



*A Team of Teams
Making a Difference!*

May 2, 2005

Memorandum for City Administrator

**Subject: Proposed Resolution on Approving Transition Policy
Waivers on the Comprehensive Connection Charges**

The attached proposed resolution approves waivers requested in accordance with the Transition Policy for the Comprehensive Connection Charges in accordance with §13.02.070.A.12 of the City Code and Resolution No. 1237.

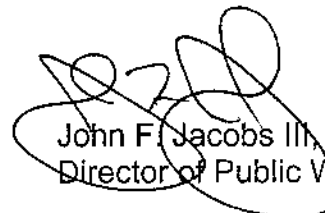
The staff report is attached as Attachment 1.

As part of the appeal process, the Mayor and a City Council representative met with the respective property owner/developer on nine proposed developments that submitted Capacity Fee waiver requests. One of the developers had received a waiver approval in accordance with the affordable housing policy.

After reviewing the staff report and meeting with the developers, the Mayor and the Council representative recommend waivers be approved by the Council through a resolution for Kohl's Department Store, the Kilarney Drive segment of Eireann Mhor, and 202/204/208/210 Saratoga.

Unless you or the Mayor, have further questions, please forward this memorandum to the City Council. For any additional questions you may have, I can be reached at (410) 548-3170 or by e-mail at jjacobs@ci.salisbury.md.us.

Sincerely,


John F. Jacobs III, P.E.
Director of Public Works

JOHN F. JACOBS III, P.E.
DIRECTOR

NEWELL W. MESSICK III, P.E.
DEPUTY DIRECTOR

Government Office Building
125 North Division Street
Salisbury, MD 21801-4940

Phone: (410) 548-3170

Fax: (410) 548-3107

www.ci.salisbury.md.us/publicworks/

Attachments:

- 1 - Memorandum, subject: Requests of Waiver of Capacity Fee dated February 3, 2005
- 2 - Resolution



**A Team of Teams
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**JOHN F. JACOBS III, P.E.
DIRECTOR**

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February 3, 2005

Memorandum for: City Administrator

Subject: Requests for Waiver of Capacity Fee

In accordance with § 13.02.070.A.14, ten property owners and/or developers requested Capacity Fee waivers. In no particular order, they were:

- Kohl's Department Store, letter by Gordon Mead of Davis, Bowen, & Friedel, Inc. dated January 20th; Enclosure 1.
- Eireann Mhor, letter by John W. Causey of Larry J. Causey & Sons Inc. dated January 18th; Enclosure 2.
- Springhill Manor, letter by Mike Dunn of DunnSmith Properties dated January 19th; Enclosure 3.
- 202, 204, 208, & 210 Saratoga, letter by James Barnes of B&W Real Estate, LLC. dated January 14th; Enclosure 4.
- 419 Jefferson, letter by James Barnes of B&W Real Estate, LLC. dated January 14th; Enclosure 5.
- 500, 502, & 504 Christopher, letter by James Barnes of B&W Real Estate, LLC. dated January 14th; Enclosure 6.
- Go-Getters, letter by Richard Bearman dated January 6th; Enclosure 7.
- Villages at Parson's Lake, letter by Thomas Ruark of Thomas H. Ruark, Inc. dated January 3rd; Enclosure 8.
- The Heritage, letter by Robert Benson of Cullen, Insley, Hanson, & Benson, LLP dated January 17th; Enclosure 9.
- Waterside East, letter by Donald Williams of Advanced Property dated January 5th; Enclosure 10.

The deadline submission was at 4 PM, January 20, 2005.

Although "The Heritage" letter was dated January 17th, it was hand delivered to this office on/or about 9 AM, January 21st, which was after the 4 PM, January 20th deadline specified in the ordinance.

Subject: Requests for Waiver of Capacity Fee

City staff reviewing the waiver requests were: Paul Wilber, City Solicitor; John Jacobs, Director of Public Works, Chip Messick, Deputy Director; and Dale Pusey, Supervisory Civil Engineer. The City staff met on January 31st and February 3rd to evaluate the waiver requests.

Staff Analysis and Methodology.

