



City of Virginia Beach

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VIRGINIA BEACH, VA 23456-9001

April 27, 2018

The Honorable Mayor William D. Sessoms, Jr.
Members of City Council

Subject: Ashville Park Cost Participation Term Sheet and Briefing

Dear Mayor and Members of City Council:

Enclosed please find a memorandum from Deputy City Manager Thomas Leahy summarizing a proposed term sheet for the Ashville Park Cost Participation Agreement (CPA). If acceptable to Council, this term sheet would be the basis for drafting a CPA whereby the City and the Developer would jointly construct Phase I of the Ashville Park Stormwater project and cost share in same. A somewhat unique aspect of this proposed term sheet and CPA is that the City would own one of the new storage pond BMP's, and in turn would bank \$2.1 million of water quality credits that would be used for CIP projects in the southern watershed.

Also enclosed is a draft presentation providing the zoning history of Ashville Park and a summary of the proposed Phase I term sheet and CPA. Director of Planning Barry Frankenfield and Deputy City Manager Thomas Leahy will be making the presentation at the Informal Session on Tuesday.

Respectfully,

David L. Hansen
City Manager

Enclosures (2)

c: Thomas M. Leahy, Deputy City Manager
Ronald H. Williams, Jr., Deputy City Manager
Mark A. Johnson, P.E., Interim Director of Public Works
Barry Frankenfield, Director of Planning



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INTER-OFFICE MEMORANDUM

DATE: April 27, 2018
TO: David L. Hansen, City Manager
FROM: Thomas M. Leahy, Deputy City Manager *TML*
SUBJECT: Ashville Park Stormwater Project – Cost Participation

This memo will summarize the proposed term sheet for the City/Developer cost participation for Phase I of the Ashville Park stormwater project. A draft term sheet that Public Works and the Developer have verbally agreed to is enclosed. If approved, this term sheet would be the basis for a cost participation agreement (CPA) between the City and the Developer of Ashville Park, Village C.

Phase 1 would provide immediate, near-term flooding relief to the 299 families in the existing Villages A and B. During a 100-year storm, there would be no flooding in any living spaces. Although water would still pond in yards and streets, it would drain away much faster (hours versus days). Phase 1 would also provide additional benefits with respect to more frequent precipitation events (2-year, 5-year, and 10-year storms).

Phase I has been designed assuming that Village C development would proceed with either 98 or 116 lots. However, by itself, Phase I will not provide all the improvements necessary for Villages D and E to move forward.

Enclosed with this memo is a map showing the various components of Phase I. The City would construct the pump station, the outfall weir, the Sandbridge/New Bridge Road improvements, the Princess Anne Farm Ditch improvements, and provide the 30% design. The Developer would expand BMP 6; construct BMP's 2A, 10A, and 16; construct canals 10A and 15; and regrade the Historic Farm Ditch¹.

Phase 1 is estimated to cost \$11,122,796, based upon a unit cost for excavation that both Public Works and the Developer feel is reasonable. Public Works and the Developer have agreed upon a cost share of \$8,008,413 for the City (72%) and \$3,114,383 for the Developer (28%). For reasons stated below, the City would purchase a 5.490 acre parcel

¹ Each party would be responsible for the 100% design of its respective component projects. The Developer would also construct an emergency ingress/egress for Ranier Village at Cayman Lane. However, that cost is 100% the responsibility of the Developer and is not part of the cost share discussed herein.

from the Developer at a cost of \$363,500 (\$1.52 per square foot). This parcel would incorporate one of the newly constructed storage BMP's (10A), and the City would own the parcel in fee-simple. Therefore, the Developer's net cost share would be \$2,750,883 (\$3,114,383 less \$363,500). All other property and easements necessary for construction, access, and maintenance of the Phase I infrastructure would be dedicated to City by the Developer at no additional cost.

