

Agenda Item Summary

To: Dr. Bobbi Johnson, Superintendent
Date: February 10, 2014
From: Hunter B. Spencer, Director of Facilities, Planning and Construction

Re: Approval of utilities Easement Request and Additional Right of Way for the widening of Rt. 229

Area of Responsibility/Oversight: Planning and Construction

Background Information:

VDOT and the Town of Culpeper are involved in a road widening project on the east side of Rt. 229 that is adjacent to the Sycamore Park and Floyd T. Binns properties. The roadway will be widened from two lanes to four lanes and additional property is required to complete this project. In addition, we are granting a utility easement to relocate existing underground utility lines.

Current Considerations:

The documents have been reviewed for form and substance by School Board counsel.

Budget Considerations:

The Highway Department is offering \$35,300 for the land and the replacement several trees.

Requested Action by the Culpeper County School Board:

Request that the School Board approve the easement request and grant the additional Right of Way request.

**PREPARED BY VDOT
UNDER SUPERVISION OF THE
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes
and fees under Sections 58.1-811(A)(3),
58.1-811(C)(5), 58.1-3315, 25.1-418,
42.1-70, 17.1-266, and 17.1-279(E)

UPC: 16640

Route: 0229

Project: 0229-204-101, R201

County: Culpeper

Magisterial District: Catalpa Town

From: Int. Route 15/29 Business

To: N.C.L. Town of Culpeper

(This block for Department of Transportation use only.)

This Option, granted this ____ day of _____, 2013, by CULPEPER COUNTY SCHOOL BOARD, hereinafter referred to as "landowner" (even though more than one), to the COMMONWEALTH OF VIRGINIA, Department of Transportation, hereinafter referred to as "Commonwealth".

WITNESSETH: That for and in consideration of One Dollar (\$1.00) cash in hand paid to the landowner by the Commonwealth, receipt of which is hereby acknowledged, the landowner does hereby grant the Commonwealth the option to purchase a perpetual right and easement to construct, reconstruct, alter, operate and maintain, a public street or highway, including any necessary appurtenances thereto, drainage and/or utilities, over, upon and across the lands and property of the landowner, and if such option be exercised as hereinafter provided, the landowner will convey the easement unto the Commonwealth by deed of general warranty, properly executed, acknowledged, and delivered with usual covenants of title, free of all encumbrances.

The land subject to this option is situated in the County of Culpeper and is described as follows:

Parcel 027 – Being as shown on Sheets 4RW, 5RW, 5BRW and 6RW of the plans for Route 229, State Highway Project 0229-204-101,R201, and beginning on the east (right) side of the Route 229 construction baseline from the lands now or formerly belonging to Charles Stapleton and Harry Leland Stapleton opposite approximate Station 165+48 to the lands of the Commonwealth opposite approximate Station 170+89; thence from the lands of the Commonwealth opposite approximate Station 171+32 to the lands of the Commonwealth opposite approximate Station 176+50, including connection with Radio

Lane. Said connection being further described as follows: lying on both sides of the Radio Lane construction centerline from the Route 229 existing right of way line opposite approximate Station 31+15 to a point in the lands of the landowner opposite approximate Station 35+01. Also including connection with Grandview Avenue. Said connection being further described as follows: lying on the south (right) side of the Grandview Avenue from the Route 229 existing right of way line opposite approximate Station 600+65 to a point in the lands of the landowner opposite approximate Station 601+65 and containing 1.075 acres (46,827 square feet), more or less, land;

Also together with the permanent right and easement to use the additional areas shown as being required for a permanent sign easement for the construction and maintenance of permanent signs, right of opposite approximate Station 165+27 to opposite approximate Station 165+47, thence from opposite approximate Station 167+63 to opposite approximate Station 168+31, and thence from opposite approximate Station 169+57 to opposite approximate Station 170+05;

Also together with the permanent right and easement to use the additional areas shown as being required for a permanent sign and slope easement for the construction, maintenance of permanent signs and slope; right of the Radio Lane from opposite approximate station 31+33 to opposite approximate Station 35+12, thence on the left from opposite approximate Station 30+85 to opposite approximate station 31+04; thence from opposite approximate Station 32+43 to opposite approximate Station 32+69, thence from opposite approximate Station 33+58 to opposite approximate Station 34+58;

Also together with the permanent right and easement to use the additional areas shown as being required for a permanent drainage, sign and slope easement for the construction, maintenance of pipe, inlet signs and slope on the right of Grandview Avenue opposite approximate Station 600+92 to opposite approximate Station 601+68, and containing 0.198 acre, (8,625 square feet) more or less;

Together with the temporary right and easement to use the additional areas shown as being required for the proper construction of entrance and cut and/or fill slopes, together containing 0.499 acre, (21,736 square feet) more or less. Said temporary easements will terminate at such time as the construction of the aforesaid project is completed.

