

**WEST POINT TOWN COUNCIL
WORK SESSION
MINUTES
JULY 21, 2008**

I. 7th Street Marina

Neal Barber advised that he recently meet with "Four on the Shore" development group regarding the 7th Street Marina. The group is ready to move forward with Phase I of the project that will involve development of the old restaurant property and Ty Blands shop. The EDA have been working on relocating Ty Blands property for a long time and are now in the position to ask Town Council for assistance with completion on the relocation project. The EDA need a resolution from Town Council supporting the project in order for the EDA to obtain a loan from C&F Bank.

Mr. Hudson suggested the relocation of Ty Blands property be placed on the Community Development agenda for August.

Andrea Erard advised she will draft a resolution for the Community Development Committee to review.

II. Burke & Lou Johnson Property

Neal Barber advised that Burke and Lou Johnson need to sell their property located on Kirby Street. Pete Henderson would like to purchase the property to construct condominiums in the \$399,000 price range, but Mr. Henderson is unable to purchase the property for approximately two years. The EDA is willing to purchase the property and hold it until Mr. Henderson can purchase it. The EDA has been approved for a loan from C&F Bank to purchase the property contingent upon Town Council adopting a resolution supporting the project.

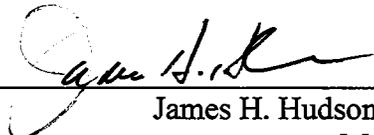
Mr. Lawson advised this project is a residential project not a commercial project and what happens if Pete Henderson is unable to purchase the property in two years and the EDA is left holding land and unable to sell it.

Neal Barber advised the EDA has an agreement with Pete Henderson to purchase the property in two years, during the two years Pete Henderson will proceed with the environmental feasibility study. The agreement does not guarantee that Pete Henderson will purchase the property in two years.

The consensus of Town Council is that the view of the railroad yard might affect the pricing of the condominiums, the property is zoned commercial and is a residential project. The Town should not use tax payers' money for a residential project especially if there is no guarantee Pete Henderson will purchase the property in two years.

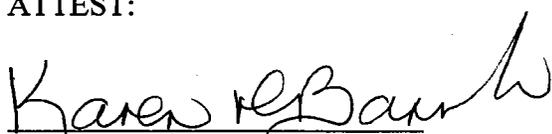
III. VDOT Resolution

Mr. Funkhouser advised that VDOT are requesting Town Council adopt a resolution for adjusting the remaining property from the bridge replacement projects. VDOT wants to discontinue a portion of the old Rt. 33 road that runs west from the railroad tracks, under the old Eltham Bridge to the chip plant. This means VDOT would not provide maintenance for the road. Mr. Funkhouser recommends Town Council endorse the resolution with the exception of the discontinued portion of Rt.33. VDOT needs to abandon Rt. 33 so the adjoining property owners can purchase the property. Mr. Funkhouser also suggested the Town request the Bridge abutment property located at the bottom of the Lord Delaware Bridge.



James H. Hudson, III
Mayor

ATTEST:



Karen M. Barrow
Town Clerk

**TOWN OF WEST POINT
TOWN COUNCIL
MINUTES
July 21, 2008**

I. CALL TO ORDER

The West Point Town Council held its regular monthly meeting on Monday, July 21, 2008. The Honorable James H. Hudson III called the meeting to order at 7:30 p.m. Doctor Jeffery Smith gave the Invocation followed by the Pledge of Allegiance.

Members Present: Mayor, Jim Hudson; Vice Mayor, Deborah Ball; Charlie Gordon; Tina Gulley; Wayne Healy; Jack Lawson; Gail Nichols and Bub Shreaves.

Also Present: Trenton L. Funkhouser, Town Manager; Andrea Erard, Town Attorney; Karen Barrow, Town Clerk; Bill Hodges, Chief of Police; Neal Barber, Economic Development Coordinator; and other interested persons.

II. ANNUAL ORGINAZITIONAL MEETING

Mr. Hudson advised the Town Council Committees are as follows:

The Community Development Committee meets on the second Monday of each month at 5 p.m. Members are Jack Lawson, Chairperson, Deborah Ball and Gail Nichols.

The Education Committee meets on the third Wednesday of each month at 4:30 p.m. Members are Gail Nichols, Chairperson, Tina Gulley and Charlie Gordon.

The Finance & Organizational Committee meets on the second Thursday of each month at 4:30 p.m. Members are Deborah Ball, Chairperson, Jack Lawson and Bub Shreaves.

The Public Safety Committee meets on the third Thursday of each month at 4:30 p.m. Members are Tina Gulley, Chairperson, Deborah Ball and Wayne Healy.

The Public Works Committee meets on the third Thursday of each month at 10:00 a.m. Members are Wayne Healy, Jack Lawson and Bub Shreaves.