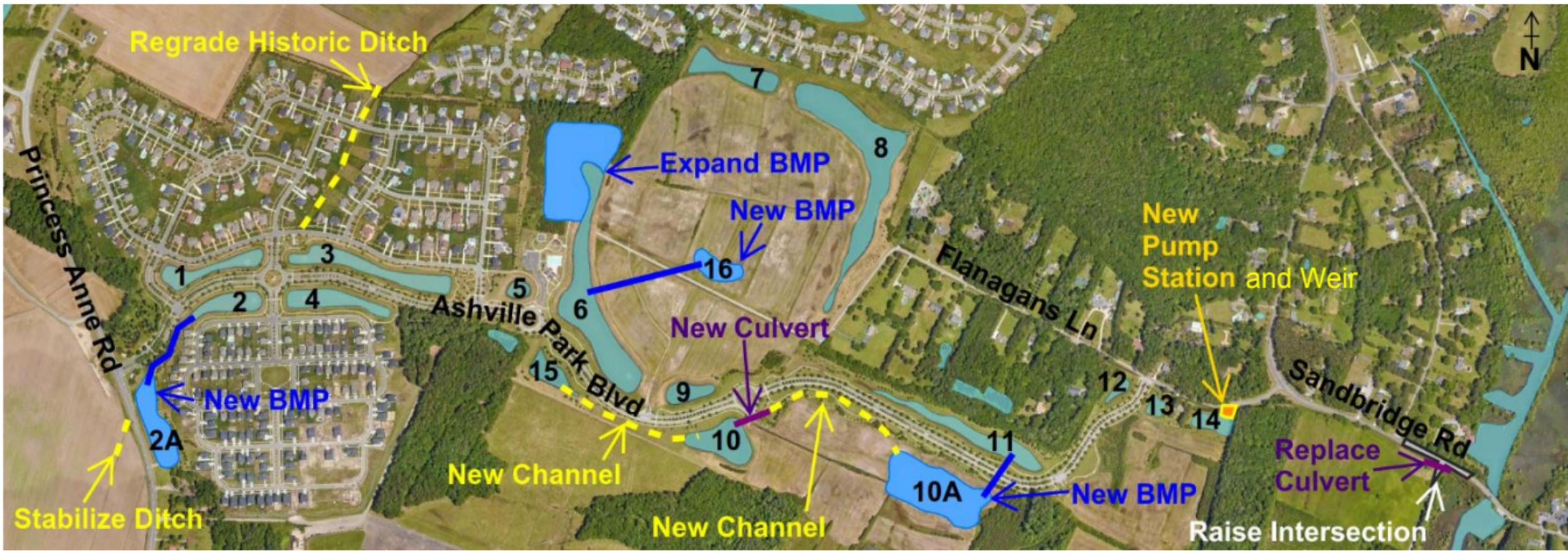
Traditionally, the City does not own storage BMP's. They are owned by the adjacent property owners or a Homeowner's Association (HOA), subject to City easements for stormwater purposes. In this case however, if the City owns this newly constructed storage BMP, it will be able to bank water quality credits worth \$2,144,868. These credits may be used to offset requirements for roadway and other projects in the southern watershed. To name just a few: Princess Anne Road VIIA, Sandbridge/Nimmo VIIA and VIIB, New Bridge/Sandbridge Road intersection improvements, and Pungo Ferry Road improvements. If the CPA is ultimately approved and executed, I would recommend that we use the credits for CIP projects in the southern watershed and transfer the equivalent savings from the benefitting CIP projects to the Ashville Park CIP for future project phases.

The City would be responsible for constructing the City components. The Developer would be responsible for constructing the Developer components valued at \$7,247,000. The City would pay the Developer for the construction of the Developer components less the Developer's cost share of \$2,750,883.

There is a City Cost Cap that represents the maximum the City will pay for the Developer components based on the bids the Developer receives for the work. If the approved low bid exceeds the City Cost Cap, the City has the right to re-negotiate with the Developer. In the event the approved low bid is less than the estimated cost of the Developer components, the Developer will retain the first \$1,000,000 of savings. If the low bid results in a savings of more than \$1,000,000, the amount above \$1,000,000 will be shared between the City and Developer based on a 50/50 split.

No building permits would be issued for Village C homes until the expansion of BMP 6 and BMP 16 are substantially complete. This would not preclude the City's Building Administrator from allowing "model" homes to be constructed (but not occupied). No Certificate of Occupancy for any homes in Village C would be issued until all Developer components are completed and accepted by the City.

I have been significantly involved in the negotiation of this term sheet. Even before we realized that we would bank \$2.1 million of water quality credits, I believed that moving forward with Phase I and a CPA with the Developer was in the public interest. This is a win for the City, a win for the Developer, and most importantly, a win for the Ashville Park residents. I recommend we move forward with a CPA based upon this term sheet.



Map of proposed Ashville Park improvements.