Being a portion of the land acquired by Deed from Town of Culpeper, a Municipal Corporation to Culpeper County School Board, dated, January 16, 1942, recorded January 22, 1942, in Deed Book 254, Page 105, and also a portion of the same, land acquired by Deed from Town of Culpeper, a Municipal Corporation to Culpeper County School Board, dated, April 10, 1951, recorded June 21, 1951 in Deed Book 127, Page 475 in the Office of the Clerk of the Circuit Court of said County.

The total consideration for the conveyances provided for herein is as follows:

\$35,300.00 in full for land, temporary construction easement for cut and/or fill slopes, temporary construction easement for entrance, permanent drainage easement, permanent sign easement, VDOT utility easement and all appurtenances thereon, including damages, if any.

It is understood and agreed that the risk of loss or damage by fire, wind storm or any other cause to the structure or structures, if any, hereunder optioned and situated in whole or in part upon the hereinabove described land will remain with the landowner until final settlement is made.

The landowner by the execution of this instrument acknowledges that the plans for the project as they affect its property have been fully explained to its authorized representative.

There have been no other promises, consideration or representations made which are not set forth in this instrument.

The consideration mentioned above represents the value of all estates or interests in such easement, and the damages to the lands of the landowner not encumbered by such easement which may result by reason of the use to which the Commonwealth will put the easement. The landowner agrees to accept its legally proportionate share to such total consideration for its interest and rights in the easement.

In the event the landowner is unable to convey the easement to the Commonwealth as herein provided, and the Commonwealth should elect to institute condemnation proceedings for the purpose of acquiring title to such easement, it is agreed by the landowner that this instrument may be introduced in such proceedings as evidence of the value of the easement and damages, if any, to the lands of the landowner not encumbered by such easement.

This option may be exercised by the Commonwealth at any time within one year from the date hereof, or any further extensions as may be agreed upon in writing by the parties. The option shall be exercised by any one of the following methods:

- (1) By the mailing of notice to the landowner, such notice to be by certified letter mailed to the last known place of abode of the landowner, and effective as of the time of posting of such letter;
- (2) By demanding a deed from the landowner by a duly authorized agent of the Commissioner of Highways, such demand to be made either by the posting of a letter as provided in (1), or by oral demand, the latter method to be effective as of the time of actual receipt by the landowner;
- (3) By the entry of the officers, agents, or employees of the Commissioner of Highways upon the easement, for the purpose of commencing construction or improvement of the highway or other project for which the same is to be utilized.

The landowner hereby covenants and agrees for itself, its successors and assigns that the consideration herein mentioned shall be in lieu of any and all claims to compensation and damages, if any, by reason of the location, construction and maintenance of the transportation project by the Commonwealth, including such drainage facilities as may be necessary, and that the Commonwealth shall have the right to enter upon and take possession of the easement prior to the execution and delivery of the deed which is to be executed in the event this option is exercised.

WITNESS the following signature and seal:

COUNTY SCHOOL BOARD
CULPEPER COUNTY, VIRGINIA

BY: _____ (SEAL)

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of
_____, 2013, by _____,

(Title of Position)

My Commission expires _____.

Notary Registration No.: _____

Notary Public

**PREPARED BY VDOT
UNDER SUPERVISION OF THE
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes
and fees under Sections 58.1-811(A)(3),
58.1-811(C)(5), 58.1-3315, 25.1-418,
42.1-70, 17.1-266, and 17.1-279(E)

THIS DEED OF EASEMENT, made this ____ day of _____, 2013, by and between CULPEPER COUNTY SCHOOL BOARD, Grantor (even though more than one), and the COMMONWEALTH OF VIRGINIA, acting by and through the Commissioner of Highways, Grantee,

WITNESSETH: THAT WHEREAS, it is proposed by the Commonwealth to widen or improve State Highway Route 229 Project 0229-204-101, R201, from Int. Route 15/29 Business to N.C.L. Town of Culpeper in the County of Culpeper, Virginia; and

WHEREAS, in the improvement it is necessary that the Grantee enter upon the lands of the Grantor located in the aforesaid county to establish and/or relocate utility facilities on the lands herein conveyed.