1. Prior to enactment of the ordinance on December 20, 2004, the City staff developed threshold criteria for developments and individual lots. These were:
 - a. Developments. An approved Public Works Agreement and Site Plan.
 - b. Individual Lots. An approved Water and Sewer Application.
2. Also, prior to ordinance enactment, the City staff reviewed 93 developments, which staff summary was presented in a memorandum dated December 17, 2004 titled Development Status and Capacity Fee. There were seven developments that were extremely close to meeting the criteria of fee waiver. Five met the necessary requirements by December 20th and two have requested the waiver. These are Kohl's Department Store and Eireann Mhor.
3. In addition to the criteria, the staff evaluated each individual development project to determine if there were mitigating and extenuating circumstances that prevented the respective developer/property owner from achieving the criteria.

Summary of Staff Analysis.

- a. Developments.
 - (1) Kohl's Department Store.
 - (a) Criteria.
 - Public Works Agreement Approved: Yes.
 - Site Plan Approved: No. Pending receipt of a draft deed and easement for public water and sewer extensions. After the receipt of the deed and easement, the site plan will be ready for approval.
 - (b) Discussion.
 - Kohl's Department Store was on the cusp of getting its Site Plan approved on December 20th.
 - It is one of the two developments on the December 17th staff memorandum recommending a waiver of the Capacity Fee.

Subject: Requests for Waiver of Capacity Fee

- (c) Recommendation. The staff recommends approval of the waiver request.
- (2) Kilarney Drive Phase of Eireann Mhor.
- (a) Criteria.
- Public Works Agreement Approved: Approved after the ordinance enactment date but prior to January 20th.
 - Site Plan Approved: This development had a site plan approved in 1988. It was inadequate by today's standards and we required a new site plan, revised grading plan, and utility drawings. The new site plan was approved after the ordinance enactment and prior to the January 20th deadline for appeals.
- (b) Discussion.
- The request (Enclosure 2) proposes waiver of the previous policy of Front-Foot Assessment and a credit for installing a sidewalk.
 - Approval of this request would set a precedent of crediting a General Fund activity at the expense of the Water and Sewer Fund. This is not permissible in accordance with Maryland State Law.
 - The Kilarney Drive segment of Eireann Mhor is under construction by various builders. This segment was on the cusp of getting its Site Plan approved on December 20th.
 - It is one of the two developments on the December 17th staff memorandum recommending a waiver of the Capacity Fee.
- (c) Recommendations. The staff recommends:
- Disapproval of the request to waive the previous policy of Front-Foot Assessment and a credit for installing a sidewalk.
 - Approval to waive the Capacity Fee for the Kilarney Drive segment of Eireann Mhor.
- (3) 500, 502, & 504 Christopher.
- (a) Criteria.
- Public Works Agreement Approved: No.
 - Site Plan Approved: No.
- (b) Discussion. The property owner may not have been aware of his obligations to design and construct public roadway, storm drainage, and water and sewer infrastructure in existing City streets on which his property has frontage at the time that the property was purchased.

Subject: Requests for Waiver of Capacity Fee

Waiving the Capacity Fee for those lots may promote this in-fill development that otherwise may not occur.

- (c) Recommendations:
 - The staff recommends disapproval of the waiver based on consistent application of the threshold criteria.
 - The Mayor and Council may want to consider a policy issue with this development that is discussed on page 7 of this memorandum.

- (4) Go-Getters.
 - (a) Criteria.
 - Public Works Agreement Approved: No.
 - Site Plan Approved: No.

 - (b) Discussion. This project is very early in the development process.

 - (c) Recommendations:
 - The staff recommends disapproval of the waiver request.
 - The Mayor and Council may want to consider a policy issue with this development that is discussed on page 7 of this memorandum.

- (5) Villages at Parson's Lake.
 - (a) Criteria.
 - Public Works Agreement Approved: No.
 - Site Plan Approved: No.

 - (b) Discussion. This project is very early in the development process.

 - (c) Recommendation. The staff recommends disapproval of the waiver request.

- (6) The Heritage.
 - (a) Criteria.
 - Public Works Agreement Approved: Yes for Phase I. No for Phases II through IX.
 - Site Plan Approved: Yes for Phase I. No for Phases II through IX.

Subject: Requests for Waiver of Capacity Fee

(b) Discussion.

- The Heritage request is somewhat vague on what phase they are requesting the waiver for. It appears they are requesting it for the entire development, which is a very large development with nine phases.
- Only Phase I has an approved Public Works Agreement and approved Site Plan.
- There have been no site plans or draft Public Works Agreements submitted for Phases II through IX.
- The waiver request was submitted after the 4 PM, December 20th deadline.

