'm pretty much adjacent to the Williamsburg Jamestown Airport and Yard Works. I'm also located about 1 mile from Williamsburg Winery and centrally located within a 5 or 6-mile radius of Water Country, Bush Gardens, Colonial Williamsburg, College of William & Mary, and Jamestown Settlement.

My house will be available for full rental (3 bedrooms, 3 bathrooms, kitchen, dining room, den, and utility room - minus rooms that are locked off) or rental of a few rooms. When I'm not staying in my home with the renters, I will be staying next door in my childhood home which is located approximately 90-100 feet away. Not only is there access to my home from Lake Powell Rd but also a private entrance off Waltrip Ln.

I have always been a people person and would love to share my home and knowledge of our community with visitors. On any given day you can see deer, rabbits, squirrels, geese, turkeys, hawks, bald eagles, and numerous other bird's native to our area. I do consider my home very safe for any potential renters not only because of required detectors, fire extinguishers and motion sensor lights but also because the nearby houses on the property are all family.

If any further information is required, please advise at your earliest convenience.

Thank you,

Dena Waltrip

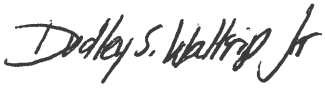
pudnbud@hotmail.com

(757) 592-8998

To whom it may concern.

As a resident of 2892 Lake Powell Rd, I have no concerns or objections to the proposed S.U.P. for 2884 Lake Powell Rd.

Dudley S. Waltrip Jr.



05/01/2023

To the James City County Planning Commission or To Whom it may concern.

We; Brian and Simone Waltrip, reside at 2882 Lake Powell Rd, which is next door to Ms. Dena Waltrip 2884 Lake Powell Rd. We do not have any objections to the Special Use permit proposed, even as we share the same driveway easement.

Thank you.

Brian and Simone Waltrip

Brian Waltrip
Simone Waltrip

**Unapproved Minutes of the May 3, 2023
Planning Commission Regular Meeting**

SUP-23-0010. 2884 Lake Powell Road Tourist Home

Ms. Terry Costello stated that Ms. Dena Waltrip has applied for an SUP to allow for the short-term rental of a four-bedroom single-family home at 2884 Lake Powell Road. Ms. Costello stated that the property is zoned R-2, General Residential, is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map and is located inside the PSA. The property is served by private water and public sewer. Ms. Costello stated that if granted, this SUP would allow for short-term rentals throughout the year. Ms. Costello further stated that no changes to the footprint of the home are proposed.

Ms. Costello stated that staff finds some favorable factors for this application, such as the presence of adequate off-street parking and that the owner will obtain the proper licensing and inspections. Ms. Costello stated that staff finds the proposed use will not negatively impact levels of service for roads and other public services.

Ms. Costello stated that staff finds the proposal to be incompatible with surrounding development and not consistent with the recommendations for short-term rentals in the 2045 Comprehensive Plan. Ms. Costello stated that staff therefore does not recommend approval of this application. Ms. Costello stated that should the Planning Commission wish to recommend approval, staff has included proposed conditions for consideration.

Mr. Polster opened the Public Hearing.

Ms. Dena Waltrip, 2884 Lake Powell Road, Applicant, addressed the Commission in support of the application.

Mr. Tracy Douglas, 2862 Lake Powell Road, addressed the Commission in support of the application.

As no one further wished to speak, Mr. Polster closed the Public Hearing.

Mr. Polster opened the floor for discussion by the Commission.

Mr. O'Connor stated that he has concerns about recommending approval of short-term rentals when they do not meet the criteria set forth in the Comprehensive Plan. Mr. O'Connor stated that he finds this application to be inconsistent with the Comprehensive Plan and will not support the application.

Mr. Polster inquired about the locations of existing approved and proposed short-term rentals on Lake Powell Road.

Staff provided a map showing the location of the approved and proposed short-term rentals.

Mr. Polster stated that he asked for the map in order to see the impact of short-term rentals within neighborhoods Mr. Polster further stated that he has concerns about the number of applications for this particular location.

Mr. Krapf stated that while this property is not within a subdivision, he does not find it compatible with the Comprehensive Plan and the land use designation. Mr. Krapf stated that he is concerned about the increasing number of short-term Rental SUP applications and the cumulative impact on the County. Mr. Krapf stated that he will not support the application.

Dr. Rose inquired about the land use designation for the previously approved short-term rentals in that area.

Ms. Costello stated that all of the properties are designated Low Density Residential.

Mr. Polster noted that one of the properties was designated Airport. Mr. Polster further noted that he tries to go by a scorecard where the application meets three out of the four Comprehensive Plan criteria.

Mr. O'Connor stated that he feels the issue is part of the larger discussion on affordable housing stock and density within the PSA.

Mr. Haldeman noted that in some instances, the income from short-term rental can help the property owner afford to remain in the home, so while approving a short-term rental might remove a property from the affordable housing stock, it could make the home affordable for the current owner. Mr. Haldeman noted that there seems to be a saturation point with these applications which may affect approval of ones coming in now and hereafter.

Mr. Rodgers noted that this application seems to have a number of protections in place to ensure compatibility with the neighborhood. Mr. Rogers inquired if the other approved sort-term rentals provide similar assurances.

Mr. Holt stated that he did not have a synopsis of Planning Commission discussion and action for the previous applications; however, he could request that staff look at the minutes for those applications.

Mr. Polster stated that short-term rentals are a recent phenomenon and that the Commission has struggled with finding a way to review the applications and apply appropriate criteria. Mr. Polster stated that as with many of the recent innovations in land use, the Commission is having to learn as it goes along and see what the impacts are based on approved applications. Mr. Polster stated that the one improvement in the process is that a SUP condition has been brought forward to ensure periodic review of the SUP and a mechanism to revoke the SUP if problems arise.

Mr. Haldeman stated that he is concerned about this application being within an existing neighborhood and not on a main road.

Dr. Rose inquired if the SUP would still run with the land even if the property is sold.

Mr. Holt stated that the SUP would have a condition requiring review by the Board of Supervisors at a specific time.

Ms. Costello stated that the Board would review the SUP in February of 2026.

Dr. Rose stated that few of the short-term rental applications meet all the criteria in the Comprehensive Plan and that the Commission has used discretion on past cases based on the impacts to the adjacent community. Dr. Rose stated that in this instance there has not been any concern raised about the impact of this application.

Mr. O'Connor stated that he is concerned that the SUPs are approving the short-term rental of the property and not just tourist homes or vacation rentals which could potentially lead to other transient occupancy uses. Mr. O'Connor stated that other short-term rentals could change the tone and tenor of a neighborhood.

Mr. Haldeman made a motion to recommend denial of the application.

On a roll call vote, the Commission voted to recommend denial of SUP-23-0010. 2884 Lake Powell Road Tourist Home. (4-2)

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Jose Ribeiro, Senior Planner II; Suzanne Yeats, Planner

SUBJECT: ORD-22-0004. Amendments to the Zoning Ordinance Regarding Community Recreation Facilities in Residential Districts

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Board of Supervisors' Initiating Resolution, April 12, 2022	Backup Material
☐	May 9, 2023, Board of Supervisors Memorandum	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	5/26/2023 - 3:20 PM
Development Management	Holt, Paul	Approved	5/26/2023 - 3:21 PM
Publication Management	Daniel, Martha	Approved	5/26/2023 - 3:24 PM
Legal Review	Kinsman, Adam	Approved	5/26/2023 - 3:50 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:02 AM
Board Secretary	Purse, Jason	Approved	6/6/2023 - 8:32 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 8:58 AM

MEMORANDUM

DATE: June 13, 2023

TO: The Board of Supervisors

FROM: Jose R. Ribeiro, Senior Planner II/Landscape Planner
Suzanne Yeats, Planner

SUBJECT: ORD-22-0004. Amendments to the Zoning Ordinance Regarding Community Recreation Facilities in Residential Districts

At its meeting on April 12, 2022, the Board of Supervisors adopted an Initiating Resolution to consider possible amendments to the James City County Zoning Ordinance regarding community recreation facilities (Attachment No. 1).

On February 9, 2023, the Policy Committee reviewed the information provided by staff and found that, overall, the issue was a very infrequent problem and would require substantial staff oversight; and that there are perhaps easier ways to handle issues involving community recreation facilities. The Policy Committee unanimously recommended by a vote of 4-0 that the Planning Commission not recommend adoption of this Ordinance amendment unless the problem becomes more frequent.

Staff presented the proposed Ordinance at the April 5, 2023, meeting of the Planning Commission. On a roll call vote, the Planning Commission voted to not recommend approval of ORD-22-0004 to the Board of Supervisors by a vote of 5-0 (Mr. Rodgers and Mr. Rose were absent). There have been no proposed changes since the April Planning Commission meeting.

Staff presented the proposed Ordinance at the May 9, 2023, meeting of the Board of Supervisors (see Attachment No. 2) where it was deferred to the June 13, 2023, Regular Meeting.

Recommendation

Staff recommends deferring this Ordinance amendment indefinitely. Should the Board wish to consider this item in the future, staff will readvertise this Ordinance amendment pursuant to public notice requirements per State Code.

JRR/SY/md
ORD22-4ZOACRFac-mem

Attachments:

1. Board of Supervisors' Initiating Resolution, April 12, 2022
2. May 9, 2023, Board of Supervisors Memorandum

RESOLUTION

INITIATION OF CONSIDERATION OF AMENDMENTS TO THE ZONING ORDINANCE

TO CONSIDER POSSIBLE AMENDMENTS REGARDING COMMUNITY

RECREATION FACILITIES IN RESIDENTIAL DISTRICTS

WHEREAS, section 15.2-2286(A)(7) of the Code of Virginia, 1950, as amended (the "Virginia Code"), and County Code Section 24-13 authorize the Board of Supervisors of James City County, Virginia (the "Board"), to, by resolution, initiate amendments to the regulations of the Zoning Ordinance that the Board finds to be prudent and required by public necessity, convenience, general welfare, or good zoning practice; and

WHEREAS, the Board is of the opinion that the public necessity, general welfare, and good zoning practice warrant the consideration of amendments to the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate amendment of the James City County Code, Chapter 24, Zoning in order to consider possible amendments regarding community recreation facilities in residential districts. The Planning Commission shall hold at least one public hearing on the consideration of amendments to said Zoning Ordinances and shall forward its recommendation to the Board of Supervisors in accordance with the law.


John J. McGlennon
Chairman, Board of Supervisors

ATTEST:


Teresa J. Saeed
Deputy Clerk to the Board

ICENHOUR
HIPPLE
LARSON
SADLER
MCGLENNON

VOTES

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
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Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2022.