A. Election of Vice Mayor

Mr. Hudson opened the floor for nominations for Vice Mayor.

Mr. Gulley made a motion to nominate Deborah Ball to be Vice Mayor, seconded by Mr. Gordon.

Mr. Hudson asked if there were any other nominations, there being none, Mr. Hudson closed the nominations.

Upon roll call, Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

Mr. Hudson congratulated Mrs. Ball on her nomination of Vice Mayor.

B. Annual Business Meeting Resolution

Mr. Gordon made a motion to establish the last Monday of each month at 6:30 pm for the Town Council meeting and a Work Session at 6 pm with the exception for the December meeting that will be on Monday, December 22, 2008 and the May meeting that will be on Monday, May 18, 2008. Seconded by Mrs. Nichols, upon roll call, Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves voted "Aye".

III. CITIZENS ADDRESS TO COUNCIL

A. Crab Carnival Master Plan

Maureen Medlin presented Town Council with the Crab Carnival Master Plan and reviewed the changes for 2008.

Mr. Healy advised there are 44 members of the Fire Department, and asked if each member can have a parking pass to get downtown to the Fire Station incase there is an emergency.

Mrs. Medlin advised she will get a pass for each member.

Mrs. Gulley made a motion to adopt the Crab Carnival Master Plan, seconded by Mrs. Ball. Upon roll call, Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves voted "Aye".

B. EDA Update

Mr. Cawley, Chairman of the EDA stated the Industrial Park Access Road build out will be complete by the end of July and installation of the Water and Sewer lines are almost complete. The Economic Development Coordinator advised the Town Manager and Town Staff gave thirteen Marketing Managers from the Virginia Economic Development Partnership a tour of the Town and Industrial Park. Mr. Cawley also advised the "Jammin' on the Point" concert series has become very popular with Town residents and the YMCA has scheduled a concert for Saturday, August 2nd at 6 pm with music by the Dean Greer Band.

C. VDOT Resolution Discontinuing a Portion of Old Rt. 33

Mr. Gordon advised the Public Works Committee has concerns with the discontinuance of a portion of the old Route 33 between the railroad tracks and entrance of the chipping plant.

Mr. Funkhouser stated the discontinuance of a portion of old Rt. 33 means that VDOT would not provide maintenance or repairs to the road.

Marcie Parker, VDOT's representative from Saluda advised the road serves two businesses, in order for a road to remain in VDOT's system we require three businesses to keep a road active.

Mr. Gordon advised it would be difficult for the Town to provide maintenance to the road.

Mr. Stunkle suggested the Town pursue an agreement with the two businesses on the maintenance of the road.

Mr. Hudson asked what will happen if Town Council does not support VDOT's discontinuance of old Rt.33.

Marcie Parker advised that VDOT does not need Town Council's permission to discontinue Rt. 33, VDOT has the authority to discontinue the road.

Mr. Healy asked if VDOT has sent notification to Smurfit-Stone or the Chipping Plant on the discontinuance of Rt. 33.

Mr. Stunkle advised no, the Town would need to negotiate a maintenance agreement.

Mr. Hudson asked the Public Works Committee to review the resolution prior to the next Commonwealth Transportation Board meeting.

D. Citizens Address to Council

Mr. Hudson opened the floor for citizens to address Town Council on any Town related business. There being none, Mr. Hudson closed the Citizens Address.

IV. COUNCIL RESPONSE

Mr. Hudson advised a Welcome Home Reception was arranged for the 237th Engineer Company at the High School on Sunday, July 19th 2008. Mr. Hudson apologized to the public for any confusion with the time of arrival of the unit. The Nation Guard organized the Home Coming and did not have an exact time of arrival or a commencement time for the ceremony.

V. AGENDA CHANGES

No changes were made to the agenda.

VI. ADOPTION OF CONSENT AGENDA

Mrs. Ball made a motion to adopt the following consent agenda, seconded by Mr. Shreaves.

- 1) Minutes of June 30, 2008 Town Council Meeting and Work Session
- 2) Cash Reports
 - a) General Fund
Cash on hand as of June 30, 2008 - \$2,434,146.03
 - b) Water Fund
Cash on hand as of June 30, 2008 - \$385,231.16
 - c) CIP
Cash on hand as of June 30, 2008 - \$664,817.15
- 3) Monthly Budget Report
- 4) School Fund Cash Report
 - a) Cash on hand as of June 30, 2008 - \$134,165.61
- 5) West Point Monthly Police Activity Report
- 6) Building Official Monthly Report
- 7) Public Works Monthly Report
- 8) Community Development Monthly Permit Report
- 9) Treasurer Monthly Report

Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

VII. COMMITTEE REPORTS

A. Public Safety – Mrs. Gulley reported for the Committee.

1. Ordinance 04-08 – Outdoor Gatherings

Mrs. Gulley made a motion to authorize the Town Manager to advertise Ordinance 04-08 for a Public Hearing on August 25, 2008. Seconded by Mr. Lawson, upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

