

**A G E N D A**

**JAMES CITY COUNTY BOARD OF SUPERVISORS**

**County Government Center Board Room**

**January 24, 2012**

**7:00 P.M.**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE – Amy Pressey**

**E. PRESENTATIONS**

1. Shelley Weisberg – Williamsburg Area Arts Commission
2. Scott Jackson – Virginia Arts festival

**F. PUBLIC COMMENT**

**G. BOARD REQUESTS AND DIRECTIVES**

**H. CONSENT CALENDAR**

1. Minutes –
  - a. December 20, 2011 – Special Meeting
  - b. January 3, 2012 – Organizational Meeting
  - c. January 9, 2012 – Joint Meeting
  - d. January 10, 2012 – Regular Meeting
2. Grant Award – Radiological Emergency Preparedness – \$25,000
3. Contract Award- Architectural Design Services for Fire Station #4, New Construction – \$255,378
4. Appropriation of Grant Award – Office of Emergency Medical Services (OEMS) Rescue Squad Assistance fund (RSAF) Grant – \$269,840

**I. PUBLIC HEARINGS**

1. Freedom Park Lease – Go Ape Freedom, LLC

**J. BOARD CONSIDERATION**

1. Creation of a James City County Tourism Zone
2. Analysis of House Bill No. 316 Cemeteries
3. Board and Commission Appointments
4. Draft Deferral Policy
5. Discussion of Jamestown District Supervisor Appointment

**- CONTINUED -**

- K. PUBLIC COMMENT**
- L. REPORTS OF THE COUNTY ADMINISTRATOR**
- M. CLOSED SESSION – None**
- N. BOARD REQUESTS AND DIRECTIVES**
- O. ADJOURNMENT to 4 p.m. on February 6, 2012**

**AT A SPECIAL MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 20TH DAY OF DECEMBER 2011, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

Mary K. Jones, Chairman, Berkeley District  
Bruce C. Goodson, Vice Chair, Roberts District  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

**C. PLEDGE OF ALLEGIANCE - Mr. Goodson led the Board and citizens in the Pledge of Allegiance.**

**D. PUBLIC HEARING**

1. Ordinance Amendment to Chapter 2, Administration, Section 2-3, Designation and Population of Election Districts

Mr. Leo Rogers, County Attorney, stated that this is a special meeting of the Board of Supervisors where the County advertised the public hearing for the purpose of considering an ordinance amendment to change the Board of Supervisors elections from staggered terms to quadrennial elections. There still would be an election held in 2013 for a two-year term and then a quadrennial election would be held in 2015 where all five Board members would have four-year terms.

Ms. Jones addressed the audience and stated that any citizen may comment specific to the topic of this public hearing. A representative of a group may speak 15 minutes and all others are allowed five minutes.

Ms. Jones opened the Public Hearing.

1. Ms. Linda Rice, 2394 Forge Road, Toano, spoke in opposition of eliminating staggered terms because changing the election process is a significant issue affecting the representation local citizens receive. She stated that in the past, prior to making decisions on important policy issues, the County encouraged public input by means of public forums or a referendum on a ballot. These methods give the public more representation in the decision-making process. Possible outcome of quadrennial terms is that one

party may gain total control over the decision making process. She asked the Board to ask other jurisdictions about the election process they use.

2. Ms. Judy Fuss, 3509 Hunter's Ridge, Williamsburg, spoke in opposition of eliminating staggered terms. She stated that she has done extensive research on this issue and staggered terms allow experience and corporate history to flow from one Board year to the next and protects against special interests influencing a clean sweep of the Board. She said for these reasons the National Civic League endorses this form of election. She further stated that she either watched or attended the public redistricting meetings and after reviewing the meeting tapes the proposal to change the County's election cycle was introduced at the end of the committee's last meeting three and a half hours into the meeting. She felt it was clearly a surprise to several committee members and without opportunity for research or ample discussion a vote was forced. Since April 2011, the proposal has mainly laid dormant and now it is before the Board five days before Christmas. She said that neither the proposal nor the timing is good public policy.