InitConsCommRecFac-res

MEMORANDUM

DATE: May 9, 2023

TO: The Board of Supervisors

FROM: Jose R. Ribeiro, Senior Planner II/Landscape Planner
Suzanne Yeats, Planner

SUBJECT: ORD-22-0004. Amendments to the Zoning Ordinance Regarding Community Recreation Facilities in Residential Districts

At its meeting on April 12, 2022, the Board of Supervisors adopted an Initiating Resolution to consider possible amendments to the James City County Zoning Ordinance regarding community recreation facilities (Attachment No. 2). Currently, the James City County Zoning Ordinance defines recreation facilities and further classifies them as being either “commercial” or “community” and is written as follows:

- Recreation facility, Commercial. *A place designed and equipped for the conduct of leisure-time activities, sports, or other customary and usual recreation activities and which is operated as a business.*
- Recreation facility, Community. *A place designed and equipped for recreational activities by the inhabitants of a residential or mixed-use project and which is operated for noncommercial purposes by a developer, homeowners association, nonprofit organization, or a governmental agency.*

It has come to staff’s attention that at least one neighborhood’s community recreation facility is being used by group and team sports not affiliated with the neighborhood. Such additional group and team sport use does bring with it the potential for impacts such as increased vehicular traffic, noise, lighting, and a duration of use not commonly found with typical neighborhood facilities. The purpose of the Initiating Resolution and this Ordinance amendment would be to classify community recreation facilities with recurring use by outside entities as a Specially Permitted Use, allowing public input, analysis, and mitigation of impacts, as determined.

In the existing Zoning Ordinance, community recreation facilities are a permitted use in most Residential and Mixed Use Districts as shown in the table below:

DISTRICT	Permitted	SUP
A-1, General Agricultural		SUP
R-1 Limited Residential	P	
R-2, General Residential	P	
R-3, Residential Redevelopment	P	
R-4, Residential Planned Community	P	
R-5, Multifamily Residential	P	
R-6, Low Density Residential	P	
R-8, Rural Residential		SUP
PUD, Planned Unit Development	P	
MU, Mixed Use	P	
EO, Economic Opportunity	P	

Staff analyzed the Zoning Ordinance and other parts of the County Code as it relates to Recreation Facilities, Commercial and Community, and presented their findings to the Policy Committee at its meeting on December 8, 2022. During the discussion, the Policy Committee requested further investigation and provided a list of questions to be addressed (questions below with staff's responses in italics):

- How widespread is the problem? How many complaints have been received? Are homeowners associations (HOAs) handling the problem?

Complainants	Is an HOA present in the related neighborhood?	Are there other entities present in this neighborhood?	HOA or other entity actions in response to complaint(s).
1	No	<i>Yes, a Recreation Association. The complainant was not a member of the Recreation Association.</i>	<i>There is not an HOA in this neighborhood. County staff is not able to comment on actions taken by the Recreation Association.</i>
Summary of Issues Presented by the Complainant			
<i>-Recreation facility being used by outside recreation groups and also for non-recreational uses (fundraisers, private parties, other organizations). -Parking outside facility parking areas (on streets). -Increased traffic, vehicles making unsafe traffic movements. -Safety issue for residents and children from increased traffic generally and also specifically in terms of children crossing to a bus stop. -Neighborhood children unable to use the facility due to outside group use. -Lack of information to neighborhood residents about activities and schedules. -Ownership of the recreation facility not by the neighborhood but by an outside group whose members did not live in the neighborhood, perceived lack of accountability to neighbors. -Noise.</i>			

- How would the proposed amendment be enforced?

The Zoning Administrator is empowered to administer and enforce the requirements of the Zoning Ordinance.

- What specific activities would be covered? Sports? Weddings? Card Games?

Staff would evaluate each proposal based on the language of the Ordinance. If the draft language under consideration were adopted, staff would evaluate whether the recreation facility "included the recurring use of by a team, organization, or other entity who are not primarily residents of the neighborhood within which the facility is located." Key considerations would be one-time versus recurring use, and whether the make-up of the team, organization, or other entities using the facility on a recurring basis were primarily residents (50% or greater) of the neighborhood the facility is located in.

- What conditions would apply to the Special Use Permit (SUP)?

Conditions would vary on a case-by-case basis; staff would review each case and work to mitigate impacts such as noise, visual impact, or traffic. Staff would also review the duration of the proposed use and the location of use: i.e., indoor clubhouse, outdoor athletic fields, swimming pools, etc. (See additional discussion under the next question.)

Are there other ways to handle this problem if it is a problem?

There are some general regulations or resources that may be pertinent to issues noted above and they include:

- *Noise.* The County has noise regulations in [Section 15-20](#) which are written to address “excessive noise” and would apply in residential zoned districts or areas.
- *Lighting.* The County has standards for lighting in the Zoning Ordinance that are designed in part to limit light trespass. Unless they pre-dated the Ordinance, recreation facilities would be built in accordance with these standards, and any new lighting would require a site plan amendment to demonstrate compliance.
- *Parking.* The County has standards for minimum numbers of parking space within the Zoning Ordinance. New or expanded facilities would require site plans that demonstrate compliance with the minimum number of spaces required.
- *Structure Height.* Each zoning district has height limitation standards.
- *Parking on Streets.* The County has a mix of private streets and public streets. For public streets, [Section 13-36](#) permits the County Administrator to restrict or prohibit parking upon County-maintained roads and streets, and roads part of the state secondary system within the County, and may designate the time, place, and manner vehicles may be allowed to park.
- *Unsafe Driving.* The Police Department is able to assist in monitoring and enforcing traffic laws.

Staff is not aware of existing regulations that would apply to issues directly related to the following:

- The exact nature of use of a recreation facility;
- Duration of use of a recreation facility (either daily hours of operation or number of months per year);
- Resident/non-resident status of use of a recreation facility;
- Evaluation of the volume of traffic in relation to a particular road and its capacities/geometry; and
- Visual impacts of the facility (other than height and lighting described above).

Recommendation

On February 9, 2023, the Policy Committee reviewed the information provided by staff and found that, overall, the issue was a very infrequent problem and would require substantial staff oversight; and that there are perhaps easier ways to handle issues involving community recreation facilities. The Policy Committee unanimously recommended by a vote of 4-0 that the Planning Commission not recommend adoption of this Ordinance amendment unless the problem becomes more frequent.

Staff presented the proposed Ordinance at the April 5, 2023, meeting of the Planning Commission. On a roll call vote, the Planning Commission voted to not recommend approval of ORD-22-0004 to the Board of Supervisors by a vote of 5-0 (Mr. Rodgers and Mr. Rose were absent).

There have been no proposed changes since the April Planning Commission meeting.

JRR/SY/md
ORD22-4ZOACommRec-mem

Attachments:

1. Ordinance, Strikethrough Version
2. Ordinance, Clean Version
3. Board of Supervisors’ Initiating Resolution, April 12, 2022
4. Unapproved Minutes from the April 5, 2023, Planning Commission Meeting
5. Unapproved Minutes from the February 9, 2023, Policy Committee Meeting
6. Unapproved Minutes from the December 8, 2022, Policy Committee Meeting

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Paxton Condon, Deputy Zoning Administrator

SUBJECT: Z-23-0002. Colonial Heritage - Pickleball Proffer Amendment

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	1. Ordinance	Ordinance
☐	2. Amended Proffers	Exhibit
☐	3. Proposal Summary	Exhibit
☐	4. Existing Proffers	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	5/26/2023 - 12:38 PM
Development Management	Holt, Paul	Approved	5/26/2023 - 12:38 PM
Publication Management	Daniel, Martha	Approved	5/26/2023 - 1:20 PM
Legal Review	Kinsman, Adam	Approved	5/26/2023 - 3:49 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:05 AM
Board Secretary	Rinehimer, Bradley	Approved	6/2/2023 - 11:20 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 9:34 AM

MEMORANDUM

DATE: June 13, 2023

TO: The Board of Supervisors

FROM: Paxton Condon, Deputy Zoning Administrator

SUBJECT: Case No. Z-23-0002. Colonial Heritage - Pickleball Proffer Amendment

On November 27, 2001, the Board of Supervisors approved rezoning and Master Plan applications for a 2,000-unit gated and age-restricted community known as Colonial Heritage at Williamsburg. The applications rezoned $\pm$ 777 acres from A-1, General Agricultural, and M-1, Limited Business/Industrial, to MU, Mixed Use with Proffers. The Master Plan included 425,000 square feet of commercial development fronting on Richmond Road.

On December 14, 2004, the Board of Supervisors approved rezoning and Master Plan amendment applications to incorporate the neighboring $\pm$ 731-acre Boy Scouts of America (BSA) property into the Colonial Heritage development. At that time, the western two-thirds of the BSA property ($\pm$ 503 acres) were located outside the Primary Service Area (PSA), zoned A-1, and designated Rural Lands. The eastern one-third ($\pm$ 229 acres) was located inside the PSA, zoned A-1, and designated Low Density Residential. The applicant received approval to rezone the eastern 229-acre portion from A-1, General Agricultural, to MU, Mixed Use, with Proffers, with no increase to the existing 2,000-unit cap. This 229-acre portion joined the Colonial Heritage Homeowners Association (HOA) as part of its age-restricted community.

As part of these rezonings, the applicant proffered certain conditions which were intended to provide for certain types of benefits specified in the Low Density Residential provisions of the Comprehensive Plan and in the Zoning Ordinance to allow for densities greater than one dwelling unit per acre. Existing Proffer No. 4.B. of the proffers applicable to the residential portion of the development calls for the developer to provide “Tennis courts numbering not fewer than three (3).”

Mr. Benming Zhang of Kaufman & Canoles, P.C. has now applied on behalf of the Colonial Heritage HOA to amend the adopted proffers for Colonial Heritage to allow for additional pickleball courts, in lieu of being limited to only tennis courts. Mr. Zhang has provided a proposal summary (Attachment No. 3) detailing the reasons for the request. No other changes are proposed as part of this application.

This proposed amendment would change Condition No. 4.B. to read “***recreational courts for spatial activities including but not limited to racket sports such as pickleball and tennis numbering not fewer than three (3).***”

Section 15.2-2302 of the Code of Virginia (1950), as amended, allows the Board of Supervisors to waive the requirements for a public hearing where such amendments do not affect conditions of use or density. This application does not affect conditions of use or density. As such, the Board of Supervisors voiced no objection to the applicant’s request to consider amending these proffers as a consideration item.

Recommendation

Staff finds that the application is consistent with the Zoning Ordinance and with the 2045 Comprehensive Plan. Staff also finds the application consistent with the recommended Development Guidelines found in the adopted Parks & Recreation Master Plan. These guidelines call for the provision of “Sport Courts,” generally, and are not specific to needing only tennis courts. Staff recommends that the Board approve the Proffer amendment.