B. Finance Committee – Mrs. Ball reported for the Committee

1. VRS Resolution – *See attached resolution*

Mrs. Ball made a motion to adopt the attached Virginia Retirement Resolution. Seconded by Mrs. Gulley, upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

C. Education Committee – Mrs. Nichols reported for the Committee

1. School Board Resolution Appropriating Funds – *See attached resolution*

Mrs. Nichols made a motion to adopt the Resolution appropriating unexpended funds from fiscal year 07-08. Seconded by Mr. Gordon, upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

D. Public Works – Mr. Gordon reported for the Committee

1. Stage Canopy

Mr. Gordon advised the Economic Development Coordinator solicited three bids to construct a Tensile Structure/Canopy over the stage at the Town Square. Due to the timeframe to construct the canopy by Crab Carnival, two of the companies declined to submit bids, only one company submitted a bid.

Mr. Gordon made a motion to authorize the Town Manager to enter into a contract for the design of the tensile structure, the solicitation of bids for the concrete foundation to support the tensile structure and the lighting around the perimeter of the Town Square, seconded by Mr. Shreaves.

Mrs. Gulley asked how the Town was paying for the Canopy and advised she does not remember the cost being so high.

Mr. Barber advised the funds will come from the Bond proceeds.

Mrs. Gulley asked Mr. Barber to explain the estimate showing a reduced rate if the Town provides general labor for construction.

Mr. Barber advised Soper Fabric Products will provide supervision for the general labor.

Mr. Hudson asked Mr. Barber if he plans on providing an exact cost for the foundation in case it comes in over budgeted and we decided not to do the canopy.

Mr. Barber advised in order to have the canopy in place for the Crab Carnival, we need authorization to proceed with the design, I will bring the foundation cost back to Council in August.

Mr. Lawson stated that a rental tent has been reserved for Crab Carnival if the canopy has not been built.

Mr. Hudson asked if enough research has been done on the construction cost to be sure it will cost between \$20,000 and \$30,000.

Mr. Barber stated yes.

Mr. Healy advised he has a concern with the cost and suggested waiting till next spring before proceeding with this project.

Mr. Gordon stated the Town has rushed into this project and suggested renting a tent for the Crab Carnival, it would leave the Town with the option to obtain additional bids.

Mr. Lawson advised the stage has just been built, it is too early to know how much it will be used. The YMCA has scheduled a concert, Christmas on the Town is in December, including the Crab Carnival and Jammin' on the Point the stage will be used. Mr. Lawson also stated that most bands require a stage cover before they will sign a contract.

Andrea Erard, the Town Attorney asked if the Town employee's were qualified to install the canopy and would that affect the warranty.

Mr. Barber advised no.

Upon roll call Mrs. Ball, Mrs. Gulley, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye" and Mr. Gordon and Mr. Healy voted "Nay".

Mr. Hudson advised the cost for construction of the foundation will come back to Council at a later date.

2. Mattaponi Avenue Drainage Improvements

Mr. Gordon advised the Town Attorney has reviewed the Contract and Notice to Proceed. Mr. Gordon made a motion to award the contract to Waterfront Construction & Design not to exceed \$39,500 and to authorize the Town Manager to sign the contract and proceed with construction. Seconded by Mrs. Ball, upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

E. Economic and Community Development – Mr. Lawson reported for the Committee

1. Boating Infrastructure Grant – *See attached resolution*

Mr. Lawson advised the Economic Development Coordinator attempted to transfer a grant the Town received for the development of the 3rd Street Marina to the 7th Street Marina, the grant was not transferable. The attached resolution authorizes a new application in the amount of \$750,000 for the 7th Street Marina.

Mr. Lawson made a motion to adopt the attached resolution, seconded by Mrs. Gulley. Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

2. Broadband Study

Mr. Lawson made a motion to authorize the Town Manager to apply for grant funds from DHCD in the amount of \$32,500 with a local match not to exceed \$3,250. Seconded by Mr. Shreaves, upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

3. Geotechnical Study on Chelsea Road

Mr. Lawson made a motion to authorize the Town Manager to proceed with boring test on the property owned by the Town at the corner of Chelsea Road and Glass Island Road, not to exceed \$4,300. Seconded by Mr. Gordon, upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

VIII. TOWN MANAGER'S ITEMS

A. Kirby Street Historic Resources Agreement Resolution – *See attached resolution*

Mrs. Gulley made a motion to adopt the attached resolution, seconded by Mr. Shreaves. Upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

B. Employee Recognition

Mr. Funkhouser advised that Bradley Hornsby, an employee in the Public Works Water Department on his way home one evening heard a resident in her back yard yelling for help. Mr. Hornsby called 911 for assistance. The resident was Betty Hodges that had fallen and broken her hip, she had been laying on the ground for approximately ten minutes in pain.