3. Ms. Dorothea Neiman, 105 Broomfield Circle, Williamsburg, spoke on behalf of the James City County Citizens Coalition, (J4C). She reminded the Board that at the April 26, 2011, meeting, Mr. Kennedy stated that he could not support eliminating staggered terms without citizen input. At the same meeting it was mentioned alternatives could be considered such as adding districts and having one or more Board members at large. She urged the Board to study the alternatives, to discuss the effects of eliminating staggered terms, and to let the citizens of the County provide input prior to their making a decision. J4C respectfully requested that the Board not vote on eliminating staggered terms at this time.

4. Ms. Sue Sadler, 9929 Mountain Berry Court, Toano, spoke in favor of eliminating staggered terms. She stated that after the election in November 2011, it became clear that staggered terms have serious flaws and challenges and do not meet the intent of the Constitution. She stated that as a result of redistricting, which occurs every ten years, thousands of citizens were disenfranchised. Another flaw is that it allows for the pursuit of being elected to a parallel position without first relinquishing their current position. This creates a new set of problems depending on whether or not the election bid was successful. She stated that staggered terms specifically permit for selfish pursuits, prohibitions, and disenfranchisement.

5. Mr. Robert Richardson, 2786 Lake Powell Road, Williamsburg, spoke on behalf of the James City Citizens for Ethical Government.

Ms. Jones stated that he had five minutes to speak.

Mr. Richardson stated that he was speaking for a group which has been in existence for four years and should have 15 minutes to speak. He further stated that he has spoken for the group at prior meetings and has not been challenged.

Ms. Jones stated that she did not recognize the group and asked the County Attorney for comment on specific information on what is an organization, how is it recognized by the Board, and how has it been historically recognized.

Mr. Rogers responded that the Board recognizes organizations like legal entities such as homeowner associations, organized groups of citizens, or nonprofit groups. A group should be a group of citizens or members of the public that have a particular interest on a topic which is brought before the Board. He advised the Board that it is certainly within the judgment of this Board as to what they believe a group should or should not be and in this case it is within the judgment of the Board to decide what constitutes a group for giving the additional time. He stated that the reason the Board created the speaker rule for a group was to encourage a collective voice from a group and avoid having several members address the Board providing the same information.

Mr. McGlennon asked Mr. Rogers if he was aware of any organization that the Board had challenged under these circumstances.

Mr. Rogers responded no. He stated that he has questioned individuals outside the meeting as to whether or not they were really speaking on behalf of a group.

Mr. McGlennon inquired if the Board had ever discussed the nature of an organization.

Mr. Rogers responded that to his knowledge the Board had not.

Ms. Jones recognized the speaker to speak for five minutes.

Mr. Richardson spoke in opposition of eliminating staggered terms. He read from an essay he wrote entitled, "Disenfranchisement Lie." He stated disenfranchisement occurs after redistricting is done every ten years. He stated that regardless of terms disenfranchisement will always occur and the only way to eliminate it is to have members at large. He requested a Public Comment at the end of the meeting.

6. Ms. Roseanne Reddin, 2812 King Rook Court, Williamsburg, spoke in favor of eliminating staggered terms. She stated that the census is conducted every ten years to count the population and redistricting follows to equalize the electorate in each voting district. The purpose is to preserve and maintain one man or woman, one vote, not to gerrymander, and that it lets the people vote on who they want to represent them.

7. Mr. Keith Sadler, 9929 Mountain Berry Court, Toano, spoke in favor of eliminating staggered terms. He requested that the Board end disenfranchisement.

8. Ms. Penny Pulley, 20 Mile Course, Williamsburg, spoke in opposition of eliminating staggered terms. She gave a possible scenario where the City of Williamsburg could control the School Board placing an outside entity in control over the County's largest expenditure. Due to many recent changes to include redistricting, elections, distraction of the holidays, and the fact that the Board has not given ample opportunity for public input before making a fundamental change in the election process, she requested the Board delay voting on this issue.

9. Mr. James M. Brown, 4 Longleaf Circle, Williamsburg, spoke in opposition of eliminating staggered terms. He requested that the Board consider different alternatives and provide time for citizen input.

10. Ms. Heather Cordasco, 113 Alexander Place, Williamsburg, newly elected School Board member, and a member of the Redistricting Committee, spoke in favor eliminating staggered terms. She stated that going to quadrennial elections would provide continuity and assist with long-term planning which are important factors when making decisions.