Case No. Z-23-0002. Colonial Heritage - Pickleball Proffer Amendment

June 13, 2023

Page 2

PC/md

Z23-2ColHerPckbll-mem

Attachments:

1. Ordinance
2. Amended Proffers
3. Proposal Summary
4. Existing Proffers

ORDINANCE NO. _____

AN ORDINANCE TO AMEND EXISTING PROFFERS TO ALLOW FOR ADDITIONAL
USES AS DESCRIBED IN CASE NO. Z-23-0002. COLONIAL HERITAGE - PICKLEBALL
PROFFERS AMENDMENT

- WHEREAS, on November 27, 2001, the Board of Supervisors approved Case No. Z-0004-2000/MP-0001-2001, which rezoned approximately 777 acres located at 6175 Centerville Road, 6799 Richmond Road, 6895 Richmond Road, 6993 Richmond Road, and 6991 Richmond Road, further identified as Parcel Nos. (1-21), (1-22), (1-32), (1-11), and (1-32a) on James City County Real Estate Tax Map Nos. (23-4), (23-4), (24-3), (31-1), and (24-3), respectively (collectively, the “Property”), from A-1, General Agricultural, and M-1, Limited Business Industrial, to MU, Mixed Use, with Proffers; and
- WHEREAS, on December 14, 2004, the Board of Supervisors approved Case Nos. Z-0003-2002/Z-0004-2002/MP-0001-2002, which rezoned approximately 229 acres from A-1, General Agricultural, to MU, Mixed Use with Proffers, and rezoned approximately 503 acres from A-1, General Agricultural, to A-1, General Agricultural with Proffers, on properties identified as Parcel No. (1-21) on James City County Real Estate Tax Map No. (23-4), Parcel No. (1-32) on Tax Map No. (24-3), Parcel No. (1-11) on Tax Map No. (31-1); and Parcel No. (1-7) on Tax Map No. (22-4); and
- WHEREAS, on behalf of the Colonial Heritage Homeowners Association (the “Association”), Mr. Benming Zhang of Kaufman & Canoles, P.C. has applied to amend the Existing Proffers; and
- WHEREAS, the Existing Proffers require the Association to maintain and regulate “tennis courts numbering not fewer than three;” and
- WHEREAS, the Association desires to amend the Existing Proffers to require the Association to maintain and regulate “recreational courts for spatial activities including but not limited to racket sports such as pickleball and tennis not fewer than three (3)” to allow for additional pickleball courts on the Property; and
- WHEREAS, the Board of Supervisors finds that the amended proffers proposed as part of Case No. Z-23-0002 to be required by public necessity, convenience, general welfare, and good zoning practice.
- NOW, THEREFORE, BE IT ORDAINED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-23-0002 as described herein and accepts the amended voluntary proffers.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

VOTES

AYE NAY ABSTAIN ABSENT

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023.

Z23-2ColHerPckbll-ord

AMENDED PROFFERS

COLONIAL HERITAGE AT WILLIAMSBURG: PICKLEBALL OR HARD SURFACE

COURTS

THESE AMENDED PROFFERS are made this 16 day of May,
2023, by and among:

COLONIAL HERITAGE LLC, a Virginia limited liability company ("Colonial Heritage"), COLONIAL HERITAGE HOMEOWNERS ASSOCIATION, INC., a Virginia corporation ("HOA") (to be indexed as grantors) and

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

RECITALS

R-1. Colonial Heritage is a wholly-owned subsidiary of and is managed by U.S. HOME, LLC, a Delaware limited liability company ("U.S. Home").

R-2. Colonial Heritage has developed an age-restricted residential community/subdivision known as Colonial Heritage, located in the County of James City, Virginia, more particularly described on Exhibit A attached hereto and made a part hereof. The property described on Exhibit A is referred to herein as the "Colonial Heritage Property."

R-3. In 2004, the James City County Board of Supervisors approved rezoning of a portion of the Colonial Heritage Property as Mixed-Use ("MU") and approving a master plan (the "Master Plan") in connection with the development of the Colonial Heritage age-restricted active adult community in cases labelled: Z-3-02/Z-4-02/MP-1-02, and SUP-21-04 (collectively, the "2004 Rezoning").

R-4. The 2004 Rezoning was approved subject to certain Amended and Restated Proffers dated December 2, 2004 and recorded in the Office of the Clerk of the Circuit Court for

the City of Williamsburg and County of James City, Virginia Instrument No. 050000448 (the “2004 Proffers”).

R-5. The HOA now holds title to certain lands constituting common area within the Colonial Heritage development on which are located recreation amenities and open space as shown on the Master Plan.

R-6. The 2004 Proffers require tennis courts numbering not fewer than three (3) to be provided by the developer and later maintained and regulated by the HOA.

R-7. The HOA desires to replace the term or phrase “tennis courts” with “recreational courts for spatial activities including but not limited to racket sports such as pickleball and tennis,” and has applied for a rezoning/proffer amendment in case labelled Z-23-0002. The purpose of replacing the phrase “tennis courts” required by the 2004 Proffers is to increase the number of available pickleball courts in Colonial Heritage to six (6) total pickleball courts based on the increased popularity of pickleball among residents of Colonial Heritage. The proposed language affords greater flexibility to the HOA when adapting the uses of the courts with the popular racket sport in the future while conforming to the intent of the 2004 Proffers without requiring future proffer amendments.

R-8. Because these Amended Proffers do not affect conditions of use or density, Colonial Heritage and the HOA jointly request under Section 15.2-2302(A) of the Virginia Code and Section 24-20(C) of the County’s Zoning Ordinance to waive any public hearing otherwise required under any statute, ordinance, or proffer requiring a public hearing prior to amendment of proffers. All Colonial Heritage residents have been duly notified of the proposed changes to the existing 2004 Proffers.

NOW, THEREFORE, for and in consideration of the approval by the County of these Amended and Restated Proffers, and pursuant to Section 15.2-2302(A) of the Virginia Code and Section 24-20(C) of the County's Zoning Ordinance, Colonial Heritage and the HOA agree to the following amended proffers:

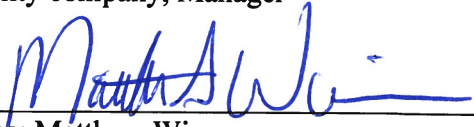
PROFFERS

1. "Tennis courts" shall be stricken under Paragraph 4(B) of Section II of the 2004 Proffers and replaced with "recreational courts for spatial activities including but not limited to racket sports such as pickleball and tennis," for purposes of allowing for a total of six (6) dedicated pickleball courts or future courts which shall be maintained by the HOA.

2. Except as expressly amended hereby, the 2004 Proffers shall remain in full force and effect as if fully incorporated herein, and shall be applicable to any portion of the Colonial Heritage Property now owned by Colonial Heritage or the HOA. To the extent a conflict exists between the 2004 Proffers and these Amended Proffers, these Amended Proffers shall control. Terms defined in the 2004 Proffers shall have the same meaning when utilized in this document.

COLONIAL HERITAGE, LLC, a Virginia limited liability company

By: U.S. Home, LLC, a Delaware limited liability company, Manager

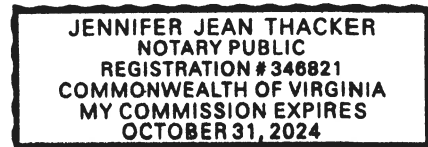
By: 
Name: Matthew Wineman
Title: Vice President

STATE OF VIRGINIA
CITY/COUNTY OF FAIRFAX, to-wit:

The foregoing instrument was acknowledged before me this 16 day of May, 2023, by Matthew Wineman, Vice President, of U.S. Home, LLC, a Delaware limited liability company, Manager of COLONIAL HERITAGE, LLC, a Virginia limited liability company, on its behalf.


Notary Public

My Commission Expires: October 31, 2024



COLONIAL HERITAGE HOMEOWNERS
ASSOCIATION, INC., a Virginia
corporation

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2023, by _____, _____, of COLONIAL HERITAGE
HOMEOWNERS ASSOCIATION, INC., a Virginia corporation, on its behalf.

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM:

County Attorney

Exhibit A

Colonial Heritage Property

Proposal Summary

Separate the court complex into a tennis side and a Pickleball side

2 dedicated tennis courts on tennis side, 6 dedicated Pickleball courts on the Pickleball side

A diagram of the six Pickleball court layout follows. This will provide for maximum utilization of court area we have available to the community for both tennis and Pickleball, without the need to add any additional court area. It will create a high quality Pickleball complex, similar to Veteran's park, but with only 6 courts.

4' divider fencing on the sides between the courts, will prevent the incursion of balls onto adjoining courts, which creates a trip hazard and danger, especially to ankles. The 6' fencing between the backs of the courts would be similar to what is already in place between our existing 2 dedicated courts.

The 6 courts are evenly spaced but offset 2' away from the entrance gate side, to provide for entrance, seating, and equipment placement on the side of the courts where there is shade.

Rationale

Tennis is on the wane as a sport in this country, with younger people taking up Pickleball vice tennis, and numerous tennis players converting to Pickleball. Whereas in 2009, when Pickleball was started in CH, no residents had previously played and everyone had to learn from scratch, today new buyers, many who already play, are moving into the community, because of our Pickleball facilities, and many more who don't play have heard of the sport and taken it up. Every Newcomers' Welcome results in a list of 10-15 additional new residents interested in learning Pickleball.

Tennis plays 3 mornings and 3 evenings a week. The other 4 days the courts are basically unused. To accommodate additional players, all tennis needs to do is add additional play days. Only 3 of 7 "prime time" mornings are currently used. The existing shared court has been used for tennis 5 times in the past 18 months and then just for a short time during their peak player count.

Pickleball plays 6 early mornings, 3 mid-mornings, and 3 nights a week. Additionally, the 3 alternating mid-mornings are used for new player introductions, drills, and practice. By contrast the Pickleball courts on the shared court are in use daily, for much of the morning session and often during the evening sessions. There are no "additional" play days to add to accommodate the growing number of players, and during the summer the sun during mid-morning play time becomes too intense to play as long as desired.

The resurfacing/repainting we do in 2023 will have to serve the residents of this community for until 2030. Does it make sense to have empty tennis courts 4 days a week, during prime playing time, while the Pickleball courts are being utilized to their maximum.