Mr. Healy asked if a recognition letter can be placed in Mr. Hornsby's employee file.

IX. OLD BUSINESS

X. NEW BUSINESS

A. Planning Commission Report - Mr. Hudson

1. Planning Commission

Mr. Hudson advised that Planning Commission did not meet in July, therefore there is no report available.

2. Request Authorization to Advertise for Public Hearings for/ Patriots Village/Magnolia Meadows/New Delaware Subdivisions

Mr. Hudson advised the request is for authorization to advertise for Public Hearings on final plat approval for the following proposed subdivisions: Patriots Village, Magnolia Meadows and New Delaware. Town staff has not received final approval from VDOT on Magnolia Meadows and New Delaware and both subdivisions will need to be reviewed by the Town Attorney.

Mrs. Gulley made a motion to authorize the Town Manager to advertise for public hearings on Patriots Village, Magnolia Meadows and New Delaware upon review of the Town Attorney and VDOT. Seconded by Mrs. Ball, upon roll call Mrs. Ball, Mr. Gordon, Mrs. Gulley, Mr. Healy, Mr. Lawson, Mrs. Nichols and Mr. Shreaves all voted "Aye".

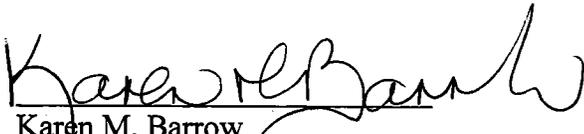
XI. ADJOURNMENT

There being no further business Mr. Hudson adjourned the meeting.



James H. Hudson, III
Mayor

ATTEST:



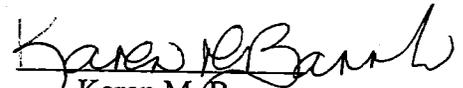
Karen M. Barrow
Town Clerk



**TOWN OF WEST POINT
ANNUAL ORGANIZATIONAL MEETING
RESOLUTION**

BE IT RESOLVED; pursuant to State Code 15.2-1416 the Town Council of the Town of West Point establishes the last Monday of each month at 6:30 p.m. with a Work Session at 6 p.m. in Town Hall located at 329 6th Street, West Point, Virginia for its regularly scheduled monthly meeting to conduct Town business except for the December meeting that will be on Monday, December 22, 2008 and the May meeting that will be on Monday, May 18, 2009.

Certified to be a true copy of a resolution adopted by the Town Council of the Town of West Point at its regular monthly meeting held July 21, 2008 at which meeting a quorum was present and voted throughout.


Karen M. Barrow
Town Clerk



**TOWN OF WEST POINT
RESOLUTION**

**Affirmation of Authorization to Pick-up the Employee's Contribution to VRS
for The Town of West Point – 55241
Under § 414(h) of the Internal Revenue Code**

WHEREAS, the Town of West Point provides its employees with tax deferral pursuant to § 414(h) of the Internal Revenue Code with respect to their member contributions to the Virginia Retirement System (referred to as VRS) by picking up member contributions to VRS; and

WHEREAS, VRS keeps track of such picked up member contributions, and treats such contributions as employee contributions for all purposes of VRS;

WHEREAS, the Internal Revenue Service in Notice 2006-43 has provided transition relief for existing pick up arrangements provided that an authorized person takes formal action to evidence the establishment of the pick-up arrangement no later than January 1, 2009.

WHEREAS, in order to avail itself of the protection given under Notice 2006-43, the desires to affirm its intention to establish and maintain a pick-up arrangement through formal action by its governing body.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the existing member contribution pick-up arrangement is hereby affirmed as it relates to salary reduction elections in effect prior to the date of this Resolution, and it is further

RESOLVED that effective the first pay day on or after July 21, 2008, the Town of West Point shall pick up member contributions of its employees to VRS, and such contributions shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code of the United States; and it is further

RESOLVED that such contributions, although designated as member contributions, are to be made by the Town of West Point in lieu of member contributions; and it is further

RESOLVED that pick up member contributions shall be paid from the same source of funds as used in paying the wages to affected employees; and it is further

RESOLVED that member contributions made by the Town of West Point under the pick up arrangement shall be treated for all purposes other than income taxation, including but not limited to VRS benefits, in the same manner and to the same extent as member contributions made prior to the pick up arrangement; and it is further

RESOLVED that nothing herein shall be construed so as to permit or extend an option to VRS members to receive the pick up contributions made by the Town of West Point directly instead of having them paid to VRS; and it is further

RESOLVED that notwithstanding any contractual or other provisions, the contributions of each member of VRS who is an employee of the Town of West Point shall be picked up either through a reduction in the current salary of such employee or as an offset against future salary increases of such employee or as a combination of both at the option of the employer by the Town of West Point on behalf of such employee pursuant to the foregoing resolutions.