Ashville Park (CIP 7-047)

Cost Participation Agreement between City and Developer

Term Sheet

April 27, 2018

GENERAL:

- The City and Developer will construct components of Phase I of Alternative B (Phase I), that when all are completed, will improve storm water performance in the existing Villages A and B and provide for Village C development. The City will prepare the PER and 30% design of all components of Phase I and provide to the Developer. The Developer will complete design, solicit bids for construction, and complete construction of the “Developer Components”. The City will complete design and construction of the “City Components”, as applicable.
- The total cost estimate for the Phase I Project based on the 30% design, is \$11,122,796 (See Exhibit 1).
- The estimated cost of the “Developer Components” is \$7,247,000 (See Exhibit 2).
- City will pay Developer for his execution of “Developer Components”, based on bids Developer receives by qualified contractors. City must approve bids.
- There is a “City Cost Cap” that represents the maximum the City will pay for the “Developer Components” based on the bids the Developer receives for the work. The City Cost Cap amount is \$9,058,750. If the approved low bid exceeds the City Cost Cap, City has the right to re-negotiate with Developer.
- In the event the approved low bid is less than the estimated cost of the “Developer Components” (\$7,247,000), the developer will retain the first \$1,000,000 of savings. If the low bid results in a savings of more than \$1,000,000, the amount above \$1,000,000 will be shared between the City and Developer based on a 50/50 split.
- Developer shall pay City a “Developer Cost Share” for the project, separate from the items to be constructed by the City and Developer. The “Developer Cost Share” is 28% of the total cost estimate for Phase I, which equals \$3,114,383 (28% of \$11,122,796). See Exhibit 3 for cost share calculation.
- City shall pay Developer \$363,500 for ownership of BMP 10A after constructed.
- Net Credit to City based on “Developer Cost Share” and Cost for purchase of BMP 10A is \$2,750,883 (\$3,114,383 minus \$363,500). This amount represents the “Net City Credit Amount”.

SCOPE OF WORK:

A. City Components:

1. PER and 30% Design of Phase I.
2. Flanagan's Lane Pump Station & BMP 14 Weir.
3. Sandbridge Road/New Bridge Road Intersection Improvements.
4. Princess Anne Farm Ditch.

B. Developer Components:

1. BMP #2A.
2. BMP #6 Expansion.
3. BMP #10A.
4. BMP #16.
5. Channel 10A.
6. Channel 15.
7. Historic Farm Ditch.
8. Ranier Village Emergency Ingress/Egress

All above Scope Items are shown on and shall be in accordance with the document entitled "Asheville Park Drainage Improvements – Phase I, by WSP USA Inc." and dated March 30, 2018, for the "Recommended Alternative".

DESIGN:

- Developer shall provide City with a design submittal at 100% stage. City shall review and provide written comments. Developer shall incorporate comments.
- Developer is required to secure all permits and approvals for construction of "Developer Components".

CONSTRUCTION:

- Developer shall solicit a minimum of (3) bids for the construction of the "Developer Components". Bidders can be selected by Developer, however, they must be "qualified" bidders, as defined by the City. Developer shall submit all bids and a recommendation of award to the lowest responsive bidder, to the City for review and approval.
- Developer shall cause the selected General Contractor to submit Final Price with Schedule of Values for the City's review and approval. The Schedule of Values will be attached to the CPA as Exhibit ____.

- In the event the Final Price exceeds the City Cost Cap amount, the Developer can propose changes in Scope to reduce the Final Price.

PAYMENT:

- City shall pay Developer for construction of “Developer Components” in accordance with approved Schedule of Values. Developer shall submit invoice to City no more than one per month.
- City shall deduct from invoices on a proportional basis by duration of construction contract, the “Net City Credit Amount”, \$2,750,883.

ADDITIONAL REQUIREMENTS:

- A. Developer shall dedicate all property and easements necessary for, but not limited to, BMP construction, canal construction, pipe improvements and pump station construction to the City for access, construction and maintenance. Lakes and canals will be maintained by the Ashville Park Homeowner Associations with impoundment easements and maintenance easements dedicated to the City in accordance with City Standards. Developer shall dedicate property needed for the proposed Flanagans Lane Pump Station, access driveway and weir gate, to the City. Developer shall sell to the City, as part of this Agreement, property needed for BMP 10A. The HOA will be required to maintain BMP 10A, as referenced above, however, the City will be required to perform dredging of BMP 10A.
- B. Developer’s BMP design for the (4) BMP’s, 2A, 6, 10A and 16, and (2) Channels 10A and 15 shall yield a minimum dry storage volume of 3,907,762 cubic feet, measured above Elevation 1.0 to the Top of Banks, and a minimum storm storage volume of 2,449,767 cubic feet, measured above Elevation 1.0 to the 100-Year Maximum HGL, in accordance with Exhibit 4. Total Volume Achieved is measured from the top of bank to the BMP bottom. Dry Storage Volume Achieved is calculated from elevation 1.0 feet to the top of bank. Storm Storage Volume is calculated from elevation 1.0 feet to the 100-year maximum HGL in accordance with Exhibit 4. This is the cumulative total of all (4) BMP’s and (2) Channels as shown in the Exhibit.
- C. The existing BMP’s will not be used to manage erosion and sediment control. (If the proposed BMP’s are intended for managing erosion and sediment control, the BMP’s shall be over-excavated to address potential erosion collection and the Developer shall develop as-built surveys of the BMP’s to confirm their actual volume prior to acceptance and release of bonds.)
- D. Developer shall provide access to the City for the City’s construction of the facilities described in this Agreement.
- E. Construction of BMP 6 and BMP 16 by Developer, will be treated the same as the Village C subdivision infrastructure work. No building permits will be issued for Village C homes until BMP 6 and BMP 16 are substantially complete. This does not exclude the City’s Building Administrator from allowing “model” homes to be constructed (but not occupied).
- F. Developer shall not receive Certificate of Occupancy for any homes in Village C until all “Developer Components” are completed and accepted by the City.
- G. The water quality phosphorus reductions provided by the BMP’s/Channels shown in Section 11 of the Final PER Report are water quality phosphorus reductions that the City will utilize for its own purposes, to include, but not limited to, Ashville Bridge Creek phosphorus TMDL and to

meet the required phosphorus reductions for the construction of the Lake #14 Weir and permanent pump station construction. The City shall claim all of the water quality pollutant reduction credits provided by the construction of BMP's 2A, 6, 10A, and Channels 10A and 15. The Developer may use the water quality phosphorus reduction credits from the construction of BMP 16 towards the pollutant reduction requirements associated with the development of Village C in accordance with the City's Stormwater Management Ordinance Appendix D. Public Works Engineering will provide a copy of the Final PER report to Planning and Community Development, Development Services Center.

- H. City will release any holds on the release of bonds in Ashville Park once the requirements have been satisfied and the Cost Participation Agreement executed.
- I. The "Princess Anne Ditch Farm" City Component requires the City to make necessary improvements upstream of BMP 2A. The cost for these improvements will be the City's responsibility and are not part of this Agreement.
- J. The "Ranier Emergency Ingress/Egress" Developer Item requires the Developer to provide Emergency Ingress/Egress access via Cayman Lane to Princess Anne Road via Open Area property owned by the Ashville Park Homeowner's Association, along the northern boundaries of Camarillo Ln and Kittridge Dr. The cost for these improvements will be the Developer's responsibility and are not part of this Agreement.

Zoning History of Ashville Park

City Council Informational Briefing – May 1, 2018

Barry Frankenfield, Director Planning and Community Development



Zoning History of Ashville Park

- **1995-2003:** Local consultant Dick Browner works with property owners to consolidate their parcels for development as a golf course community; however, demand for golf courses drops
- **2003:** Ashville Park, LLC (Lewis McMurrin, III) proposes development
- **2003 May:** Ashville Park, LLC submits application to City for a Conditional Change of Zoning (AG-1/AG-2 to PD-H2 Planned Development [R-30 Residential])
- **2004 February 24:** City Council grants zoning change for 490 dwellings (160 are age-restricted)