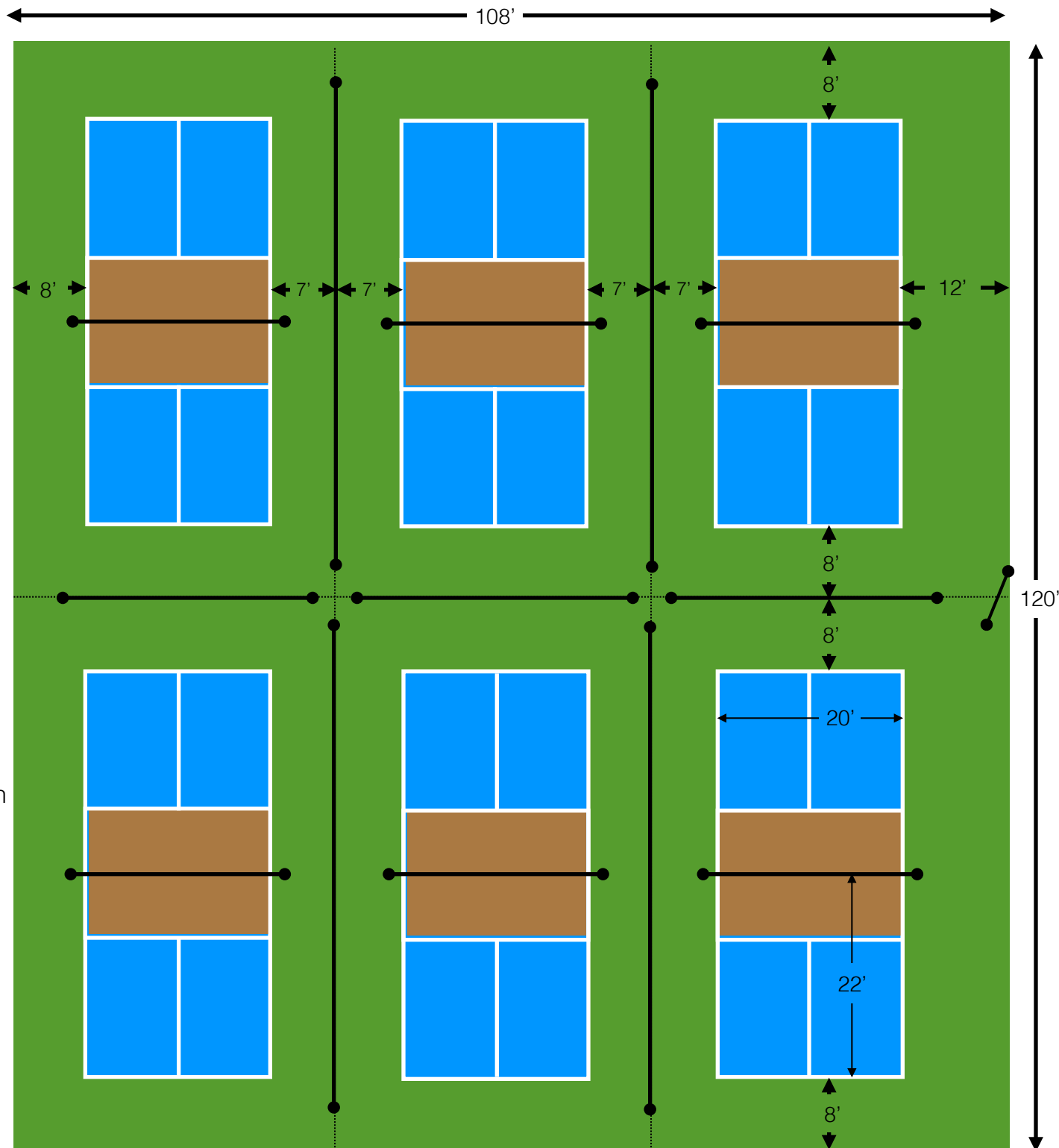
Proposal

This proposal increases the number of Pickleball Courts from 2 dedicated and 2 shared, to 6 dedicated courts. The layout provides for safe play and creates a Pickleball facility that can handle the growth of Pickleball in Colonial Heritage through the buildout of the community.

What we do relative to resurfacing and repainting in 2023 we will have to live with until around 2030, so we must be forward looking rather than simply accommodating today's needs.

To accomplish this, the community would have to reduce our Tennis court capacity to 2 dedicated courts in one of the court complexes and have the other court complex dedicated to Pickleball.

Today, the shared tennis court is rarely used while the shared Pickleball courts are used almost daily. Given the popularity and growth of Pickleball, continuing on with what we have, through the buildout of the community, only ensures we are not making best use of our existing facilities to serve the maximum number of Colonial Heritage residents.



Z-03-02/Z-04-02. Colonial Heritage at Williamsburg Amended Proffers

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

December, 2004

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

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EXHIBIT A
EXHIBIT B
EXHIBIT C

AMENDED AND RESTATED
PROFFERS
COLONIAL HERITAGE AT WILLIAMSBURG

THESE AMENDED AND RESTATED PROFFERS are made this 2nd day of December, 2004, by and among:

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

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

RECITALS:

R-1. Colonial Heritage is a wholly-owned subsidiary of and is managed by U.S. Home Corporation, a Delaware corporation ("U.S. Home").

R-2. Colonial Heritage is the owner of certain real property located in the County of James City, Virginia, more particularly, described on **Exhibit A** attached hereto and made a part hereof. The property described on Exhibit A is referred to herein as the "Colonial Heritage Property."

R-3 Colonial Heritage is likewise the owner of certain real property located in the County of James City, Virginia containing 740.2 ± acres, formerly owned by the Colonial

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

Virginia Council of Boy Scouts of America, Inc., more particularly described on **Exhibit B**, attached hereto and made a part hereof (the "Boy Scout Property").

R-4. Colonial Heritage is the developer of an age-restricted active adult community known as Colonial Heritage, located on the Colonial Heritage Property, pursuant to certain Proffers dated November 7, 2001 which are recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 010022082 (the "Proffers"), and a master plan of development which is incorporated by reference and made a part of the Proffers.

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

R-6. All real property which is described on Exhibits A and B inclusive and which is located inside the PSA shall be referred to collectively herein as the "Property".

R-7. Colonial Heritage, its successors and assigns who own record title to the Property and subsequent purchasers of Residential Units (as hereinafter defined) and non-residential areas are referred to collectively herein as the "Owners". The term "Residential Unit(s)" as used herein shall be defined as any residential dwelling, house, condominium or other unit.

R-8. The Owners and/or their predecessors in title have filed applications under County file numbers Z-3-02/Z-4-02/MP-1-02 (the "Applications for Amendment") to (i) rezone the Boy Scout Property, and (ii) to amend the previously approved master plan and the

Proffers in connection with incorporating portions of the Boy Scout Property into Colonial Heritage but without any increase whatsoever in the number of permitted Residential Units, and (iii) to rezone the Non-PSA Boy Scout Property from A-1 to A-1 with a special use permit (referenced in R-10 below) allowing a residential cluster development.

R-9. Colonial Heritage has filed an application for a special use permit ("SUP") under County file number SUP-21-04 to establish not more than fifty (50) residential lots on the Non-PSA Boy Scout Property, which application and SUP will impose certain conditions upon the Non-PSA Boy Scout Property.

R-10. The provisions of the Zoning Ordinance, Section 24-1, *et seq.* possibly may be deemed inadequate for protecting and enhancing orderly development of the Property in accordance with the County Comprehensive Plan. The Owners, in furtherance of the Application, desire to proffer certain conditions which, among other things, provide for some of the types of benefits specified in the low density residential provisions of the comprehensive plan and in the Cluster Development Standards and density bonus provisions of the Zoning Ordinance applicable to R-1, R-2 and R-5 districts that should be provided for densities greater than one dwelling unit per acre. These conditions are specifically limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the "Virginia Code"), and Section 24-16 of the Zoning Ordinance.

R-11. The County constitutes a high-growth locality as defined by Section 15.2-2298

of the Virginia Code.

R-12. Phase I, II and III Archaeological Studies have been performed on the Colonial Heritage Property as described in that document entitled: An Archeological Assessment of the Massie and Ware Tracts, James City County, Virginia dated October, 2000 prepared by Cultural Resources, Inc. The referenced studies with treatment plans required pursuant to paragraph 2 below have been approved by the County Director of Planning.

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

R-14. A Community Impact Statement made by AES Consulting Engineers, with update dated June 24, 2002 has been submitted to the County Director of Planning for review and approval by the County in connection with both the Application and the Applications for Amendment, and those statements are on file in the office of the County Director of Planning.

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

PROFFERS:

SECTION I. Proffers Applicable to All Property.

1. Binding Master Plan. The Property shall be developed generally in accordance with an Amended Master Plan of Development pursuant to Section 24-515(b) of the Zoning

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

2. Archaeological Study. If not previously submitted and approved, a Phase I Archaeological Study for each Land Bay shall be submitted to the Director of Planning for his review and approval prior to issuance of a land disturbing permit for any soil disturbing activity in such Land Bay. A treatment plan shall be submitted to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation, and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment

plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for each Land Bay and shall be adhered to during the clearing, grading and construction activities thereon.

3. Traffic.

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

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

(6) Modifications to crossover pavement to accommodate

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

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

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

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

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

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

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

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

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

(3) Construction of a right turn lane on eastbound Richmond Road at

the East Crossover.

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

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

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

(7) If commercial component or Nonresidential Use (as defined below) development precedes residential development and commercial component or Nonresidential access to the West Crossover is requested, then the West Crossover improvements cited above shall be required as a condition of the Nonresidential development approval upon determination of necessity by the County Director of Planning and approval by VDOT.

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

(2) After approval of the first phase of road improvements identified above and within 30 days of a request from VDOT, the Owners shall pay to VDOT a pro rata share (pro rata share based on the number of signals provided by the Owner divided by the total number of signals included) of any VDOT U.S. Route 60 (Richmond Road)

signal coordination project that includes either or both of the East and West Crossovers committed for construction by the earlier of December 31, 2020 or the date of completion of development of the Property (defined below).

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

(4) The cost for a signal coordination project may include traffic signal equipment at intersections on Richmond Road and may include any necessary utility relocation within available right of way and easements to accommodate traffic signal equipment, but will not include any right of way acquisition expense(s) or road construction changes.

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

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

(1) Construction of a left turn lane on northbound Centerville Road at the point of access.

(2) Construction of a right turn lane on southbound Centerville Road at the point of access.

(3) Construction of two (2) exit lanes and one (1) entrance lane at the point of access.

(4) A traffic signal shall be installed on Centerville Road at the point of access.

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

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

I. The road improvements to Centerville Road described in subparagraph F above shall be completed or bonded prior to approval of any subdivision plat or final site plan for any lot, section or phase containing Residential Units within Land Bay V, VII or VIII as shown on the Master Plan. The entrance and road improvements for Centerville Road described in subparagraph F above and the connection of the main road shown on the Master Plan connecting State Route 614 (Centerville Road) to U.S. Route 60 (Richmond Road) shall be completed or bonded prior to approval of any final subdivision plat or site plan for any lot, section or phase creating a cumulative total of 1,200 Residential Units within the Property. No Residential Units beyond 1200 shall be approved by the County until said improvements and connection have been completed or bonded. If said improvements and connection to Centerville Road have

not then been completed, then the Owner shall provide an additional traffic impact analysis (reviewed and approved by the County Director of Planning and VDOT) to include:

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

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

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

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

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

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

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

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

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

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

upon Richmond Road and/or Centerville Road.

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

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

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

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

Road and/or Centerville Road.

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

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

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

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

upon Richmond Road and/or Centerville Road.

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

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

(4) In the event that such actual trip generation rates as determined above produced by Residential Units on the Property exceed those projected by the Traffic Study, additional roadway improvements shall be made after each trip generation study or, at the option of the County, cash payment(s) may be made to the County after each trip generation study in order to fund road improvements, additional signal coordination, capacity improvements on Richmond Road or Centerville Road, or other capacity needs generated by development of the Property as may be determined appropriate and approved in advance by the County Director of Planning; provided, however, that the aggregate cost of improvements and/or cash payment(s) described herein during the entire development of the Property shall not exceed a total of Five Hundred Thousand and No/100 Dollars (\$500,000.00).