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Karen M. Barrow
Town Clerk

Motion: Deborah Ball
Second: Tina Gulley

VOTE:

Mrs. Ball	"Aye"
Mr. Gordon	"Aye"
Mrs. Gulley	"Aye"
Mr. Healy	"Aye"
Mr. Lawson	"Aye"
Mrs. Nichols	"Aye"
Mr. Shreaves	"Aye"



**TOWN OF WEST POINT
RESOLUTION
TOWN BUDGET AMENDMENT AND
APPROPRIATION OF SURPLUS FUNDS
FROM FY 07-08 SCHOOL BUDGET
FY 08-09 Budget Amendment (#0809-01)**

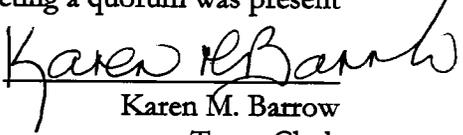
WHEREAS: The West Point School Board had a surplus balance of \$134,165 of funds from the FY 07-08 budget; and

WHEREAS; The School Board approved a resolution requesting approval and appropriation of the surplus funds to add \$25,000 for use towards rising Fuel cost \$25,000 towards Utility cost, \$50,000 to renovate the Biology Lab at the high school and \$34,165 to be applied towards the Architectural and Engineering fees associated with the HVAC replacement project; and

WHEREAS; The appropriation of \$134,165 will not reduce the Town's fund balances.

NOW THEREFORE BE IT FURTHER RESOLVED: The West Point Town Council of the Town of West Point amends the FY 08-09 Town Budget to add \$134,165 to the School Budget and to appropriate \$134,165 to the School Board Budget. The total School Budget is now \$9,955,500 and the total Town Budget is now \$18,934,700.

Certified to be a true copy of a resolution adopted by the Town Council of the Town of West Point at its regular monthly meeting held July 21, 2008 at which meeting a quorum was present and voted throughout.


Karen M. Barrow
Town Clerk

VOTE:

Mrs. Ball	"Aye"
Mr. Gordon	"Aye"
Mrs. Gulley	"Aye"
Mr. Healy	"Aye"
Mr. Lawson	"Aye"
Mrs. Nichols	"Aye"
Mr. Shreaves	"Aye"



TOWN OF WEST POINT RESOLUTION

WHEREAS, the former marina site on the Mattaponi River at 7th Street has been purchased by "4 On the Shore" development group with the intent to re-establish a marina, including facilities for large transient vessels; and

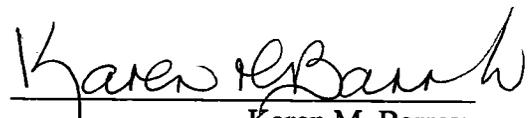
WHEREAS, the Town supports the development of the 7th Street marina, and has developed a Boating Infrastructure Grant (BIG) funding application to cover a portion of the costs of the infrastructure related to facilities designed for large transient boats.

WHEREAS, the cost development of the 7th Street Marina is projected at \$5,000,000 with approximately \$2,000,000 of the development costs supporting facilities for large transient boats.

NOW, THEREFORE BE IT RESOLVED: That the West Point Town Council requests the Virginia Department of Health and the United States Fish and Wildlife Service award a \$750,000 grant for the 7th Street marina site.

NOW BE IT FURTHER RESOLVED: That the Town Council authorizes the Town Manager to submit the necessary application and supporting materials to apply for the BIG funding.

Certified to be a true copy of a resolution adopted by the Town Council of the Town of West Point at its regular monthly meeting held July 21, 2008, at which meeting a quorum was present and voted throughout.


Karen M. Barrow
Town Clerk

VOTE:

Mrs. Ball	"Aye"
Mr. Gordon	"Aye"
Mrs. Gulley	"Aye"
Mr. Healy	"Aye"
Mr. Lawson	"Aye"
Mrs. Nichols	"Aye"
Mr. Shreaves	"Aye"

**PROGRAMMATIC AGREEMENT
BETWEEN
THE TOWN OF WEST POINT
AND
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE KIRBY STREET NEIGHBORHOOD REVITALIZATION
PROJECT**

WHEREAS, the Town of West Point, in the County of King William, Virginia (Town) has applied for and will receive a Community Development Block Grant (CDBG) to address neighborhood revitalization and the removal of slums and blight; and

WHEREAS, Congress amended the Housing and Community Development Act of 1974 (HCD Act) in 1981 to give each State the opportunity to administer CDBG funds for non-entitlement areas; and

WHEREAS, in the Commonwealth of Virginia the Department of Housing and Community Development (DHCD) administers CDBG funds from the U.S. Department of Housing and Urban Development (HUD) under the HCD Act; and