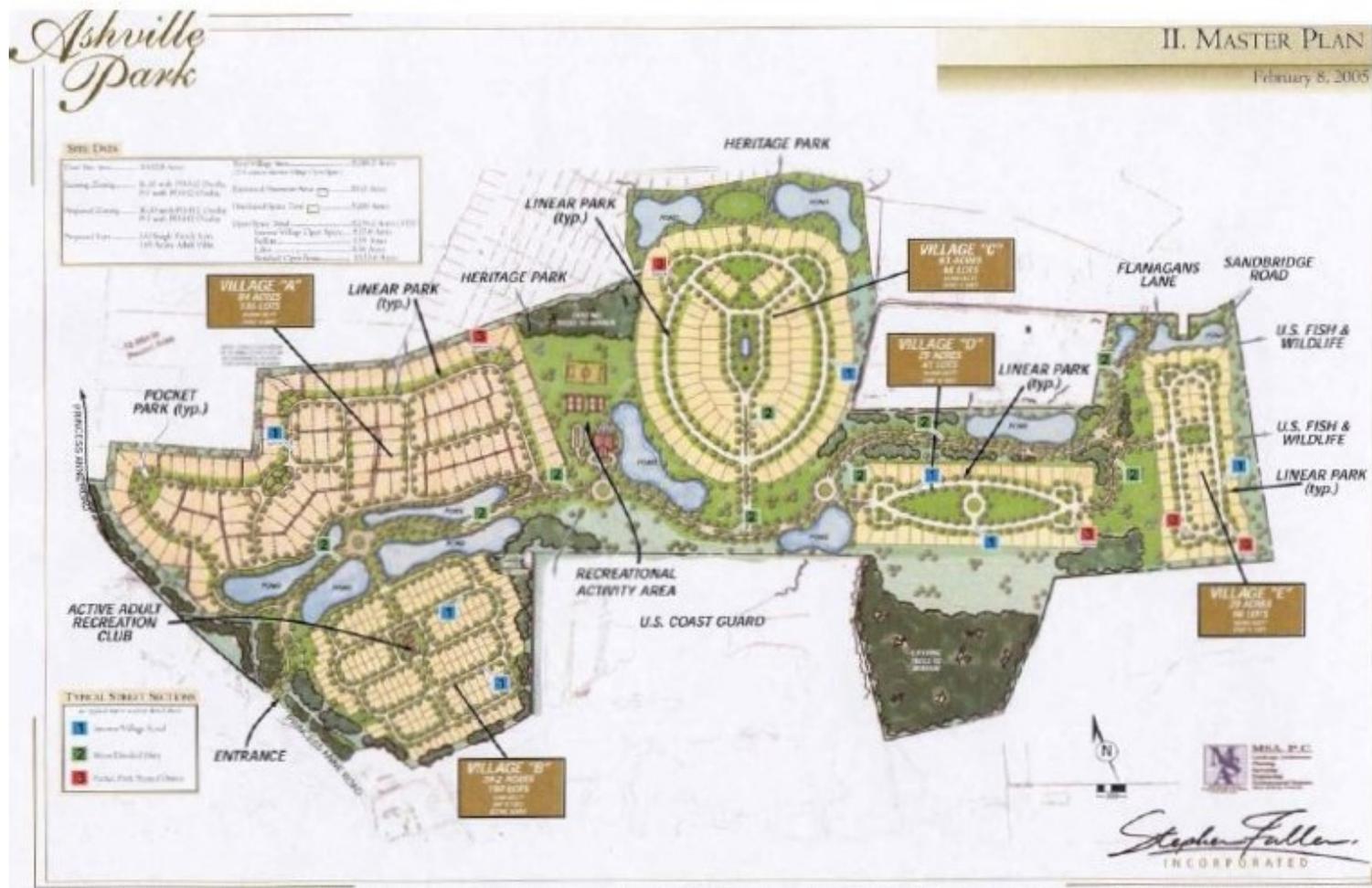
2004 Plan Approved by City Council for Lewis McMurrin 490 dwellings (160 age-restricted)



Zoning History of Ashville Park

- **Late 2004:** McMurrnan sells property to Sandler at Ashville Park, LLC
- **2005 January 3:** Sandler submits application for a modification to the Conditional Zoning Agreement (proffers) of the 2004 zoning change
- **2005 May 10:** City Council grants zoning change for **499 dwellings** (169 are age-restricted)

2005 Plan
Approved
By City
Council for
Sandler's
499 single-
family
dwellings
(169 age-
restricted)



Zoning History of Ashville Park

- 2010: ATC Realty Sixteen, Inc. (subsidiary of Wells Fargo) forecloses on property due to failure of Sandler at Ashville Park to meet loan obligations
- 2011: ATC Realty Sixteen submits an application to modify the 2005 zoning change -- removal of the age-restriction for Ranier Village (VILLAGE B) as well as the Active Adult Center planned for that village. City Council approves the requested modification on February 14, 2012
- 2012 February 16: ATC Realty Sixteen conveys property to HOFD Ashville Park, LLC (subsidiary of HomeFed Corp.), which was the winning bidder at foreclosure

Zoning History of Ashville Park

- 2013 November: HOFD Ashville submits an application to modify the 2005 rezoning and plan, which includes a rezoning of an 87-acre parcel to the south located on New Bridge Road (Elbow Farms Associates – owner of farm)
- HOFD Ashville proposed preserving the 87 acres, zoning it to P-1, and ‘transferring’ the 87 units (one unit per acre in Transition Area) to the HOFD Ashville Park property
- 2014 January 8: Planning Commission recommends approval of application, 10-0
- 2014 February 25: Applicant requests (and Council grants) an indefinite deferral of the application