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

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

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

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

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

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

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

5. Bus/Transit Facilities. A bus pull-off area and bus stop shelter shall be

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

6. Natural Resources.

A. The Owners shall commission a natural resource inventory of each of the portions of the Colonial Heritage Property to be disturbed, before each such portion is disturbed, which will map and describe unique and sensitive habitats for known threatened and/or endangered species, as well as rare species of concern ("Natural Heritage Resources") which are now listed by the Virginia Department of Conservation and Recreation's Division of Natural Heritage ("DCR/DNH"). These investigations will be conducted by personnel who are qualified to conduct such studies and be submitted to and approved by the County Director of Planning prior to issuance of a preliminary site plan or subdivision plan approval for any portion of the development of the Property occupied by a Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource exists on a particular portion of the Property to be disturbed, a conservation management plan will be prepared, submitted, and approved by the County Director of Planning, as well as other agencies responsible for the protection/conservation of the specific species inventoried, prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed DCRJDNH standards. All approved conservation management plans shall be incorporated into the development plan of the portion of the Property affected and if unavoidable impacts will occur as a result of

clearing, grading or construction, an appropriate mitigation plan will be developed by the Owners and approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbance permit for the portion of the development of the Property occupied by any Natural Heritage Resource. Such an inventory shall be completed and the terms above met for any portion of the property which is the subject of a land disturbance permit application before issuance of that permit. The provisions of this paragraph shall be in addition to and not in lieu of any environmental inventory otherwise required by the County Code.

B. The Owners shall commission a natural resource inventory for all of the Boy Scout Property within the PSA prior to County approval of any final site plan or subdivision plat for development on said property. Such inventory will map and describe unique and sensitive habitats for any known threatened and/or endangered species, as well as any rare species of concern ("Natural Heritage Resources") which are listed by the Virginia Department of Conservation and Recreation's Division of Natural Heritage ("DCR/DNH"). These investigations will be conducted by personnel who are qualified to conduct such studies and be submitted to and approved by the County Director of Planning prior to preliminary site plan or subdivision plan approval for any portion of the development of the Property occupied by any Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource exists on a particular portion of the Property to be disturbed, a conservation management plan will be prepared, submitted, and approved by the County Director of Planning, as well as any other agency responsible for the protection/conservation of the specific species inventoried, prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed DCR/DNH

standards. All approved conservation management plans shall be incorporated into the development plan of the portion of the Property affected and if unavoidable impacts will occur as a result of clearing, grading or construction, an appropriate mitigation plan will be developed by the Owners and approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbance permit for the portion of the development of the Property occupied by any Natural Heritage Resource.

7. Sidewalks. Sidewalks shall be constructed on one side of the road along those portions of Richmond Road and Centerville Road which abut the Property. These sidewalks shall be constructed prior to issuance of a building permit by the County for the 250th Residential Unit within the Property. Should VDOT or other permitting issues delay completion of the sidewalks described in this paragraph, the Owners may be issued building permits beyond 250 Residential Units after bonding compliance with this paragraph.

8. Cash Proffer in Lieu of Public Use Site.

A. In order to mitigate impacts upon the County of development of the Property and its use as described herein, a contribution shall be made to the County in the amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00). The County may make these monies available for any project in the County's capital improvement plan, the need for which is generated by the physical development and/or physical operation of the Property.

B. The cash contribution described in this paragraph shall be paid to the County on or before such date as is sixty (60) days after the date of final approval of both the Applications for Amendment and the SUP described above. For purposes of these proffers, final approval shall be defined as such date which is sixty (60) days after action of the Board of

Supervisors approving the Applications for Amendment, no appeal or challenge to such action having been noted or filed by any person or party, or, in the event of such appeal or challenge, the date on which a final non-appealable order has been entered resolving any such appeal or challenge.

C. The cash proffer described in this paragraph shall be in lieu of and shall supersede any obligation described in the Proffers to convey or dedicate land for a public use site, including without limitation, Public Use Site A or Public Use Site B as described in the Proffers.

SECTION II. Proffers Applicable to Residential Property

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

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

B. Each Residential Unit within the Property shall have a master bedroom and bath on the main floor of such unit and shall be developed and operated in compliance with applicable federal and state laws and regulations regarding housing intended for occupancy by persons fifty five (55) years of age or older, including but not limited to: the Fair Housing Act, 42 U.S.C. §3601 *et seq.* and the exemption therefrom provided by 42 U.S.C.

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

2. Density.

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

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

3. Water Source: Cash Contribution. A contribution shall be made to the County in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00) for each Residential Unit developed on the Property (the "Per Unit Contribution"). The County shall make these monies available for development of water supply alternatives. Such contributions shall be payable for each of the Residential Units developed within the Property upon the earlier of the time of final subdivision plat or final site plan approval by the County for the particular Residential Unit or

grouping, phase or section of Residential Units.

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

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

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

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

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

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

(2) The greenways described herein shall be (a) conveyed subject to restrictive covenants prohibiting all motorized vehicles from operating thereon, and further

prohibiting all buildings or structures thereon, (b) constructed with soft, pervious surfaces in accordance with the County Greenway Master Plan approved June 25, 2002, and (c) constructed not less than eight (8) feet in width unless a lesser width is approved by the County Director of Planning.

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

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

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

5. Transitional Screening.

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

adjacent to areas of Nonresidential Use (defined below) prior to issuance of a Certificate of Occupancy by the County for such Nonresidential Use.

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

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

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

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

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

7. Additional Water Conservation.

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

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

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

8. Property Owners Association. A residential property owners' association ("Association") shall be established in accordance with the Virginia Property Owners' Association Act, §55-508 *et seq.* of the Virginia Code, in which all owners of Residential Units within the portions of the Property currently lying inside the PSA shall be members by virtue of their property ownership. The articles of incorporation or organization and bylaws of the Association and declaration of restrictive covenants enforceable by the Association shall be submitted to and reviewed by the County Attorney for consistency with this proffer. Such governing documents shall require or provide for, *inter alia* the following:

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

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

C. The Association shall have the power to assess its members in order to provide for the budget described above, and shall further have the power to levy special assessments, and to have a lien upon property owned by its members for collection and'

enforcement of such assessments, and for the cost of remedying violations of the rules and regulations established by the Association. Separate owners' associations may be established for individual sections within the Property, and impose supplemental restrictive covenants on individual sections or areas of the Property.

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

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

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

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

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

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

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

9. Private Streets. All streets (as defined by the County Code) within the residential portions of the Property shall be private and shall conform to VDOT construction standards. All private streets shall be certified to the satisfaction of the County engineer as required by Section 19-49 of the County Code. Curb and gutter shall be constructed on any streets on which a Residential Unit fronts.

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

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

12. Sidewalks/Pedestrian and Bicycle Trails.

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

(2) Sidewalks (or a combination of sidewalks and the pedestrian trails described in subparagraph B below) shall be constructed on both sides of any internal street on which multiple family or two-family (as defined in the County Code) Residential

Units front. Such sidewalks and/or trails shall be completed or bonded not later than the date on which construction of the adjacent road is completed (including final asphalt topcoating).

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

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

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

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

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

(4) Trails shall avoid lands with greater than twenty-five percent

(25%) slopes, environmentally sensitive areas and areas designated as resource protection areas where practical as determined by the County Chesapeake Bay Administrator.

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

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

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

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

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

13. EMS Equipment/Signalization: Cash Contribution.

A. A contribution shall be made to the County in the amount of Seventy Thousand and No/100 Dollars (\$70,000.00) for fire and rescue equipment replacement and supply and traffic signal preemption equipment. This payment shall be made at the rate of Seventy and No/100 Dollars (\$70.00) per Residential Unit (the "Per Unit Contribution") for the first one thousand (1,000) Residential Units within the Property, and shall be payable upon the

earlier of the time of final subdivision plat or final site plan approval by the County of each said Residential Unit or grouping, phase or section of Residential Units or, in the case of signal preemption equipment, when said equipment is installed.

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

14. Automatic External Defibrillator ("AED") Program. An AED program shall be established for administration by the Association within the Property which shall comply with Section 32.1-111.14:1 *et seq.* of the Code of Virginia, as written on the date hereof, and Virginia State Board of Health regulations promulgated pursuant thereto. Not less than one defibrillator per building to be used as a part of the AED program shall be supplied by the Owner for use in this AED program for every building constructed for public occupancy on the Property of the Association (exclusive of golf course maintenance buildings, equipment sheds, pump houses, storage buildings, Residential Units and other outbuildings of less than 2,000 square feet. The existence of such AED program and an implementation schedule shall be confirmed by the County Fire Chief prior to any final site plan or subdivision plat approval.

15. INTENTIONALLY OMITTED.

16. Cash Contributions For Additional Community Impacts.

A. An additional contribution shall be made to the County in the amount of

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

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

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

A. Fifteen (15) feet between the top of any Steep Slope and any structure

B. Ten (10) feet between the top of any Steep Slope and the limits of lot or other clearing. The separation or setback described in this paragraph may be reduced upon approval of the County Environmental Director in order to provide flexibility in the application of this provision, and so as to assure that this provision does not unreasonably restrict the developable acreage within the Property.

18. Open Space/Conservation Area. An open space and conservation area consisting of not less than 282± acres shall be established by easement conveyed to the County encumbering land shown on the Master Plan as "Area Not Subject of Master Plan" and more particularly described on that plan entitled "SPECIAL USE PERMIT PLAN — ALTERNATE 1,

COLONIAL HERITAGE BSA PROPERTY" dated 7/9/04, revised 7/29/04, made by AES, Consulting Engineers, submitted with the SUP application SUP-21-04 referenced above, which plan is incorporated by reference. The open space and conservation area easement shall prohibit construction of any Residential Unit or other building, provide for protection of open space, wetlands, trees and tree canopy. The open space and conservation area shall be available, and the Owners shall retain the right to utilize the open space and conservation area for stormwater management structures and facilities, required open space, required impervious/pervious cover percentages, watershed protection measures and other uses benefiting or facilitating development of the Property and/or the Non-PSA Boy Scout Property.

SECTION III. Proffers Applicable to Commercial Property

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

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

- (a) location and uses of buildings,

- (b) building orientation,
- (c) landscaping, open space and buffers,
- (d) location and number of entrances,
- (e) pedestrian and vehicular connections,
- (f) building height, and size of any single building
- (g) architectural design,
- (h) setbacks from adjacent properties or roadways,
- (i) signs.

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

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

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

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

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

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

IV. Miscellaneous Provisions

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

2. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be

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

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

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

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

6. Effect of Accepted Amended and Restated Proffers. If these Amended and Restated Proffers are accepted by the County and the Applications for Amendment are simultaneously approved by the County, upon the expiration of thirty (30) days from said

acceptance and approval with no appeal being duly noted, these Amended and Restated Proffers, and the Master Plan and associated documents filed with the Applications for Amendment shall amend, supersede and restate in their entirety the Proffers and all the associated documents, effective upon the date of such acceptance and approval.

7. INTENTIONALLY OMITTED.

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

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

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

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

described herein.