(c) Recommendation. The staff recommends disapproval of the waiver of Phases II through the IX. Phase I is already under construction and therefore is already waived before ~~December 20th~~.

January

(7) Waterside East.

(a) Criteria.

- Public Works Agreement Approved: No.
- Site Plan Approved: No.

(b) Discussion.

- A preliminary site plan was submitted on December 20, 2004.
- The development requires MDE approval of their storm water outfall because it discharges into waters of the state. MDE approval is anticipated to take a couple of months.

(c) Recommendation. The staff recommends disapproval of the waiver.

b. Individual Lots.

(1) Springhill Manor.

(a) Criteria: Approved Water and Sewer Application: No.

(b) Discussion. The property owner has not submitted a Water and Sewer Application prior to December 20, 2004 or by January 20, 2005.

(c) Recommendation. The staff recommends disapproval of the waiver request.

Subject: Requests for Waiver of Capacity Fee

- (2) 202, 204, 208, & 210 Saratoga.
 - (a) Criteria: Approved Water and Sewer Application: No. The Water and Sewer application was submitted on December 20, 2004.
 - (b) Discussion. Their Water and Sewer Application would have been approved on December 20th if staff had reviewed it on the date of submission.
 - (c) Recommendation. The staff recommends approval of the waiver request.
- (3) 419 Jefferson.
 - (a) Criteria: Approved Water and Sewer Application: No.
 - (b) Discussion. This project is very early in the approval process.
 - (c) Recommendation. The staff recommends disapproval of the waiver request.

Summary of Staff Recommendations. The staff recommends:

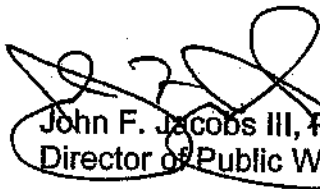
- Approval of the waiver request of the Capacity Fee for Kohl's Department Store, the Kilarney Drive segment of Eireann Mhor, and 202/204/208/210 Saratoga.
- Disapproval of the waiver request of the Capacity Fee for 419 Jefferson, Springhill Manor, 500/502/504 Christopher, Go-Getters, Villages at Parsons Lake, The Heritages (except Phase I), and Waterside East.
- Policy review and consideration for Go-Getters. In staff discussion, it was recognized that the Go-Getters request was compatible with City Council discussions and objectives on providing incentives for non-profit organizations that provide housing for elderly and low-income families and individuals.
- Policy review and consideration for 500/502/504 Christopher. In staff discussion, it was recognized that the 500/502/504 Christopher request was compatible with City Council discussions and objectives on encouraging infill development within the City corporate limits. The original parcel, which had water and sewer service on one side, was subdivided into three lots (17C, 18B, and 18C) at the northwest intersection of Harrington and Christopher Streets. As a result of the subdivision, the developer will be required to install water and sewer mains on Christopher

Subject: Requests for Waiver of Capacity Fee

Street and improve the frontage of the new subdivided lots with storm water, roadbed construction, curb, gutter, sidewalk, and one or more streetlights. Apparently, the developers were unaware of these infrastructure requirements on their original purchase of the subdivided lots. These lots may remain vacant and unproductive to the City's tax base because of this significant capital investment in the infrastructure required by the city.

For any additional questions you may have, I can be reached at (410) 548-3170 or by e-mail at jjacobs@ci.salisbury.md.us.

Sincerely,


John F. Jacobs III, P.E.
Director of Public Works

Enclosures:

- 1 - Kohl's Department Store
- 2 - Eireann Mhor
- 3 - Springhill Manor
- 4 - Saratoga (202, 204, 208, & 210)
- 5 - Jefferson (419)
- 6 - 500, 502, & 504 Christopher
- 7 - Go-Getters.
- 8 - Villages at Parson's Lake
- 9 - The Heritage
- 10 - Waterside East

Copy Furnished:

- City Solicitor
- Deputy Director for Engineering
- Supervisory Civil Engineer
- Development Manager

January 20, 2005

Gerald G. Friedel, P.E.
Michael R. Wigley, AIA
Randy B. Duplechain, P.E.
Charles R. Woodward, Jr., LS
Jo Anne Williams, P.E.
Charles A. Hauser, P.E.