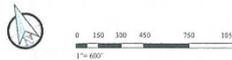
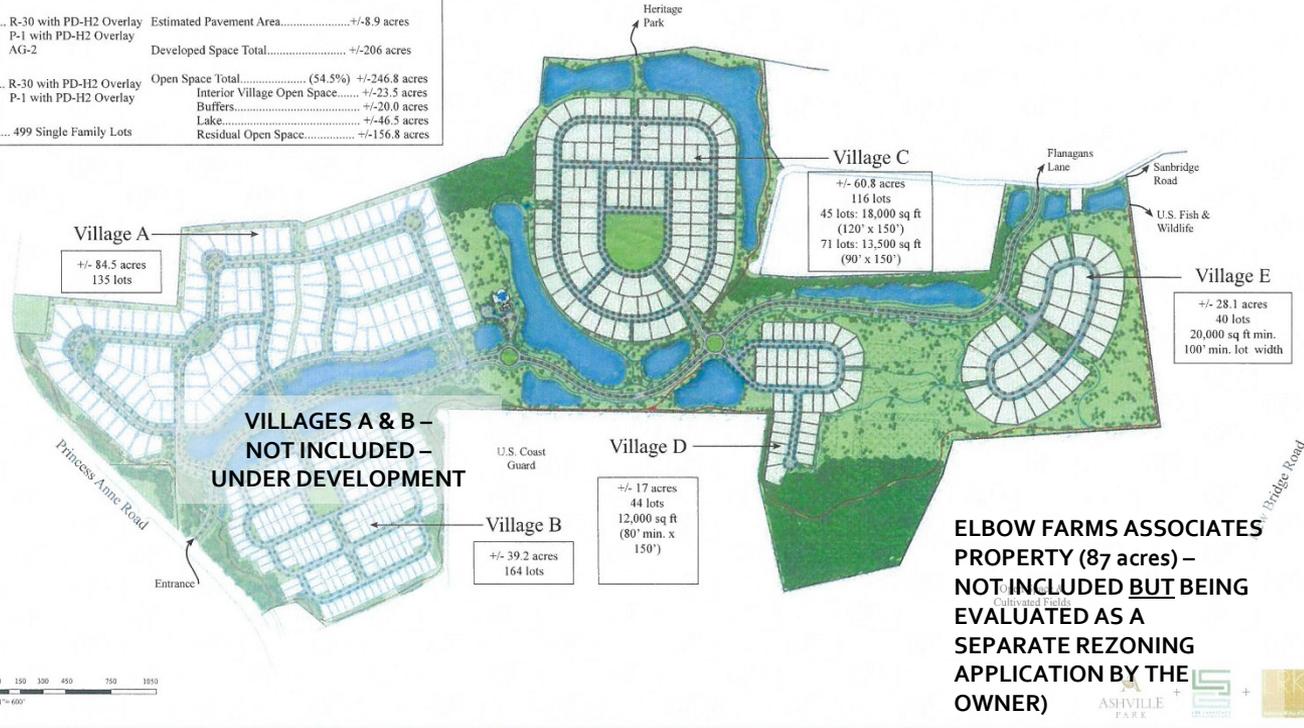
Zoning History of Ashville Park

- NOTE: There are now two applications still active for Ashville Park; application deferred in 2014 is referred to as the “2014 Rezoning.” The application that follows is referred to as the “2015 Rezoning”
- 2015 January: HOFD Ashville submits a new application to modify the 2005 rezoning application. The difference between this application and the 2014 Rezoning is that the 87 acres to the south is no longer part of the application
- 2015 March 11: Planning Commission recommends approval of 2015 Rezoning application 10-0
- 2015 April 21: City Council defers the application to May 19
- 2015 May 19: City Council indefinitely defers the application

2015
Modification
of Proffers
Application
499 Single-
Family
Dwellings

Site Data

| | |
|--|--|
| Total Site Area +/-452.8 acres | Total Village Area +/-229.5 acres |
| Existing Zoning..... R-30 with PD-H2 Overlay P-1 with PD-H2 Overlay AG-2 | Estimated Pavement Area..... +/-8.9 acres Developed Space Total..... +/-206 acres |
| Proposed Zoning... R-30 with PD-H2 Overlay P-1 with PD-H2 Overlay | Open Space Total..... (54.5%) +/-246.8 acres Interior Village Open Space..... +/-23.5 acres Buffers..... +/-20.0 acres Lake..... +/-46.5 acres Residual Open Space..... +/-156.8 acres |
| Proposed Lots 499 Single Family Lots | |