11. Ms. Landra Skelly, 6572 Wilkshire Road, Williamsburg, spoke in favor of eliminating staggered terms. She stated quadrennial elections would increase accountability in the County government and eliminate disenfranchisement.

12. Mr. Jeff Ryer, 7154 Merrimac Trail, Williamsburg, spoke in favor of eliminating staggered terms. Accountability and equality are good attributes produced by quadrennial elections. He encouraged the Board to vote tonight.

13. Mr. Les Skelly, 6572 Wiltshire Road, Williamsburg, spoke in favor of eliminating staggered terms. He said that staggered terms are confusing, complicated, and can manipulate power shifts.

14. Mr. Wayne Moyer, 268 Peach Street, Norge, gave the Board three alternatives to consider: 1) vote on the issue tonight, meaning they have already decided on the issue; 2) defer it to the January or February 2012, meeting, for further consideration and to dispel the illusion of manipulation; or 3) modify the resolution before them by having all Board members be up for election in 2013 where the voters have input and which would be more accepted by County citizens.

Ms. Jones allowed Mr. Moyer to play a video as it came from specific County meeting.

15. Mr. Joshua Mayes, 135 Racefield Drive, Toano, a member of the Redistricting Committee, spoke in favor of eliminating staggered terms. He stated that the issue of eliminating staggered terms was mentioned several times in redistricting committee meetings and clarified how voting would work in 2021 if quadrennial elections were in place.

16. Mr. Patrick Sensiba, 122 Braddock Road, spoke in favor of eliminating staggered terms. He stated that it would eliminate confusion and by eliminating disenfranchisement it would increase voter turnout.

17. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, suggested trying a new method for electing Board members for a specific period of time and then reevaluate the issue. He reminded the Board that they are elected by the people and are to do the work of the people.

As no other members of the audience wished to speak, Ms. Jones closed the Public Hearing.

Mr. Goodson made a motion to adopt the Ordinance amendment as presented.

Mr. Goodson stated that he wanted to clarify that this recommendation was not his initiative, but rather that of the Redistricting Committee. His initial motion to approve the redistricting plan submitted by the Redistricting Committee included changing to quadrennial terms.

Mr. Kennedy requested the quadrennial terms be deferred until citizen input had been received and he agreed to defer that issue. He felt that eight months was ample time for the Board to go out and get citizen input. He felt that as this Board assigned members to the Redistricting Committee and approved its plan, this Board needed to take action on the deferred portion of his initial motion to change to quadrennial terms. Eliminating staggered terms will eliminate political manipulation.

Mr. Icenhour submitted a substitute motion to be considered by the Board that would direct the County Administrator or County Attorney to prepare this referendum question for the decision of the voters for the November 6, 2012 ballot.

Mr. Goodson responded that he would not accept the substitute motion.

Mr. McGlennon stated that to his knowledge there was no effort to schedule any discussion to consider the elimination of staggered terms between April and November 18, 2011.

Mr. Kennedy responded that he did not say there was.

Mr. McGlennon stated that at the April 2011 meeting, a time line was not given to receive additional information and because there was a year and a half to comply with regulations for the 2013 election, he feels most people did not think this was a live issue. He stated that he did not see debate in the community between April and November, staff did not prepare a memorandum, and a work session was not scheduled, so he feels it is not appropriate to say there was a lively debate going on in the community about this question. He said it is fair to say the issue was not discussed until after the election occurred and fair to say the redistricting map could have been better as to not affect so many voters' status. If the intent of passing this ordinance is to stop disenfranchisement from occurring this is not going to do it and it would be a mistake to base the decision on that premise. He further stated that he felt this issue could be resolved without touching the election cycles of the Board based on a redistricting map.

Ms. Jones thanked the public audience and all who spoke on this issue as well as those who submitted letters to the newspapers.

Ms. Jones stated that she has listened to the citizens and feels the redistricting process followed a pure process. Politics were not involved in the process but only good representation and good common sense. She said that continuity is not an issue as any new member can contact someone with experience. She feels the process was not rushed as the Redistricting Committee brought it up last April which has been ample time for citizen input. She said that she supports the original motion because eliminating staggered terms makes sense for James City County.