CITY OF SALISBURY
Department of Public Works
125 North Division Street
Salisbury, MD 21801

ATTN: Mr. John Jacobs
Director

RE: Water and Sewer Capacity Fee
Kohl's Department Store
West Dagsboro Road
Salisbury, Maryland
DBF #059H040

Dear Mr. Jacobs:

On behalf of our client, the Silicato-Wood Partnership (the owner/developer of the above-referenced project), we herein request a waiver of the proposed water/sewer capacity fee. We believe that the proposed Kohl's Department Store is entitled to a waiver due to the fact that, prior to enactment of the affecting ordinances, the plans had been reviewed and only a few minor items we're lacking for final approval. The public works agreement was signed and approved prior to the deadline and approvals from other review agencies have long since been obtained. The following is a chronological history of the submission and approval process for the Kohl's project.

1. 09/16/04 Final Comprehensive Development Plan approval by the Planning and Zoning Commission
2. 09/21/04 Submission of Construction Drawings (CD's) to Salisbury Department of Public Works (DPW)
3. 10/15/04 Received comments from the Salisbury DPW from their review of the CD's
4. 11/15/04 Addressed comments from the Salisbury DPW in point-by-point letter and submitted revised plans, Application for Water and Sewer Services, and Public Works Agreement

5. 11/17/04 Submitted check in the amount of \$907.50 and a signed copy of Public Works Agreement to Salisbury DPW
6. 11/19/04 Received Wicomico Conservation District approval of Erosion and Sediment Control Plan
7. 11/19/04 Informed by the Maryland State Highway Administration that the previously constructed highway entrance and approved traffic study were satisfactory for this project.
8. 11/22/04 Received Wicomico County Public Works Department approval of stormwater management Plan
9. 11/23/04 Received a Grading Permit from the Department of Building, Housing, and Zoning
10. 11/30/04 Received additional minor comments from Salisbury DPW
11. 12/20/04 Received revisions concerning new water and sewer extension policy from Salisbury DPW for Public Works Agreement, made revisions, and resubmitted to DPW
12. 12/22/04 Addressed additional minor comments received from Salisbury DPW and resubmitted
13. 12/28/04 Received a copy of the Public Works Agreement which was executed on December 20, 2004.

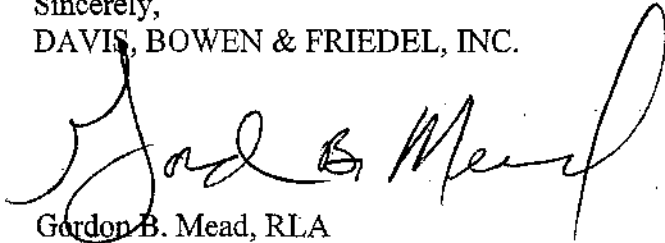
We were unaware that the new fees could apply to this project until December 20, 2004, when we were told by the Salisbury Department of Public Works that the fees would be waived if we could revise and resubmit signed copies of the Public Works Agreement before the December 21, 2004 deadline. The public works agreement was revised, signed, resubmitted, and approved on December 20, 2004. Until January 13, 2005, we believed that we had met all of the requirements to obtain a waiver of the new fees. This project has been in design and review for several months and could have been pushed ahead to obtain Public Works approval prior to the deadline, if we were aware that there was a deadline, as is evident by the fact that we had approvals from the other pertinent agencies well before December 21, 2004.

The proposed Kohl's Department Store is the final phase of development for the Leonard's Mill property which was approved by the Salisbury Department of Public Works on April 19, 1999. Three (3) lots of the four (4) lots that were approved have been developed and are occupied. The Kohl's lot is the last lot to be developed. This condition of approval, in and of itself, would justify the fee waiver under Ordinance Section 13.02.070, Paragraph A.14.

Mr. John Jacobs
CITY OF SALISBURY
Department of Public Works
January 20, 2005
Page 3

For these reasons, we request approval of the requested waivers. Please contact us if you have any questions regarding this matter. Your assistance in this matter is greatly appreciated.

Sincerely,
DAVIS, BOWEN & FRIEDEL, INC.