12/19/2014

**ELBOW FARMS ASSOCIATES
PROPERTY (87 acres) –
NOT INCLUDED BUT BEING
EVALUATED AS A
SEPARATE REZONING
APPLICATION BY THE
OWNER)**



Zoning History of Ashville Park

- The 2015 Ashville Park Rezoning (does not include the 87-acre Elbow Farms property) remains in Indefinite Deferral status
- Number of units does not change – remains 499
- Ashville Park Drainage Improvements – Phase I project does not change lot/street layout

Cost Participation Agreement: Ashville Park Drainage Improvements – Phase I

City Council Informational Briefing – May 1, 2018

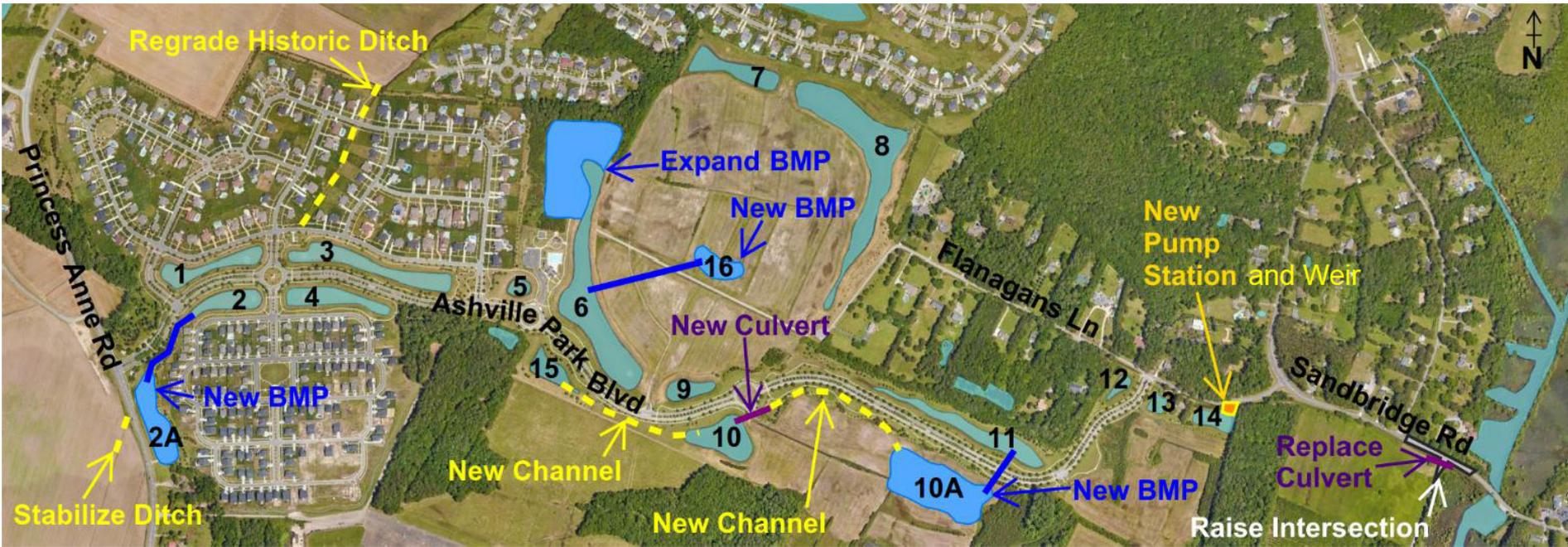
Thomas M. Leahy, Deputy City Manager



Ashville Park Stormwater Project – Phase I

- Flooding relief to the 299 families in the existing Villages A and B. No flooding in any living spaces in a 100-year storm.
 - Water would still pond in yards and streets, but it would drain away faster (hours versus days). Some garages and cars on streets still at risk.
- Additional benefits with respect to more frequent precipitation events (2-year, 5-year, and 10-year storms).
- Phase I has been designed assuming that Village C development would proceed with either 98 or 116 lots.
- Phase I will not provide all the improvements necessary for Villages D and E to move forward.

Scope of Ashville Park Drainage Improvements – Phase I



Map of proposed Ashville Park improvements.