Mr. McGlennon stated that if the Board really believes this is all about ensuring citizens have opportunity for representation then the substitute motion is more appropriate for consideration. A referendum would provide the opportunity to fully debate the question among the public, all issues can be vetted and all can see the alternatives. The election cycle in which these terms would first have to be in place is not until November 2013, which gives time to act tonight and at the same time allow citizens to make the determination on this issue not elected officials.

Mr. McGlennon stated that longevity could occur under both staggered and quadrennial elections.

On a roll call vote on the substitution motion, the vote was: AYE: McGlennon, Icenhour (2). NAY: Kennedy, Goodson, Jones (3).

On a roll call vote on the initial motion to adopt the ordinance amendment as presented, the vote was: AYE: Kennedy, Goodson, Jones (3). NAY: McGlennon, Icenhour (2).

Mr. Icenhour commented that he felt the topic today was disenfranchisement and that it needed further consideration. He noted that redistricting has been done over the years, but this is the first time disenfranchisement seems to have been an issue. He stated that he was disappointed the Board made this decision and would hope that in the future, citizens would be able to make the decision.

Ms. Jones stated that James City County has received a bailout due to complying with the Voter's Rights Act and that the redistricting process was so well done. James City County no longer has to go to the Justice Department which will save time and money.

Mr. McGlennon asked Mr. Rogers for clarification that the Justice Department reviews the records over several years to make their determination.

Mr. Rogers clarified that they look over several years.

Mr. Kennedy stated that Mr. Icenhour violated the Code of Ethics by addressing Mr. Ryer in a derogatory manner. He requested Mr. Icenhour to not address any member of the audience from the dais.

Mr. Icenhour responded that he respectfully disagreed with Mr. Kennedy. He stated that we are all accountable for what we say and that Mr. Ryer made very clear statements at a public meeting, and that Mr. Goodson was also present at that meeting. He further stated that he apologized to Mr. Ryer if he took his comments as an attack on him personally.

Mr. Goodson made a motion to adjourn.

On a roll call vote, the vote was: AYE: McGlennon, Goodson, Icenhour, Kennedy, Jones (5). NAY: (0).

**E. ADJOURNMENT** to 4 p.m. on January 3, 2012.

At 8:52 p.m., Ms. Jones adjourned the Board until 4 p.m. on January 3, 2012.

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Robert C. Middaugh  
Clerk to the Board

**AT AN ORGANIZATIONAL MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 3RD DAY OF JANUARY 2012, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

Mary K. Jones, Chairman, Berkeley District  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Roberts District

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

The Board observed a moment of silence and led the Pledge of Allegiance.

**C. ORGANIZATIONAL MEETING**

Mr. Rogers advised the Board that the first order of business was to elect a chair and vice chair for 2012.

Ms. Jones nominated Mr. Kennedy to serve as Chairman for 2012.

Mr. Icenhour stated that he would support Mr. Kennedy for Chairman if the Board would agree that Mr. Kennedy would serve as Chairman for half of the year and Mr. McGlennon for the other half.

Mr. Kennedy stated that he would prefer Ms. Jones be Chairman.

Mr. McGlennon spoke in support of a form of divided leadership.

Ms. Jones stated that she thought the Chairman and Vice Chairman should serve a full year term.

Mr. Kennedy declined the nomination for Chairman.

Mr. Kennedy nominated Ms. Jones to be Chairman for 2012.

Mr. Icenhour made a motion to amend the motion for Ms. Jones and Mr. McGlennon to each serve half of the year as Chairman and half of the year as Vice Chairman.

On a roll call vote, the vote on Mr. Icenhour's motion was: AYE: McGlennon, Icenhour (2). NAY: Kennedy, Jones (2).

On a roll call vote, the vote on Mr. Kennedy's motion was: AYE: Kennedy, Jones (2). NAY: McGlennon, Icenhour (2).

Mr. Rogers explained that if the Board could not elect a Chairman, the sitting Chairman would continue to serve as Chairman.

Ms. Jones nominated Mr. Kennedy to be Vice Chairman for 2012.

Mr. Kennedy declined the nomination.

Mr. Kennedy nominated Mr. McGlennon to be Vice Chairman for 2012.

On a roll call vote, the vote was: AYE: Kennedy, McGlennon, Icenhour, Jones (4). NAY: (0).