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

10. Signature by County. The County's Director of Planning has executed these Amended and Restated Proffers solely for purposes of confirming the filings and submissions described in the Recitals section above, and confirming approval by the County Board of Supervisors of the rezoning of the Property with these Amended and Restated Proffers and the Applications for Amendment by a resolution dated December 14, 2004.

#6010116v39

EXHIBIT A

(Colonial Heritage Property)

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

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

EXHIBIT B

(Boy Scout Property)

Parcel I

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

Beginning at a Cedar Stob being the intersection of the Southeast corner of Piggott's Estate and the Southwest corner of R. L. Henley's Estate, thence North 80 degrees 10' W. 200 feet to a point in the center line of the county road; thence with the center line of said road North 61 . degrees 10' W. 534 feet; thence North 75 degrees 00' W. 800 feet; thence North 71 degrees 00' W. 922 feet to a point; thence leaving said road South 67 degrees 20' W. 500 feet to a point; thence North 66 degrees 30' W. 130 feet to a point in the center of said county road; thence continuing with the center line of said road North 46 degrees 00' W. 1100 feet; thence North 33 degrees 20' W. 700 feet; thence North 59 degrees 30' W. 551 feet; thence North 77 degrees 00' W. 600 feet; thence South 75 degrees 20' W. 533 feet; thence North 58 degrees 40' W. 200 feet; thence North 16 degrees 30' W. 410 feet; thence North 35 degrees 30' W. 282 feet to a point; thence leaving said county road; thence North 86 degrees 00' E. 562 feet to an iron axle; thence North 4 degrees 10' E. 100 feet; thence North 0' 30' W. 140 feet; thence North 36 degrees 50' E. 100 feet; thence North 13 degrees 30' E. 100 feet; thence North 0 degrees 30' E. 184 feet; thence North 30 degrees 00' E. 100 feet; thence North 22 degrees 20' E. 123 feet; thence North 4 degrees 50' E. 255 feet; thence North 69 degrees 10' W. 100 feet; thence North 22 degrees 45' W. 300 feet; thence North 43 degrees 15' W. 100 feet; thence North 27 degrees 45' W. 300 feet; thence North 74 degrees 30' W. 100 feet; thence North 49 degrees 00' W. 158 feet; thence North 43 degrees 30' W. 400 feet; thence North 9 degrees 00' W. 254 feet; thence North 37 degrees 45' W. 200 feet; thence North 19 degrees 10' E. 300 feet; thence North 21 degrees 30' W. 359 feet to the South shore of Cranston's Mill Pond; thence continuing across said pond; North 33 degrees 00' E. 530 feet to the North shore of said mill pond; thence re-crossing said mill pond South 57 degrees 45' E. 666 feet; thence South 41 degrees 20' E. 85 feet; thence South 67 degrees 45' E. 200 feet; thence South 83 degrees 30' E. 400 feet; thence South 81 degrees 30' E. 100 feet; thence South 43 degrees 30' E. 200 feet; thence South 54 degrees 45' E. 200 feet; thence North 62 degrees 10' E. 131 feet; thence South 82 degrees 30' E. 100 feet; thence South 56 degrees 15' E. 200 feet; thence South 66 degrees 10' E. 94 feet; thence South 76 degrees 15' E. 600 feet; thence North 62 degrees 40' E. 555 feet; thence South 50 degrees 10' E. 200 feet; thence South 48 degrees 10' E. 500 feet; thence South 55 degrees 00' E. 409 feet; thence South 78 degrees 15' E. 400 feet; thence South 24 degrees 40' E. 300 feet; thence South 39 degrees 00' E. 200 feet; thence South 79 degrees 40' E. 300 feet; thence South 81 degrees 15' E. 393 feet; thence South 29 degrees 50' E. 200 feet; thence South 18 degrees 45' E. 139 feet; thence South 27 degrees 30' E. 400 feet; thence South 47 degrees 20' E. 300 feet; thence South 84 degrees 45'

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

Parcel II

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

Beginning at an iron pipe in a Pine stump located at the intersection of County Roads Nos. 626 and 603; thence North 8 degrees 20' E. 49 feet; thence North 7 degrees 40' W. 323 feet; thence North 21 degrees 40' W. 100 feet; thence North 53 degrees 00' W. 393 feet; thence North 47 degrees 30' W. 765 feet; thence North 77 degrees 10' W. 400 feet; thence North 64 degrees 00' W. 275 feet; thence North 48 degrees 10' W. 235 feet; thence North 26 degrees 40' W. 312 feet; thence North 30 degrees 45' W. 141 feet; thence North 50 degrees 10' W. 245 feet; thence up the center line of an old road North 41 degrees 50' W. 132 feet; thence North 20 degrees 10' W. 100 feet; thence North 4 degrees 50' W. 200 feet; thence North 13 degrees 00' W. 180 feet; thence North 3.2 degrees 50' E. 104 feet; thence leaving old road South 17 degrees 15' E. 158 feet; thence South 62 degrees 20' E. 104 feet to a Beech; thence North 10 degrees 45' E. 253 feet to a Cedar; thence North 36 degrees 00' E. 75 feet to a Beech; thence South 55 degrees 10' E. 76 feet to a point on the Southwest shore of Cranston's Mill Pond; thence North 71 degrees 50' E. 714 feet; thence North 71 degrees 30' E. 238 feet to a point on the Southern shore of said mill pond; thence crossing said mill pond North 26 degrees 45' E. 640 feet to a point on the northern shore of said mill pond; thence re-crossing said mill pond South 58 degrees 45' E. 870 feet to a point on the Southern shore of said mill pond; thence South 21 degrees 30' E. 359 feet; thence South 19 degrees 10' W. 300 feet; thence South 37 degrees 45' E. 200 feet; thence South 9 degrees 00' E. 254 feet; thence South 43 degrees 30' E. 400 feet; thence South 49 degrees 00' E. 158 feet; thence South 74 degrees 30' E. 100 feet; thence South 27 degrees 45' W. 300 feet (shown on Plat as South 27 degrees 45' E.); thence South 43 degrees 15' E. 100 feet; thence South 22 degrees 45' E. 300 feet; hence South 69 degrees 10' E. 100 feet; thence South 4 degrees 50' W. 255 feet; thence South 22 degrees 20' W. 123 feet; thence South 30 degrees 00' W. 100 feet; thence South 0 degrees 30' W. 184 feet; thence South 13 degrees 30' W. 100 feet; thence South 36 degrees 50' W. 100 feet; thence South 0 degrees 30' E. 140 feet; thence South 4 degrees 10' W. 100 feet to an iron axle, thence South 86 degrees 00' W. 562 feet to the point of beginning.

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

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

BEING the same property conveyed to Colonial Heritage LLC, A Virginia corporation, by Deed from Colonial Virginia Council of Boy Scouts of America, Inc., a Virginia corporation, dated September 29, 2004, recorded September 30, 2004, in the Clerk's Office of the Circuit Court, James City County, Virginia, as Instrument No. 040024552.

EXHIBIT C

(Non-PSA Boy Scout Property)

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

#6010116 v41

James City County Planning Division - Case Tracking - Proffers / Conditions
Reporting Options

Only Rezonings

Staff: All **From Date:** **Through Date:** **Omit Satisfied?** No
Title Includes: *COLONIAL HERITAGE* **Proffer/Condition Includes:** *

Expiration Satisfied? Proffer / Condition		
Case # Z-04-00	Title: Colonial Heritage at Williamsburg (US Homes)	Planner: Marvin Sowers
5/27/2005	No	Water Source: Cash Contribution: \$750 for each residential unit developed on the property for development of water supply alternatives. (Applies to 1,950 units)
5/27/2005	No	Road improvements to Centerville Road shall be completed or bonded prior to approval of any subdivision plat or final site plan for any lot withing Land Bay V.
5/27/2005	No	Sidewalks shall be constructed along Richmond Road & Centerville Road on the side that abuts the property prior to the issuance of a building permit for the 250th residential unit.
5/27/2005	No	A contributions hall be made to the County in the amount of \$70.00 for each of the first 1,000 residential units developed for fire and rescue equipment replacement and supply and traffic signal preemption equipment. It shall be payable upon the time of final subdivision plat or final site plan approval by the County. See Proffer 13A for details.
5/27/2005	No	A contribution shall be made to the County in the amount of \$50,000.00 for application to the purchase of a new paramedic/first aid vehicle or unit. Paable after final plat for 400th lot.
5/27/2005	No	An additional contribution shall be made to the County in the amount of \$438.00 for each of the first 1,000 residential units developed to mitigate additional impacts on the County arising from the physical development and/or physical operation of the Property. This contribution shall be payable at the time of final subdivision plat or final site plan approval.
12/27/2003	Yes	Development Plans-Design review standards for nonresidential uses shall be established by the Owners. Thereafter, conceptual plans and elevations shall be approved prior to site plan approval by the DRC.
12/27/2003	Yes	No land disturbing permit shall be issued by the County for any development of any portion of the Property containing Residentail Units until either a draft groundwater withdrawal permit for a desalinization plant has been issued by the Department of Environmental Quality to the County or another suitable source of water has been identified by the County.
12/27/2003	Yes	A Phase I Archaeological Study for the entire site shall be submitted to the Director of Planning for his review and approval prior to land disturbance.
12/27/2003	Yes	Natural Resources shall be approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbing permit.
12/27/2003	Yes	Bus/transit facilities shall be approved in advance by the County Transit Administrator.

**James City County Planning Division - Case Tracking - Proffers / Conditions
Reporting Options**

Only Rezoning

Staff: All **From Date:** **Through Date:** **Omit Satisfied?** No
Title Includes: *COLONIAL HERITAGE* **Proffer/Condition Includes:** *

Expiration Satisfied? Proffer / Condition		
Case # Z-04-00	Title: Colonial Heritage at Williamsburg (US Homes)	Planner: Marvin Sowers
12/27/2003 Yes	A right turn lane on eastbound Richmond Road shall be installed for any right turn in/right turn out driveway to provide access to the Nonresidential areas of the property. Lanes will be installed prior to the issuance of any temporary or permanent CO.	
12/27/2003 Yes	After approval of the first phase of road improvements and within 30 days of a request from VDOT, the Owners shall pay to VDOT a pro rata share of any VDOT US Route 60 (Richmond Road) signal coordination project that includes either or both of the East and West Crossovers committed for construction by the earlier of December 31, 2020 or the date of completion of development.	
12/27/2003 Yes	Public use site or cash contribution: Either a contribution shall be made to the County in the amount of \$750,000 to be used by the County for acquisition or improvement of a public use site OR the Owners shall convey a portion of the property to the County for use as a public use site.	
5/26/2003 Yes	Additional Water Conservation-the Owners & the Association shall be responsible for developing water conservation standards to be submitted to and approved by the JCSEA. The Association shall be responsible for enforcing these standards.	
12/27/2002 Yes	An Automatic External Defibrillator program shall be established for administration by the Association within the Property.	