WHEREAS, pursuant to 24 CFR Part 58, states administering the CDBG program have the responsibility of ensuring that recipient communities comply with applicable State and Federal laws and requirements, including the National Historic Preservation Act (16 U.S.C. 470f) (NHPA) and, therefore, DHCD has been invited and has participated in consultation towards this Agreement; and

WHEREAS, CDBG funds will be used for the Kirby Street Neighborhood Revitalization Project which consists of property acquisition, housing rehabilitation, clearance of blight, infrastructure improvements including water and sewer, streetscape, , and public space improvements including new sidewalks and street trees (Undertaking); and

WHEREAS, the Town, in consultation with the Virginia Department of Historic Resources, which serves as the Virginia State Historic Preservation Office (SHPO), has established that the Undertaking's Area of Potential Effects (APE), shown in Appendix 1, includes portions of the West Point Historic District (Historic District), a district listed in the National Register of Historic Places; and

WHEREAS, the Town has determined in consultation with the SHPO that the Undertaking may affect historic properties within the Historic District, per 36 CFR Part 800.5(a) of the regulations implementing Section 106 of the NHPA; and

WHEREAS, the SHPO and the Town have agreed, per 36 CFR Part 800.3(g), to compress the steps of the Section 106 process in order to expedite consultation; and

WHEREAS, the Town has provided notification to the Advisory Council on Historic Preservation (ACHP) per 36 CFR Part 800.6(a)(1); and the ACHP has elected not to participate in consultation; and

WHEREAS, pursuant to 36 CFR Part 800.3(f) the Town has invited the Historical Society of West Point to participate in consultation and to sign as a concurring party, and they have accepted; and

WHEREAS, the definitions given in Appendix 2 are applicable throughout this Agreement.

NOW, THEREFORE, the Town and the SHPO, agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the Undertaking's effects on historic properties.

STIPULATIONS

The Town shall ensure that the following stipulations are met:

I. Guiding Principles

A. The Town shall form a neighborhood advisory committee (CDBG West Point Management Team) within 6 months of execution of this Agreement, which will review projects covered

under this Agreement and will monitor project work. A representative from the Historical Society of West Point shall be a member of the advisory committee. The representative shall have a familiarity with the *Secretary of the Interior's Standards for Rehabilitation* and the architectural heritage of Kirby Street Neighborhood and bring that knowledge and the resources of the Society to bear upon review of projects involving contributing buildings within the Historic District. The Committee shall be responsible for the identification, evaluation and treatment of historic properties involving the expenditure of federal assistance from HUD.

B. In consultation with the SHPO the Town shall attempt to meet, when feasible, the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (Appendix 3) for all projects related to this Undertaking that affect a contributing property within the Historic District.

C. The Town shall ensure, when feasible, that all CDBG-funded new construction, within the Historic District is compatible with the historic character of the Historic District.

D. The Town and the SHPO in order to streamline the Section 106 review process shall emphasize the treatment of exteriors that contribute to the property's eligibility for the National Register; may exempt categories of routine activities; and may develop treatment and design protocols for rehabilitation and new construction.

II. Coordination of Review

A. When the Town identifies a property that will be affected by the Undertaking, the Town shall submit the following documentation to the SHPO for review and comment. If the Town disagrees with the SHPO's comments, consultation shall continue until an agreement is reached. If an agreement cannot be reached, consultation will continue pursuant to Stipulation X, Dispute Resolution.

1. A Project Review Application Form (Appendix 4).
2. A copy of the map in Appendix 1 showing the precise location of the property.
3. Photographs, digital or print, of the building(s)' exterior(s) from the front, back, and sides. For new construction projects, photographs of the site and neighboring streetscape.
4. A determination of whether the property contributes to the Historic District as defined by the boundaries on the map (Appendix 1).

B. If any portion of the Undertaking will result in a cumulative ground disturbance of one (1) acre or greater, the Town will consult with the SHPO per Stipulation V.

C. If the town determines that a property does not contribute to the Historic District, then the Town may proceed with rehabilitation activities on that property but shall continue to consult with the SHPO, per Stipulation II (D), on any new construction at that location.

D. If the Town determines that a property contributes to the Historic District, then it must be treated as an historic property for the purposes of Section 106, and the Town shall assess the effects of the Undertaking on that property. The Town shall prepare the following information based on the type of activity anticipated.

1. Rehabilitation
 - a. Detailed scope of work.
 - b. Plans and drawings, if applicable.
 - c. Materials specification, if applicable.
 - d. Description and photos of architectural features to be repaired or replaced.
2. Demolition
 - a. An explanation of the reasons for demolition.
 - b. Any code enforcement documents that support the necessity of demolition, if applicable.
 - c. A structural evaluation and documentation of the building that supports the necessity of demolition, if applicable.
 - d. Adequate documentation to demonstrate that rehabilitation is not economically or structurally feasible, or that retention of the property would jeopardize the implementation of an affordable housing project.
3. New Construction
 - a. Identification of the lot proposed for new construction, including street address and map.
 - b. Plans for exterior elevations.
 - c. Exterior materials specifications.

d. Site plan, including the boundaries of the lot and adjacent lots and proposed footprint of new construction.

