

**BOARD OF SUPERVISORS  
COUNTY OF NEW KENT  
VIRGINIA**

**O-10-11**

At the regular meeting of the Board of Supervisors of the County of New Kent, in the Boardroom of the Administration Building in New Kent, Virginia, on the 13<sup>th</sup> day of June, 2011:

Present:	Vote:
W.R. Davis, Jr.	Abstain
David M. Sparks	Aye
Stran L. Trout	Aye
James H. Burrell	Aye
Thomas W. Evelyn	Aye

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Motion was made by Mr. Sparks, which carried 4:0, to adopt the following ordinance:

**AN ORDINANCE TO AMEND THE  
LAKE CHRISTOPHER DEVELOPMENT AND  
PROFFER STATEMENT TO REMOVE GPIN #L31-2762-  
0191, APPROXIMATELY 0.635 ACRES IN SIZE,  
FROM THE DEVELOPMENT**

**WHEREAS**, the New Kent County Board of Supervisors approved Ordinance O-13-08 on August 11, 2008, which approved the Lake Christopher development and its associated proffer statement (dated August 11, 2008, recorded in the Circuit Court Clerk's Office in Deed Book 534, page 813); and

**WHEREAS**, the applicants wish to amend the development plan and proffer statement in order to remove GPIN #L31-2762-0191 (Tax Parcel 28-12); and

**WHEREAS**, the application (ZM-01-11) was formally referred to the New Kent County Planning Commission (the "Planning Commission") in accordance with applicable procedures; and

**WHEREAS**, within the timeframes established by the Code of Virginia and the New Kent County Code, the Planning Commission scheduled and conducted a formal and duly advertised public hearing on May 16, 2011, and carefully considered the application; and

**WHEREAS**, the Planning Commission voted 8:0:1 to forward the subject application to the New Kent County Board of Supervisors with a favorable recommendation; and

**WHEREAS**, the rezoning application has been advertised for public hearing before the Board of Supervisors in full accord with applicable provisions of the Code of Virginia; and

**WHEREAS**, approval of the rezoning request through the adoption of this Ordinance will further the public necessity, convenience, general welfare and good zoning practices in the County of New Kent; and

**WHEREAS**, the Board of Supervisors has found the following, with regard to this application:

- The proposal is not prejudicial to the character of the neighborhood.
- The proposal will not adversely affect the general plans for the physical development of the County as embodied in the Comprehensive Plan.
- The proposal will not be detrimental to the use or development of adjacent properties or the general neighborhood, nor will it impair the value of buildings or property in surrounding areas.
- The application is generally in conformance with the New Kent County Comprehensive Plan, "Vision 2020".
- The proposed rezoning would provide for the long-range development of the subject property in a coordinated and well planned fashion.

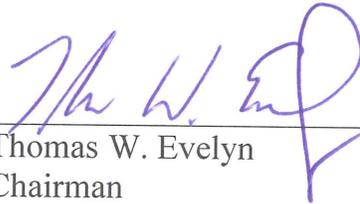
**NOW THEREFORE BE IT ORDAINED** this, the 13<sup>th</sup> day of June 2011, by the New Kent County Board of Supervisors, that application ZM-01-11 be, and it hereby is, approved by amending the Lake Christopher Development and proffer statement to remove GPIN #L31-2762-0191, consisting of approximately 0.635 acres, from the development.

**BE IT FURTHER ORDAINED** that the amended proffer statement titled "PROFFERS, LAKE CHRISTOPHER" and dated March 16, 2011, be recorded with this Ordinance and will replace the previous proffer statement for the Lake Christopher development.

**BE IT FURTHER ORDAINED**, that the County Administrator be, and he is hereby, directed to have a fully executed copy of this Ordinance and amended proffer statement recorded upon the Land Records of the County in the office of the Clerk of the Circuit Court.



G. Cabell Lawton, IV  
County Administrator



Thomas W. Evelyn  
Chairman

STATE OF VIRGINIA

County of New Kent, to-wit:

Subscribed to before me, the undersigned Notary Public, by G. Cabell Lawton, IV, County Administrator, and Thomas W. Evelyn, Chairman, on the 17<sup>th</sup> day of June, 2011.

My commission expires May 31, 2012.

Notary Commission No. 156872.



Notary Public

**PROFFERS  
LAKE CHRISTOPHER**

THESE PROFFERS are made this 16 day of March, 2011, by and among:

ADA ISABEL DAVIS WHITE JAVIS, an individual ("Jarvis") (to be indexed as grantor);

NEW KENT COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia ("County") (to be indexed as grantee).

**RECITALS**

R-1. Jarvis is the owner of certain real property located in New Kent County, Virginia, shown and depicted as "Parcels B, C and D" (together hereinafter referred to as "The Property") on the attached exhibit plat dated June 2, 2008 and entitled, "Exhibit Plat of Proposed Lake Christopher" (the "Exhibit Plat") attached hereto and made a part hereof.

R-2. The Property was rezoned from R-1 and A-1 to Conditional R-1 (Cluster) by the New Kent County Board of Supervisors on September 8, 2008, by Ordinance O-13-08 subject to Proffers dated August 11, 2008, and recorded in the Clerk's Office of the New Kent Circuit Court in Deed Book 534, at page 813.

R-3. In the rezoning, certain real property depicted as Parcel A on the Exhibit Plat owned by Mid-Atlantic Communities, LLC was also included in the plan of development and made subject to the Proffers referenced in R-2, above.

R-4. A conceptual plan of development ("Plan") entitled "Lake Christopher" dated May 28, 2008, revised August 11, 2008, prepared by C. E. Newbaker Surveying and Planning, Inc., was submitted to the County Planning Division and the Proffers included a requirement that the property was to be developed in accordance with the Plan.