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Neighborhood Development Administrator

SUBJECT: Purchase of Property at 106 and 110 Catalpa Drive, 179 and 186 Clark Lane, and 6171, 6195, and 6197 Old Mooretown Road

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Resolution	Resolution
☐	Location Map	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Housing & Community Development	Poller, Vaughn	Approved	5/26/2023 - 2:12 PM
Development Management	Holt, Paul	Approved	5/26/2023 - 2:58 PM
Publication Management	Daniel, Martha	Approved	5/26/2023 - 3:04 PM
Legal Review	Kinsman, Adam	Approved	5/26/2023 - 3:50 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:02 AM
Board Secretary	Rinehimer, Bradley	Approved	6/2/2023 - 11:18 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 8:58 AM

MEMORANDUM

DATE: June 13, 2023

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Neighborhood Development Administrator
Paul D. Holt, III, Director of Community Development and Planning

SUBJECT: Purchase of Property at 106 and 110 Catalpa Drive, 179 and 186 Clark Lane, and 6171, 6195, and 6197 Old Mooretown Road

The above referenced properties are located in the Powhatan District off of Old Mooretown Road. For several decades prior to the mid-1990s, Clark Lane existed as a dirt road. In the mid-1990s, the County completed a neighborhood improvement project, a portion of which included constructing Clark Lane as a full-width roadway built to Virginia Department of Transportation (VDOT) standards. As a result of that investment, undeveloped property in the area became accessible and the development of affordable and workforce housing followed. While those efforts were successful, not all of the area was improved. Catalpa Drive remains an unimproved right-of-way. As a result, several parcels lack road frontage. Many parcels in this area generally do not have access to public water and sewer infrastructure. Other lots are also generally unsuitable for new homes given existing platted lot lines.

The Neighborhood Development Division is interested in purchasing seven of these remaining, vacant properties to continue investing in infrastructure and creating additional lots for the construction of affordable and workforce housing. The properties are located and identified as follows:

<u>Street Address</u>	<u>James City County Real Estate Tax Map No.</u>
106 Catalpa Drive	3220100040b
110 Catalpa Drive	3220100040a
179 Clark Lane	3220100040
186 Clark Lane	3220100037
6171 Old Mooretown Road	3220100040d
6195 Old Mooretown Road	3220100039
6197 Old Mooretown Road	3220100038

Staff finds the proposed acquisition would support several Goals, Strategies, and Actions of the Comprehensive Plan. Specifically, these tracts of property present a premier opportunity for infill development. The acquisition would also directly support the creation of new affordable and workforce housing. These properties are all located inside the Primary Service Area and improvements to water and sewer infrastructure would minimize the potential for new wells and septic tanks. This acquisition would also directly complement a separate action approved by the Board of Supervisors on November 8, 2022, to dispose of otherwise undevelopable County-owned property along Old Mooretown Road and Clark Lane in support of additional affordable and workforce housing.

The seven properties listed above total approximately 13.65 acres, are all undeveloped, and have a combined assessed value of \$354,900. Combined with the property included as part of the November 8, 2022 approval, and another lot in the neighborhood that the County already owns, Neighborhood Development will be able pursue the creation of affordable and workforce housing on a total of approximately 17.34 acres.

Purchase of Property at 106 and 110 Catalpa Drive, 179 and 186 Clark Lane, and 6171, 6195, and 6197 Old Mooretown Road

June 13, 2023

Page 2

While all of these properties were originally listed and marketed for sale for \$995,000, in discussions with staff, the owner has agreed to sell the properties to the County for \$550,000. Staff finds the acquisition can be accomplished after July 1, 2023 using available existing funds from previously adopted budgets.

Recommendation

In support of the efforts referenced above, staff recommends approval of the attached resolution, authorizing the County Administrator to execute the necessary documents for completing the purchase.

Additionally, it appropriates the use of previously allocated funds in the following amounts: \$475,000 from the Fiscal Year 2023 and prior years' Housing Development Fund and the Affordable Housing Incentive Fund's fund balance, and \$100,000 from the Acquire, Rehabilitate, and Sell program (previously established by the Board of Supervisors in 2019) to cover the sales cost (\$550,000) and up to an additional \$25,000 for related closing expenses.

Should the acquisition be approved, staff has already identified an additional \$475,000 in funding from the state that can be used towards development of affordable and workforce housing units; acceptance of these funds is a separate action item for the Board's consideration. In addition, staff will work to apply for additional state funding (e.g., Community Development Block Grant funds) in support of the needed infrastructure costs (i.e., extension of public water and sewer, stormwater, and constructing a roadway to VDOT standards within the Catalpa Drive right-of-way).

AVP/PDH/md

PurchTalleyProps-mem

Attachments:

1. Resolution
2. Location Map

RESOLUTION

PURCHASE OF PROPERTY AT 106 AND 110 CATALPA DRIVE, 179 AND 186 CLARK LANE,

AND 6171, 6195, AND 6197 OLD MOORETOWN ROAD

WHEREAS, Mr. William David Talley, Trustee of the Lillian Jean Talley Family Trust under the Lillian Jean F. Talley Revocable Trust dated February 10, 2014 (“Talley”), currently owns seven undeveloped parcels of real property (the “Property”) totaling 13.65 acres located and identified as follows:

<u>Street Address</u>	<u>James City County Real Estate Tax Map No.</u>
106 Catalpa Drive	3220100040b
110 Catalpa Drive	3220100040a
179 Clark Lane	3220100040
186 Clark Lane	3220100037
6171 Old Mooretown Road	3220100040d
6195 Old Mooretown Road	3220100039
6197 Old Mooretown Road	3220100038

WHEREAS, County staff has identified the Property for future development of affordable and workforce housing; and

WHEREAS, Talley has agreed to sell the Property to the County for \$550,000; and

WHEREAS, the Board of Supervisors is of the opinion that the County should purchase the Talley property to provide for affordable and workforce housing opportunities.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize the County Administrator or his designee to execute all documents necessary to acquire the Property and authorizes the following appropriation of \$575,000 in the Housing and Neighborhood Development Fund to pay for the purchase of the Property and all closing costs and fees.

Revenue:

Fiscal Year 2023 Housing Development Fund	\$ 99,000
Acquire, Rehabilitate, and Sell program	\$100,000
Affordable Housing Incentive Fund Balance	<u>\$376,000</u>
Total	\$575,000

Expenditure:

Expenditure - Property Acquisition	<u>\$575,000</u>
Total	\$575,000

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

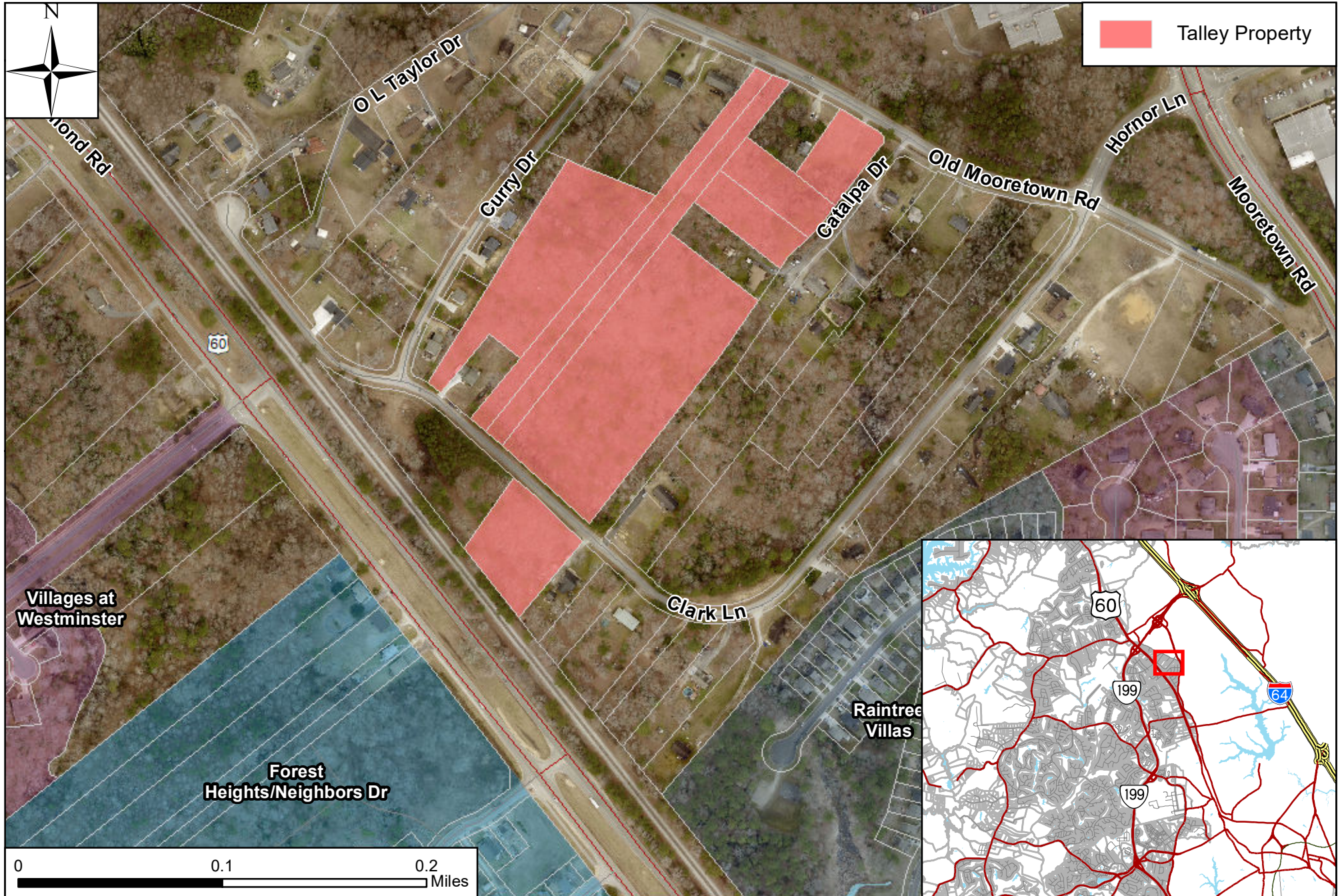
Teresa J. Saeed
Deputy Clerk to the Board

	VOTES			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
SADLER	_____	_____	_____	_____
ICENHOUR	_____	_____	_____	_____
MCGLENNON	_____	_____	_____	_____
LARSON	_____	_____	_____	_____
HIPPLE	_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023.

PurchTalleyProps-res

Talley Property



ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Neighborhood Development Administrator

SUBJECT: Grant Award - \$475,000 - Homeownership Gap Funding - Virginia Housing

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Resolution	Resolution
☐	Location Map	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Housing & Community Development	Poller, Vaughn	Approved	5/26/2023 - 2:12 PM
Development Management	Holt, Paul	Approved	5/26/2023 - 3:04 PM
Publication Management	Daniel, Martha	Approved	5/26/2023 - 3:17 PM
Legal Review	Kinsman, Adam	Approved	5/26/2023 - 3:48 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:01 AM
Board Secretary	Rinehimer, Bradley	Approved	6/2/2023 - 11:15 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 8:57 AM

MEMORANDUM

DATE: June 13, 2023

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Neighborhood Development Administrator
Paul D. Holt, III, Director of Community Development and Planning

SUBJECT: Grant Award - \$475,000 - Homeownership Gap Funding - Virginia Housing

Under separate action, staff is recommending the Talley properties located at 106 and 110 Catalpa Drive, 179 and 186 Clark Lane, and 6171, 6195, and 6197 Old Mooretown Road be acquired for the development of affordable and workforce housing.