E. For all rehabilitation and demolition projects on properties considered contributing to the Historic District and all new construction within the Historic District carried out under this Agreement, the Town shall submit to the SHPO for review and comment the following information.

1. All documentation prepared pursuant to Stipulation II (A).
2. All necessary documentation prepared pursuant to Stipulation II (D).
3. A determination of whether the proposed treatment meets the Standards or detailed statement as to why the Standards cannot be met. A Standards Checklist form shall be completed for all new construction and rehabilitation projects (Appendix 5).
4. A Finding of Effect (No Adverse Effect or Adverse Effect) based on an application of the Standards and the guidance in 36 CFR Part 800.5.

III. Mitigation

A. If adverse effects are identified during the course of the project, the Town shall consult with the SHPO, the Historical Society of West Point, and other consulting parties, as applicable, to consider possible ways to avoid or minimize the adverse effects. The Town shall provide the opportunity for the interested public to express their views on the proposed mitigation measures pursuant to Stipulation IX (B). If the effects cannot be avoided the Town shall consult with the SHPO, the Historical Society of West Point, and any other consulting parties about appropriate mitigation which shall be determined based on the degree of the adverse effect and the level of significance of the resource. The agreed upon mitigation shall be submitted to the SHPO for review and comment before construction or demolition begins.

B. All mitigation documentation prepared pursuant to this Agreement shall be prepared by a professional in the appropriate discipline who meets the *Secretary of the Interior's Professional Qualification Standards* (36 CFR Part 61).

IV. Emergency Situations

Should a building collapse, be largely destroyed by fire, be substantially damaged by a storm and/or be on the verge of collapse, the Town may, per 36 CFR Part 800.12, declare an Emergency Situation and, acting in the interest of public health and safety, propose demolition of a historic property. Upon issuance of the order, the Town shall, to the extent possible, document the building and notify the SHPO as soon as possible.

V. Archaeology

A. If no recorded archaeological site, as shown in Appendix 1, is present in the project area, the Town may proceed without archaeological consultation with the SHPO for the following ground-disturbing activities:

1. Any individual activity requiring less than one acre of ground disturbance. The area of potential effect for individual activities shall include all land-disturbing actions associated with site preparation, construction, associated access roads, temporary construction easements, equipment storage areas, staging areas, below ground utilities, etc.
2. The installation of utilities, such as sewer, storm, electrical, gas, steam, compressed air, leach lines, and septic tanks in road rights-of-way, existing utility corridors, or other areas previously disturbed by these activities.

B. Any projects involving ground-disturbing activities within existing archaeological sites or not otherwise exempted under Stipulation V (A), above, shall be submitted to the SHPO, for review and comment through the completion of a Project Review Application Form (Appendix 4).

C. Should the Town determine, in consultation with the SHPO, that further archaeological identification is needed; the SHPO shall recommend a program to identify and evaluate archaeological resources.

D. Should the Town, as a result of survey efforts, determine that an eligible archaeological site will be affected; a plan for its avoidance, protection, or recovery of data will be submitted to the SHPO for review and comment. The Town will consider all comments received in preparing the final treatment plan and will then implement the plan.

E. All archaeological studies, resulting from this Agreement including data recovery plan(s), shall be performed by an archaeologist meeting the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR Part 61) and in accordance with *The Secretary of the*

Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37), and the SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia: Additional Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44742, September 29, 1983) (1999, rev. 2003), and shall take into account the ACHP's publications, *Consulting About Archeology Under Section 106* (1990), *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), and *Section 106 Archaeology Guidance* (June 2007).

VI. Review of Documentation

The SHPO agrees to review documentation submitted pursuant to this Agreement within thirty (30) days after confirmed receipt of complete documentation. If no response is received within thirty (30) days, the Town may assume SHPO concurrence with its findings.

VII. Post Review Discoveries

The Town shall ensure that construction documents contain the following provisions for the treatment of unexpected discoveries:

A. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, the Town shall immediately notify the SHPO. All construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The Town and an archaeologist, meeting *The Secretary of the Interior's Professional Qualifications Standards* (36 CFR Part 61), immediately will inspect the work site and determine the area and the nature of the affected archaeological property. Construction work may then continue in the project area outside the site area. Within two (2) working days of the original notification of discovery, the Town, in consultation with the SHPO, shall determine the National Register eligibility of the resource.