Gordon B. Mead, RLA
Associate

GBM/res
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January 18, 2005

Mr. John Jacobs, Director of Public Works
City of Salisbury
Salisbury, Maryland 21803

Re: Eireann Mhor Development

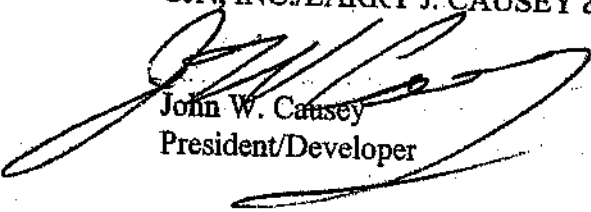
Dear John:

I feel that we are being overcharged by having to pay 50% of the construction of the water and sewer mains on Dykes Road for the above referenced Development. We only have 15 lots which is approximately 1/4 of Osprey's Development.

I propose to put a 42" sidewalk up against the curb down Dykes Road instead of the black top bike paths for reimbursement of the \$24,014.72 service area assessment fee that was paid.

Please contact me about these matters.

Respectfully submitted,
CJN, INC./LARRY J. CAUSEY & SONS, INC.


John W. Causey
President/Developer



Larry J. Causey & Sons Inc.

"Excellence in Building Since 1932"

- 12 -

30165 Wildlife Lane Salisbury, Maryland 21804

410-749-3482 Fax: 410-548-5329 www.ljcaused.com

ENCLOSURE 2

DunnSmith Properties

Attn: Mike Dunn

PHONE - 410-341-3454

Fax - 410-543-1547

P.O. Box 10
Pittsville MD, 21850

1/19/05

Mr. John F. Jacobs:

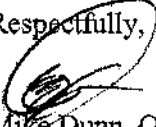
This letter is in response to a letter I received from Mr. Gary C. Hales which was dated 1/10/05 regarding the \$300.00 meter setting fee and the water capacity fee of \$1200 per unit which totals \$9600 in additional fees for my project at "Springhill Manor". The letter stated to forward a letter to you if I feel that I should be exempt.

The following is a response to that letter. I do feel I should be exempt and I think after reading this letter you will agree. Please feel free to confirm any of the points I make in this letter with Mr. Sharma which was the individual that negotiated for the City / County group who was acquiring the easements for the service extension. He has been cooperative and honest in my discussions with him regarding this matter.

The selling point that convinced me to give the easement to the County / City "team" headed up by Mr. Sharma was when he stated that by giving the easement the property owner would be allowed to hook up to the services at NO CHARGE except the cost of the meter setting fee. At the time, I was very opposed to giving an easement across a very large area of road frontage on route 50 but Mr. Sharma convinced me that it was a benefit to be able to connect to the services at no charge. It wasn't that I just wanted to be hard to get along with but I have strong thoughts about having as few easements on any property as possible. I have been going through the approval process since the time of this agreement and in the end of 2004 I received the final approval from the Fire Marshall to move forward with the project. I then promptly began obtaining bids to complete the project and just received the first one December 30, 2004. I saw in the paper that the increased fees were being discussed in approximately December of 2004 but never guessed I would have any need for concern regarding "Springhill Manor" because of my prior agreement as described above. To me it seems fairly simple, I gave an easement and the local governments gave the right to hook up to services at no cost except the meter setting fee. I would like to see the city / county abide by the agreement that they made. I have no problem with the meter setting fee of \$300.00 because that fee was disclosed at the time of our agreement to give the easement to the county. I am optimistic that after further consideration and full understanding of the events as they conspired the city will agree to abide by their agreement.

Thanks for your consideration!

Respectfully,


Mike Dunn, Owner / Partner

Cc: Mr. Rai Sharma
Cc: Mr. Gary Hales

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ENCLOSURE 3



B&W REAL ESTATE, LLC.

9060 Kingfisher Ct.

Hebron, MD 21830

Phone 410-749-9989 Fax 410-749-3876

January 14, 2005

The Honorable Mayor
City of Salisbury
125 North Division St.
Salisbury MD 21801-4540

RE: Request for Exemption from the new Capacity Fee Payment Requirement

Dear Ms. Tilgman:

B&W Real Estate, LLC. is requesting and exemption from the above fees for our lots at 202 Saratoga St., 204 Saratoga St., 208 Saratoga St. and 210 Saratoga St., Salisbury MD.

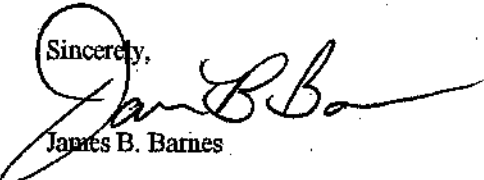
These properties were in the final stages of Public Works Agreement, per section 13.02.070 paragraph 14, prior to December 21st, 2004 and therefore we request our right of appeal.