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) cash in hand paid by the Grantee to the Grantor, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey to the Grantee, its agents, permittees, successors and assigns, the perpetual right and easement, to install, construct, operate, maintain, inspect, improve, relocate, alter, replace or remove one or more of the following, which shall collectively be referred to as "Utility Facilities":

(a) communication systems, including, but not limited to telephone, cable television and high speed internet services, consisting of buried cables, buried wires, posts, terminals, pedestals, vaults,

conduits, manholes, handholes, and related above-ground facilities including, but not limited to, cables, wires, poles, posts, terminals, location markers, cabinets, equipment housings, remote terminal units, and other appurtenances as may be from time to time required;

over, under, through, upon and across the lands and property of the Grantor adjacent to Route 229, situated in the County of Culpeper, Virginia, and including the right of reasonable egress and ingress to these Utility Facilities, said easement being more particularly bounded and described as follows:

Being as shown on Sheets 5RW, 6RW, of the plans for Route 229 State Highway Project 0229-204-101,R201, Parcel 027, UPC 16640, and beginning on the east (right) side of the Route 229 Construction Baseline from a point in the lands of the landowner opposite approximate Station 171+49 to a point in the lands of landowner opposite approximate Station 176+55 and containing 9,651, square feet in proposed utility easement, as shown in PINK, a copy of which is attached hereto to be recorded herewith in State Highway Plat Book _____, Page _____.

Being a portion of the same land acquired by the Grantor from Town of Culpeper, a Municipal Corporation to Culpeper County School Board, by deed dated January 16, 1942 and recorded in Deed Book 254, Page 105. And also a portion of the same land acquired by the Grantor from Town of Culpeper, a Municipal Corporation to Culpeper County School Board, by deed dated April 10, 1951, and recorded in Deed Book 127, Page 475 in the office of the Clerk of the Circuit Court of Culpeper County.

The utility easements and all utility facilities installed thereon as hereinabove described are subject to the following conditions:

1. The Grantee, its agents, permittees, successors or assigns, and the respective owners of the utility facilities ("Utility Owners") shall have full and free use of the said easement and

right of way for the purposes named, and shall have all rights and privileges reasonably necessary to exercise use of the easement and right of way as their interests are set forth herein, including the right of reasonable ingress to and egress from this easement over the remaining land of Grantor by such private roads as may now or hereafter exist on the property of Grantor. The right, however, is reserved to Grantor to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, then the Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall have such right of reasonable ingress and egress over the lands of the Grantor adjacent to the easement.

2. The Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall each conduct their operations within the easement area in a manner that does not materially interfere with or is otherwise inconsistent with the other easements, rights of way or interests in land acquired hereunder. Any material interference or inconsistency between users of any joint utility easement created hereunder that is not otherwise resolved by the text of this deed shall be resolved in favor of the entity that held, prior to the recording date of this deed, the first in time easement, right of way, other interest in land or occupancy of land under a claim of right or with the apparent acquiescence of the Grantor. Notwithstanding the foregoing, should the operations of the Grantee, its agents, permittees, successors or assigns necessitate material interference with the easements, rights of way or interests of land acquired hereunder, the Grantee, its agents, permittees, successors or assigns shall, in accord with applicable law, have the right and obligation to provide a replacement easement to, or pay the relocation costs of, the affected entity, to the extent necessary to resolve such interference, provided the affected entity held an

easement, right of way, other interest in land or occupancy of land under a claim of right or with the apparent acquiescence of the Grantor prior to the recording date of this deed.

3. The Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall have the right to trim, cut and remove trees, shrubbery, fences, structures, or other obstructions or facilities inside and outside the boundaries of the easement deemed to interfere with the proper and efficient use of the easement for the purposes named and/or the safe and proper operation of the utility facilities; provided, however, the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, at their own expense, shall restore, as nearly as possible, the property to its original condition, including the back-filling of trenches, the replacement of curbing and asphalt pavement, and the reseeding of grass areas, but not the replacement of structures, trees, or other obstructions. The right to trim, cut and remove trees or shrubbery inside the boundaries of the easement shall be in accordance with each Utility Owner's trimming specification, e.g., in compliance with the National Electric Safety Code; Virginia State Corporation Commission Guidelines on Tree-Trimming; the Virginia Overhead High Voltage Safety Act, Va. Code §§ 59.1-406 - 59.1-414; ANSI A-300 and ANSI Z-133. Outside the boundaries of the easement, the Utility Owners may only trim, cut and remove trees or shrubbery (including but not limited to weak, diseased and/or dead vegetation) that pose a danger to the safe and reliable operation of the utility facilities in order to eliminate the hazard.
4. The Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall, consistent with the purposes named, have the right to inspect, rebuild, repair, remove and relocate their respective utility facilities or any part thereof, within the easement area, and may make such changes, alterations, substitutions, additions in and to, or extensions of its

facilities as it deems advisable, and consistent with the purposes named, without the prior consent of the Grantor.