While previous County efforts and projects in the neighborhood have been successful, not all of the area is improved. Catalpa Drive remains an unimproved right-of-way. As a result, several parcels lack road frontage. Many parcels in this area generally do not have access to public water and sewer infrastructure. Other lots are also generally unsuitable for new homes given existing platted lot lines.

Staff finds the proposed acquisition would support several Goals, Strategies, and Actions of the Comprehensive Plan. Specifically, these tracts of property present a premier opportunity for infill development. The acquisition would also directly support the creation of new affordable and workforce housing. These properties are all located inside the Primary Service Area and improvements to water and sewer infrastructure would minimize the potential for new wells and septic tanks. This acquisition would also directly complement a separate action approved by the Board of Supervisors on November 8, 2022, to dispose of otherwise undevelopable County-owned property along Old Mooretown Road and Clark Lane in support of additional affordable and workforce housing.

Under separate action, should the acquisition of these properties be approved, staff has identified \$475,000 in grant funds from Virginia Housing's Homeownership Gap Funding grant that can be used to cover expected development costs such as engineering and infrastructure. The grant award period is to run from July 1, 2023 through December 31, 2024. Because some significant infrastructure improvements will be needed (i.e., extension of public water and sewer, stormwater, and constructing a roadway to Virginia Department of Transportation standards within the Catalpa Drive right-of-way), staff will continue to work to apply for additional state funding (e.g., Community Development Block Grant funds) as well.

Recommendation

Staff recommends approval of the attached resolution accepting these grant funds and authorizing the County Administrator or his Designee to execute those documents and agreements necessary to undertake this project.

AVP/PDH/md
GA-HomeGapFundVH-mem

Attachments:

1. Resolution
2. Location Map

RESOLUTION

GRANT AWARD - \$475,000 - HOMEOWNERSHIP GAP FUNDING - VIRGINIA HOUSING

WHEREAS, Virginia Housing has awarded James City County funding in the form of the Homeownership Gap Funding Grant for \$475,000; and

WHEREAS, the County will follow the Workforce Housing Task Force recommendations and use the funding to develop affordable infill housing; and

WHEREAS, there is no local match required.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance and appropriation of funds to the Special Projects/Grants Fund as follows:

Revenue:

State - Virginia Housing Grant Award	<u>\$475,000</u>
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Expenditure:

Affordable Infill Housing	<u>\$475,000</u>
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Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

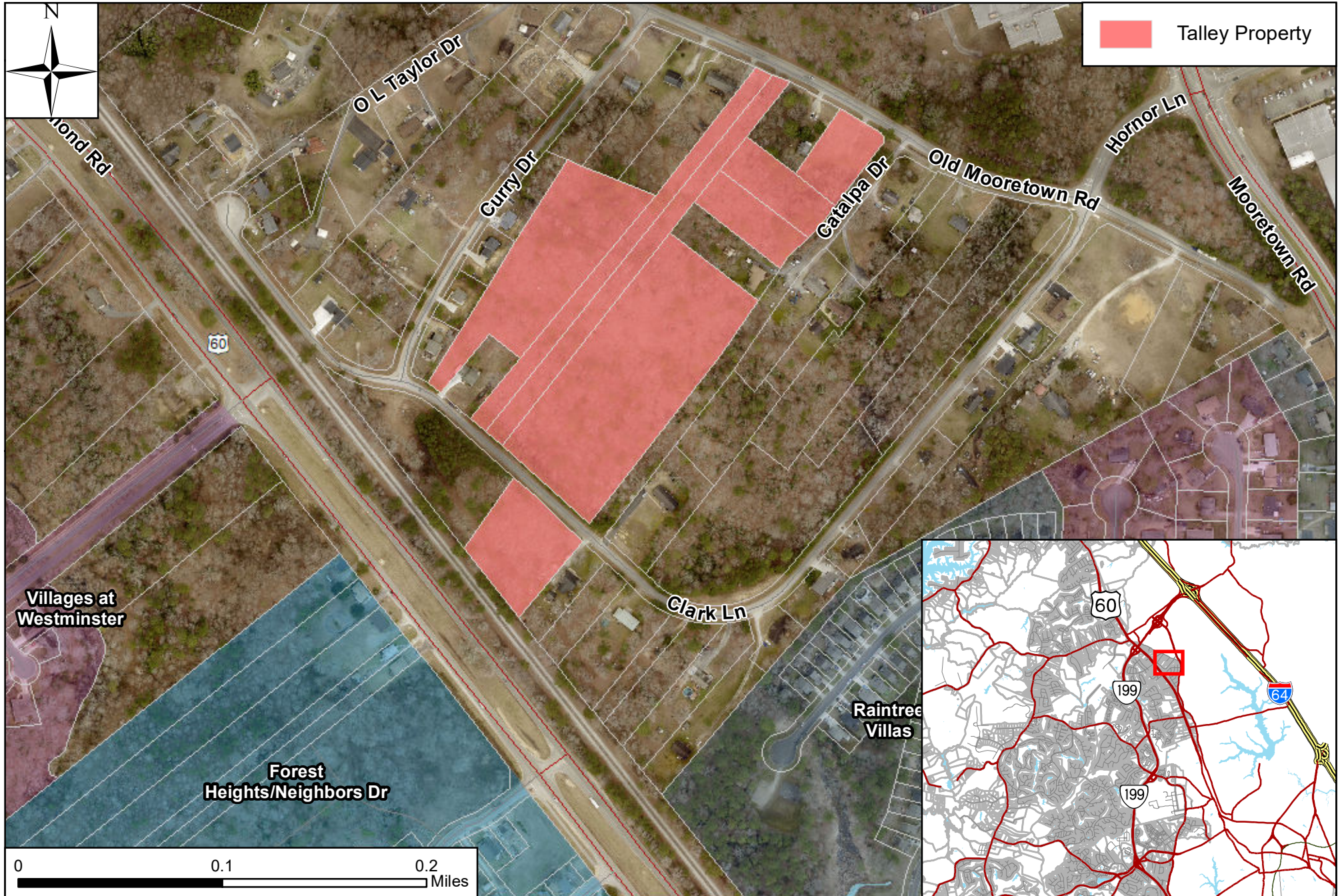
VOTES

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023.

GA-HomeGapFundVH-res

Talley Property



ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Christopher M. Johnson, Director of Economic Development

SUBJECT: Grant Award \$485,500 - Virginia Economic Development Partnership, Virginia Business Ready Sites Program

ATTACHMENTS:

	Description	Type
☐	Memorandum	Staff Report
☐	Resolution	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
Economic Development	Johnson, Christopher	Approved	5/26/2023 - 10:55 AM
Publication Management	Daniel, Martha	Approved	5/26/2023 - 11:02 AM
Legal Review	Kinsman, Adam	Approved	5/26/2023 - 3:48 PM
Board Secretary	Saeed, Teresa	Approved	6/2/2023 - 11:01 AM
Board Secretary	Purse, Jason	Approved	6/6/2023 - 8:32 AM
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 8:58 AM

MEMORANDUM

DATE: June 13, 2023

TO: The Board of Supervisors

FROM: Christopher M. Johnson, Director of Economic Development

SUBJECT: Grant Award - \$485,500 - Virginia Economic Development Partnership, Virginia Business Ready Sites Program

James City County was awarded a Virginia Business Ready Sites Program (VBRSP) grant in the amount of \$485,500 from the Virginia Economic Development Partnership on January 16, 2023. James City County applied for funding to complete required due diligence studies and design water and sanitary sewer extensions to increase the site readiness certification for the Hazelwood Farms Enterprise Center from a Tier 1 to a Tier 4, reducing the estimated time to get the site “shovel ready” from four-eight years to nine-12 months. James City County was one of 21 localities awarded development grants across the Commonwealth during this application cycle.

VBRSP is a discretionary program which helps characterize and develop industrial and commercial sites with at least 100 contiguous, developable acres to enhance the Commonwealth’s infrastructure with more competitive project-ready sites to attract new business investment and accelerate expansion in Virginia. The program has two components: 1) site characterization to assess and designate a site’s current level of development readiness; and 2) site development to further develop a pool of potential industrial sites across the Commonwealth.

The project scope and services include boundary survey, topographic survey, Phase 1 environmental assessment, cultural resources review, Phase 1 cultural resources survey, threatened and endangered species review, preliminary geotechnical report, and construction ready engineering and design for wet utility extensions. The grant award will be used to reimburse the County for necessary and reasonable costs expended in connection with the scope of work.

Staff recommends adoption of the attached resolution which accepts the grant award, authorizes appropriation to the Capital Projects Fund, and authorizes the County Administrator to execute the appropriate grant documents.

CMJ/md
GA-VAEcDvPrtnshp-mem

Attachment

RESOLUTION

GRANT AWARD - \$485,500 - VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP,

VIRGINIA BUSINESS READY SITES PROGRAM

WHEREAS, the Virginia Economic Development Partnership (VEDP) has made funding available through the Virginia Business Ready Sites Program (VBRSP); and

WHEREAS, VBRSP grants are a discretionary program which helps characterize and develop industrial and commercial sites to enhance the Commonwealth's infrastructure with more competitive project-ready sites to attract new business investment and accelerate business expansion in Virginia; and

WHEREAS, James City County applied for funding to complete required due diligence studies and design water and sanitary sewer extensions to advance the site readiness certification of the Hazelwood Farms Enterprise Center properties from a Tier 1 to a Tier 4; and

WHEREAS, VEDP has notified James City County of a grant award of \$485,500 and as a condition of receipt of the grant award, James City County is required to provide a local match at least equal to 50% of the grant award; and

WHEREAS, the Fiscal Year 2023 and 2024 James City County budgets contain the required local matching funds in the adopted and appropriated Capital Projects Fund.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to execute all appropriate grant documents and hereby accepts this grant award and authorizes the following appropriation to the Capital Projects Fund:

Revenue:

State - VEDP, VBRSP	<u>\$485,500</u>
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Expenditure:

Capital Projects Fund	<u>\$485,500</u>
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Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

VOTES

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
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Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of June, 2023.

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Scott Stevens, County Administrator

SUBJECT: Discussion of the award of a public contract involving the expenditure of public funds, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711(A)(29) of the Code of Virginia and pertaining to the contract between the County, the City of Williamsburg, and WJCC Schools.

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 4:19 PM

ITEM SUMMARY

DATE: 6/13/2023

TO: The Board of Supervisors

FROM: Teresa Saeed, Deputy Clerk

SUBJECT: Adjourn until 1 pm on June 27, 2023 for the Business Meeting

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Saeed, Teresa	Approved	6/6/2023 - 3:47 PM