Scope of Asheville Park Drainage Improvements – Phase I

- Developer Constructed Components
 - Regrade Historic Farm Ditch
 - Three new BMPs (2A, 10A, and 16)
 - Expansion of existing BMP 6
 - Two new canals 10A and 15 connecting BMPs 10, 10A, and 15
 - Ranier Emergency Ingress/Egress
- City Constructed Components
 - Pump station and gated weir at Flanagans Lane
 - Ditch and culvert improvements associated with raising Sandbridge Road at the New Bridge Road intersection
 - Stabilize Princess Anne Farm Ditch

Details of Cost Participation Term Sheet

Cost of Work to be performed by Each Party

| Item | Project Cost | City Items | Developer Items |
|--------------------------------------|---------------------|--------------------|--------------------|
| BMP 2A | \$900,000 | | \$900,000 |
| BMP 6 Expansion | \$2,489,000 | | \$2,489,000 |
| BMP 10A | \$1,549,000 | | \$1,549,000 |
| BMP 16 | \$488,000 | | \$488,000 |
| Channel 10A | \$963,000 | | \$963,000 |
| Channel 15 | \$398,000 | | \$398,000 |
| Historic Farm Ditch | \$86,000 | | \$86,000 |
| Flanagan's Lane Pump Station | \$1,930,000 | \$1,930,000 | |
| Sandbridge / New Bridge Intersection | \$232,000 | \$232,000 | |
| 30% Design Fee | \$728,060 | \$728,060 | |
| Gated Weir | \$720,000 | \$720,000 | |
| Weir Design Fee | \$157,736 | \$157,736 | |
| Princess Anne Road Farm Ditch | \$0** | \$0** | |
| Ranier Emergency Ingress/Egress | \$0** | | \$0** |
| Mobilization | \$482,000* | \$108,000* | \$374,000* |
| Total | \$11,122,796 | \$3,875,796 | \$7,247,000 |

*Based on Construction Cost

**Cost not part of CPA, but denotes responsibility

Details of Cost Participation Term Sheet

- Total Project Cost – Phase I: \$11,122,796
- Negotiated Cost Share: \$8,008,413 for the City (72%) and \$3,114,383 for the Developer (28%)
- City will purchase 5.490 acre parcel for \$363,500 (\$1.52 per sq ft)
 - Parcel would incorporate BMP 10A. City would own in fee-simple
 - City would bank water quality credits worth \$2,144,868
- Net Cost share for Developer would be \$2,750,883 (\$3,114,383 less \$363,500)
- All other property and easements necessary for construction, access, and maintenance dedicated to City at no cost.

Details of Cost Participation Term Sheet

- With City ownership of newly constructed storage BMP, it will be able to bank water quality credits worth \$2,144,868
- Credits will offset requirements projects in the southern watershed
 - Princess Anne Road VIIA
 - Sandbridge/Nimmo VIIA and VIIB
 - New Bridge/Sandbridge Road intersection improvements
 - Pungo Ferry Road improvements
- If the CPA is ultimately approved, it would be staff's recommendation to use the credits for CIP projects in the southern watershed and transfer the equivalent savings from the benefitting CIP projects to the Ashville Park CIP

Details of Cost Participation Term Sheet

- City would be responsible for constructing the City components
- Developer would be responsible for constructing the Developer components valued at \$7,247,000
- City would pay the developer for the construction of the developer components less the Developer's cost share of \$2,750,883
- If the approved low bid exceeds the City Cost Cap, the City has the right to re-negotiate with Developer
- If the approved low bid is less than the estimated cost of the "Developer Components", the developer will retain the first \$1.0M of savings. The amount above \$1.0M will be shared between the City and Developer based on a 50/50 split

Details of Cost Participation Term Sheet

- No building permits would be issued for Village C homes until the expansion of BMP 6 and BMP 16 are substantially complete
 - This would not include the City's Building Administrator from allowing "model" homes to be constructed (but not occupied).
- No Certificate of Occupancy for any homes in Village C would be issued until all "Developer Components" are completed and accepted by the City
- Existing BMP's will not be used to manage erosion and sediment control
- If new BMP's are used to manage erosion and sediment control, they must be over-excavated to address erosion collection and the Developer must provide as-built surveys to confirm actual volume prior to acceptance and release of bonds

Recommendations and Next Steps

- Staff recommends moving forward with CPA based upon term sheet
 - Best interest of City, Developer, and Ashville Park Neighborhood
- Construct Gated Control Structure and Weir
 - Project has been bid. Completion scheduled for fall 2018
- Execute Cost Participation Agreement with Developer
- Proceed with Final Design of pump station and Sandbridge/New Bridge Road intersection improvements