5. The Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall, subject to the rights acquired herein, repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement and right of way and (b) outside the boundaries of the easement caused by the Grantee, its agents, permittees, successors or assigns, or the Utility Owners in the process of the construction, inspection, and maintenance of facilities by the Grantee, its agents, permittees, successors or assigns, and the Utility Owners, or in the exercise of their right of ingress and egress, provided that Grantor gives written notice thereof to Grantee, its agents, permittees, successors or assigns, or the Utility Owners, as appropriate, within sixty (60) days after such damage occurs.

6. The communications, constructed hereunder are and shall remain the property of the Grantee, its agents, permittees, successors or assigns, and the Utility Owners. The Grantee, its agents, permittees, successors or assigns, and the Utility Owners shall, consistent with the purposes named, have the right to inspect, rebuild, repair, remove and relocate their individual utility facilities or any part thereof, within the easement area, and may make such changes, alterations, substitutions, additions in and to, or extensions of their facilities as they deem advisable, and consistent with the purposes named, without the prior consent of the Grantor. In making any such changes, alterations, substitutions, additions in and to, or extensions of its utility facilities after the initial installations for the Project herein described, the Grantee, its agents, permittees, successors and assigns, and the Utility Owners shall not install any above ground pole, cabinet, transformer, fence or appurtenance within any existing paved parking area or entrance way without the prior

consent of the Grantor; such consent shall not be unreasonably withheld. Manholes, vaults, handholes and similar types of appurtenances can be installed under paved areas and sidewalks provided they are load-bearing and are set flush with the existing pavement or sidewalk.

7. The Grantor, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby acquired, provided such use does not interfere with the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, in their exercise of any of the rights acquired hereunder. Grantor shall not have the right to construct any building, structure, or other above-ground obstruction or to change the existing ground elevation, or to impound any water, on the easement; provided, however, Grantor may construct on the easement fences, landscaping (subject, however to the tree trimming rights in Paragraph 3 hereof), paving, sidewalks, curbing, gutters, street signs, and below-ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs and below-ground obstructions do not interfere with the Grantee, its agents, permittees, successors or assigns, or the Utility Owners, in their exercise of any of its rights acquired hereunder. In the event such use by the Grantor does interfere with the exercise of any of the rights acquired by the Grantee, its agents, permittees, successors or assigns, or the Utility Owners hereunder, the Grantee, its agents, permittees, successors or assigns, and the Utility Owners may, in their reasonable discretion, relocate such of its utility facilities as may be practicable to a new site designated by Grantor and acceptable to the Grantee, its agents, permittees, successors or assigns, and the Utility Owner. In the event any such facilities are so relocated, Grantor shall reimburse the Grantee, its agents, permittees, successors or assigns, or the Utility

Owners for the cost thereof and convey to the Grantee, its agents, permittees, successors or assigns, and the Utility Owners an equivalent easement at the new site.

8. The Grantee shall have the right to assign or permit usage of this easement, or portions thereof, said assignment and usage to be only for the purposes and subject to the limitations set forth herein.

“All agents, permittees, successors and assigns of Grantee and all Utility Owners/ Contractors are expressly bound by VDOT’s Road and Bridge Specifications when entering upon and/or engaging in any work in or around easement”

The Grantor by the execution of this instrument acknowledges that the plans for the aforesaid project as they affect its property have been fully explained to it or its authorized representative.

Grantor covenants that it is seized of the property and has the right to convey the easement and the rights and privileges herein conveyed to Grantee and that Grantee shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement and the rights and privileges hereby granted.

The Grantor covenants and agrees for itself, its heirs, successors and assigns that it has been made aware of its right to receive just compensation for the easement herein conveyed, and that the considerations aforementioned and paid to it shall be in lieu of any and all claims to compensation and damages, if any, by reason of the location, construction, operation and maintenance of the utility facilities described herein. **WITNESS** the following signature and seal:

COUNTY SCHOOL BOARD
CULPEPER COUNTY, VIRGINIA

BY: _____ (SEAL)

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of

_____, 2013, by _____,

_____.

(Title of Position)

My Commission expires _____

Notary Registration No.: _____

Notary Public