R-5. Mid-Atlantic Communities, LLC has submitted an application to remove Parcel A from the Proffers and Plan of Development for the Proposed Lake Christopher development, and Jarvis has no objection to this application.

R-6. The provisions of the Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, the Owner and Contract Purchaser, in furtherance of the Application of rezoning, desire to proffer certain conditions which are 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 98-781 of the New Kent County Zoning Ordinance.

R-7. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the County of the Application, and pursuant to Section 15.2-2296, et seq., of the Virginia Code and Section 98-781 of the New Kent County Code (“County Code”), the Owner hereby agrees that if the Application by Mid-Atlantic Communities, LLC referenced in R-5, above, is approved, any subsequent development of the Owner’s Property shall be in strict accordance with the conditions set forth in this submission, and these Proffers shall not apply to Parcel A or to Mid-Atlantic Communities, LLC.

**PROFFERS:**

1. Plan of Development. Parcels B, C and D as depicted on the Exhibit Plat (“The Property”) shall be developed substantially in conformance with the Plan with the exception that only twenty three (23) lots shall be developed on the Property. The Plan is a conceptual plan for proposed development on the Property and provides only for the general location of lots, common areas, proposed streets, drainage facilities, areas of open space, and buffer areas. Upon approval of the Application, any site plan, subdivision plat or development plan thereafter submitted for the development of the Property shall be in substantial conformance with all proffered conditions in accordance with Section 98-786 of the County Code.

2. Property Owners Association(s). A property owners association shall be established pursuant to and in accordance with the Virginia Property Owners Association Act, § 55-508 et seq. of the Virginia Code (hereinafter, such association shall be referred to as the "Owners Association"), in which all owners of lots within the Property shall be members of such Owners Association by virtue of their property ownership. The Owners Association will own and maintain the lake and other common areas depicted on the Plan. The articles of incorporation and bylaws of such Owners Association and declaration of covenants enforceable by such Owners Association (collectively, the "Governing Documents") shall be submitted to and reviewed by the County Attorney for consistency with this proffer in accordance with Section 91-53 of the County Code prior to final site plan approval. The declaration of covenants will include, without limitation, protective covenants which address:

- a. Minimum square footage of the homes to be constructed on the lots depicted on the Plan
- b. Prohibition against future re-subdivision of any lots in the subdivision
- c. Acceptable exterior building and foundation materials of residential dwelling units
- d. Construction standards for accessory buildings and fences, with a specific prohibition against chain link and stockade fences.
- e. Outside storage
- f. Maintenance of property and grounds
- g. Underground utilities
- h. Removal of inoperable vehicles
- i. Prohibition against use of gasoline or diesel-powered watercraft on the lake.

3. Cash Contributions for Additional Community Impacts. A one-time contribution to the County of \$6,000.00 for each residential dwelling unit constructed on the Property will be paid to the County at the time of issuance of a building permit for each such residential dwelling unit. Such contributions shall be used by the County for school and other public infrastructure uses as deemed necessary by the County..

4. Successors and Assigns. These Proffers shall run with the title to the Property and shall be binding on the parties hereto and their respective successors and assigns; provided, however, once a party ceases to own all or any portion of the Property, such party shall have no personal liability hereunder.

5. Severability. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the 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, subparagraph, 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, subparagraph, section or provision hereof.

6. Headings. All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not a part of these Proffers.

7. Conflicts. In the event that there is any conflict between these proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Zoning Appeals and the Courts or as otherwise provided by law.

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

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

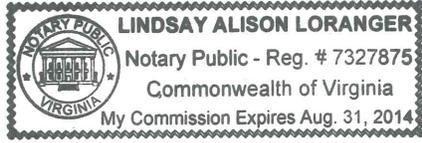
10. Supersedes Proffers dated August 11, 2008. These Proffers supersede the Proffers dated August 11, 2008 and referenced in R-2, above.

11. Parcel A not included in the Proffers. The real property depicted as Parcel A on the Exhibit Plat referenced in R-3 above and owned by Mid-Atlantic Communities, LLC is specifically removed and exempted from these Proffers.

**[SIGNATURES CONTINUE ON FOLLOWING PAGES]**

WITNESS the following signatures, thereunto duly authorized:

ADA ISABEL DAVIS WHITE JARVIS,  
an individual



By: Ada Isabel Davis White Jarvis  
Ada Isabel Davis White Jarvis

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF NOB WILLIAM, to wit:

The foregoing instrument was acknowledged before me this 16 day of MARCH, 2011 by Ada Isabel Davis White Jarvis an individual.

[Signature]  
NOTARY PUBLIC

My commission expires: 31 AUG 14  
Registration No.: 7327875

The original Proffers included land owned by Mid-Atlantic Communities, LLC, and Mid-Atlantic Communities, LLC is seeking removal of their parcel from these Proffers. Therefore, these Proffers shall no longer apply to Parcel A on the Exhibit Plat and Mid-Atlantic Communities, LLC is no longer a part of these Proffers.



Tamara J. Buchli  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7351360  
My Commission Expires  
October 31, 2014

MID-ATLANTIC COMMUNITIES, LLC  
A Virginia Limited Liability Company

By: [Signature]  
Lamont D. Myers, Member/Manager

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF York, to wit:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of March, 2011 by Lamont D. Myers, Member/Manager of Mid-Atlantic Communities, LLC, a Virginia Limited Liability Company.

[Signature]  
NOTARY PUBLIC

My commission expires: October 31, 2014  
Registration No.: 7351360