The listed properties are already included in the City of Salisbury Growth Plan and are In-Fill lots as well. Both properties are also being developed as low income starter homes to encourage home ownership with an affordable home and lot package. The Capacity Fees would greatly increase the cost of home ownership for the future buyers of these properties.

Due to the above factors, we ask that the Mayor and City Council Member hearing this appeal please consider exemption of the fees for the properties above.

If you need anything further, please feel free to contact us.

Sincerely,


James B. Barnes

Cc: John Jacobs, Dept. of Public Works, City of Salisbury MD



B&W REAL ESTATE, LLC.

9060 Kingfisher Ct.

Hebron, MD 21830

Phone 410-749-9989 Fax 410-749-3876

January 14, 2005

The Honorable Mayor
City of Salisbury
125 North Division St.
Salisbury MD 21801-4540

RE: Request for Exemption from the new Capacity Fee Payment Requirement

Dear Ms. Tilgman:

B&W Real Estate, LLC. is requesting an exemption from the above fees for our lots at 419 Jefferson St., Salisbury MD.

These properties were in the first stages of the Public Works Agreement process, per section 13.02.070 paragraph 14, prior to December 21st, 2004 and therefore we request our right of appeal.

The listed properties are already included in the City of Salisbury Growth Plan and are In-Fill lots as well. Both properties are also being developed as low income starter homes to encourage home ownership with an affordable home and lot package. The Capacity Fees would greatly increase the cost of home ownership for the future buyers of these properties.

Due to the above factors, we ask that the Mayor and City Council Member hearing this appeal please consider exemption of the fees for the properties above.

If you need anything further, please feel free to contact us.

Sincerely,


James B. Barnes

Cc: John Jacobs, Dept. of Public Works, City of Salisbury MD

RESOLUTION No. 1238

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND TO APPROVE WAIVERS IN ACCORDANCE WITH THE TRANSITION POLICY FOR THE COMPREHENSIVE CONNECTION CHARGES IN ACCORDANCE WITH CHAPTER 13.02 OF THE CITY CODE AND RESOLUTION No. 1237.

WHEREAS the City of Salisbury established the Comprehensive Connection Charges in Chapter 13.02 of the City Code by passage of Ordinance 1918 on December 20, 2004;

WHEREAS one of the goals of the Comprehensive Connection Charges in Ordinance # 1918 stated in §13.02.020.B.10 is to ensure a balanced and smooth transition of water and sewer connection costs from the previous policy;

WHEREAS Resolution # 1237 established guidance to accomplish a balanced and smooth transition policy for discounting the total Comprehensive Connection Charge in accordance with §13.02.070.A.12;

WHEREAS ten developers and property owners requested a waiver of the Comprehensive Connection Charge's Capacity Fee to the Mayor by 4 PM on January 20, 2005;

WHEREAS one of the ten developers and property owners received a waiver of the Comprehensive Connection Charge's Capacity Fee in accordance with Resolution No. 1211 adopted by the City Council on February 28, 2005, which established a waiver policy for public sponsored or affordable housing projects;

WHEREAS the City staff reviewed the requests and the Mayor and a City Council representative interviewed each of the remaining nine developers and property owners requesting a waiver; and

WHEREAS the Mayor and the City Council representative recommend that three developments meet the criteria for granting a waiver of the Comprehensive Connection Charge's Capacity Fee because of mitigating evidence showing substantial compliance on/or before December 20, 2004..

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council, as part of the Comprehensive Connection Charge Transition Policy, approves the Capacity Fee waiver requests for: Kohl's Department Store, the Kilarney Drive segment of Eireann Mhor, and 202/204/208/210 Saratoga.

AND, THEREFORE FURTHER, BE IT RESOLVED that these approved waivers are not transferable to another property owner or a different phase of the same development or another development.

AND, THEREFORE FURTHER, BE IT RESOLVED that these approved waivers shall expire 24 months from the date of passage of this resolution.

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on _____, 2005, and is to become effective immediately upon adoption.

ATTEST:

Brenda J. Colegrove
City Clerk

Michael P. Dunn
President of the City Council of the
City of Salisbury

Approved by me this _____
day of _____, 2005.

Barrie P. Tilghman
Mayor of the City of Salisbury