B. Potentially eligible historic properties shall be evaluated using the National Register Criteria for Evaluation in accordance with 36 CFR Part 800.4(c). If the Town determines that the resource meets the National Register Criteria for Evaluation (36 CFR Part 60.6), the Town shall ensure compliance with Part 800.13(b)(3) of the ACHP's Regulations. The SHPO shall provide comments on any treatment plan submitted within two (2) business days of receipt. If the SHPO fails to comment, the Town may assume concurrence and implement the plan. Work in the affected area shall not proceed until the development of an appropriate treatment plan; or the determination is made that the located resource is not eligible for inclusion on the National Register.

VIII. Human Remains

A. Human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in the manner consistent with the provisions of the *Virginia Antiquities Act*, Section 10.1-2305 of the *Code of Virginia*, and with the final regulations adopted by the Virginia Board of Historic Resources and published in the Virginia Register of July 15, 1991. Copies of the above-listed law and regulations are included as Appendix 6.

B. In the event that the human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the Town shall immediately notify the Virginia Council on Indians (VCI). The treatment of Native American human remains and associated funerary objects will be determined in consultation with the VCI. All reasonable efforts will be made to avoid disturbing Native American gravesites and associated artifacts. To the extent possible, the Town shall ensure that the general public is excluded from viewing any Native American gravesites and associated artifacts. No photographs of any Native American gravesites and/or associated funerary objects will be released to the press or to the general public.

C. The Town may obtain a permit from the SHPO for the removal of human remains in accordance with the regulations stated above. In reviewing a permit involving removal of Native American human remains, the SHPO will notify and consult with the VCI as required by the regulations stated above.

IX. Public Participation

A. The Town shall afford the interested public an opportunity to comment in accordance with the public participation plan approved by DHCD as part of the CDBG grant process.

B. When a finding of adverse effect is made, the Town shall solicit public comment regarding the Undertaking's effects on historic properties and the proposed mitigation measures and shall provide copies of those comments to the SHPO.

X. Dispute Resolution

A. Should any party to this Agreement object in writing to the Town regarding any action carried out or proposed with respect to the Undertaking or implementation of this Agreement, the Town shall consult with the objecting party to resolve the objection. If after initiating such consultation the Town determines that the objection cannot be resolved through consultation, the Town shall forward all documentation relevant to the objection to the ACHP, including the Town's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options.

1. Advise the Town that the ACHP concurs in the Town's proposed response to the objection, whereupon the agency will respond to the objection accordingly;
2. Provide the Town with recommendations, which the Town shall take into account in reaching a final decision regarding its response to the objection; or
3. Notify the Town that the objection will be referred for comment pursuant to 36 CFR Part 800.7(a)(4), and proceed to refer the objection and comment. The Town shall take the resulting comment into account in accordance with 36 CFR Part 800.7(c)(4) and Section 110(l) of NHPA.

Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Town may assume the ACHP's concurrence in its proposed response to the objection.

The Town shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Town's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

B. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement or the effect of any individual undertaking on historic properties be raised by a member of the public, the Town shall notify the parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Agreement to resolve the objection.

XI. Amendment and Termination

A. Any signatory to this Agreement may request that it be amended, whereupon the signatories shall consult in accordance with 36 CFR Part 800. to consider such an amendment. All signatories to this Agreement must agree to the proposed amendment in accordance with 36 CFR 800.6(c)(7).

B. If the Town determines that it cannot implement the terms of this Agreement, or if the SHPO determines that the Agreement is not being properly implemented the Town or the SHPO may propose to the other parties that it be terminated.

C. Termination shall include the submission of any outstanding documentation on any work done up to and including the date of termination.

D. A party proposing to terminate this Agreement shall so notify all parties to the Agreement, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

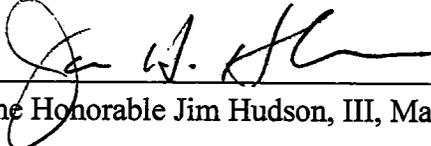
E. Should such consultation fail and the Agreement be terminated, the Town shall comply with 36 CFR Parts 800.3 through 800.6 with regard to individual project covered by this Agreement.

XII. Duration of the Agreement

This Agreement shall continue in full force and effect until five (5) years after the date of the last signature. At any time in the sixth-month period prior to such date, the Town may request the SHPO to consider an extension or modification of this Agreement. No extension or modification shall be effective unless the signatories to the Agreement have agreed with it in writing.

Execution of this Programmatic Agreement and implementation of the provisions herein shall be evidence that the Town and the Federal and State agencies have satisfied their Section 106 responsibilities for all individual projects subject to the review of this Agreement.

SIGNATORIES

By _____ Date _____
:  : _____
The Honorable Jim Hudson, III, Mayor, Town of West Point, Virginia

By _____ Date _____
: _____ : _____
Kathleen S. Kilpatrick, Director, Virginia Department of Historic Resources
and Virginia State Historic Preservation Officer

CONCURRING PARTY

By _____ Date _____
: _____ : _____
Mark Neale, President, Historical Society of West Point