Mr. Rogers explained that two meeting calendars had been prepared for the Board's review, one that retained the current meeting schedule with the Board meeting on the second and fourth Tuesday of the month and one with the Board meeting on the second and fourth Wednesday of the month.

Mr. Kennedy stated that he believed Wednesday meetings would be better because meetings would not overlap with School Board meetings and that Tuesday meetings sometime occur the day after a holiday and on the same day as Election Day.

Mr. Icenhour stated that the Board should seek public input before changing the meeting schedule and requested that staff devise a method for seeking such input.

Mr. Icenhour made a motion to approve the meeting calendar with the Board meeting on the second and fourth Tuesday of the month.

On a roll call vote, the vote was: AYE: Kennedy, McGlennon, Icenhour, Jones (4). NAY: (0).

## **RESOLUTION**

### **ORGANIZATIONAL MEETING OF THE BOARD OF SUPERVISORS**

WHEREAS, the Board of Supervisors of James City County, Virginia, is required by State law to organize at the first meeting in January.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the following rules shall apply for the Year 2012:

1. Regular meetings of the Board shall be held as shown on the attached 2012 calendar, in the Board Room of the James City County Government Center. The meeting time shall be 7:00 p.m.

Work session meetings of the Board shall be held at 4:00 p.m., Tuesday before the second regular meeting in the Board Room of the James City County Government Center.

2. The Board of Supervisors agrees to follow Robert's Rules of Order, Newly Revised 10th Edition, October 2000, and more specifically, the provisions which pertain to the "Conduct of Business in Boards," at page 469 et. seq., in particular, the "Procedure in Small Boards" as follows:
  - a. Members are not required to obtain the floor before making motions or speaking, which they can do while seated.
  - b. Motions need not be seconded.
  - c. There is no limit to the number of times a member can speak to a question, and motions to close or limit debate generally should not be entertained.
  - d. Informal discussion of a subject is permitted while no motion is pending.
  - e. The Chairman can speak in discussion without rising or leaving the chair; and can make motions and votes on all questions.
3. In addition, the Board agrees to the following:
  - a. A motion to rescind shall not be in order in a land use decision involving a rezoning or a special use permit. A motion to reconsider such a decision must be made at the same meeting the original decision is made by the Board.
  - b. Should it be necessary to cancel an advertised Board of Supervisors meeting due to weather or other conditions, the meeting shall be continued forty-eight hours to the same time and place.

The Board made the following appointments:

Hampton Roads Military and Federal Facilities Alliance – **Ms. Jones**

Hampton Roads Planning District Commission – **Ms. Jones**

Hampton Roads Transportation Planning Organization – **Ms. Jones**

Local Enterprise Zone Association – **Mr. McGlennon**

School Liaison – **Mr. Icenhour and Mr. McGlennon**

Historic Triangle Collaborative – **Mr. Kennedy**

Agricultural and Forestal District Advisory Committee – **Mr. Icenhour**

Economic Development Authority Liaison – **Mr. Kennedy**

Farmers Advisory Committee – **Mr. Kennedy**

Williamsburg Area Destination Marketing Committee – **Mr. Kennedy**

Community Services Coalition Board of Directors – **Mr. Icenhour**

Greater Peninsula Workforce Development Consortium – **Mr. Icenhour**

Peninsula Council for Workforce Development – **Mr. Icenhour**

Virginia Peninsula Regional Jail Authority – **Mr. McGlennon**

Williamsburg Land Conservancy – **Mr. Icenhour**

Local Emergency Preparedness – **Ms. Jones**

Peninsula Public Sports Facility Authority – **Ms. Jones**

Greater Williamsburg Area Chamber and Tourism Alliance – **Mr. Kennedy**

High Growth Coalition – **Mr. McGlennon**

Williamsburg Area Medical Assistance Corporation – **Mr. McGlennon**

Ms. Jones made a motion to appoint the Board members to their respective liaison seats.

On a roll call vote, the vote was: AYE: Kennedy, McGlennon, Icenhour, Jones (4). NAY: (0).

Mr. McGlennon asked to add a work session in June on the Legislative Agenda to the work session calendar.

Mr. Kennedy suggested that the Board discuss the appointment of the vacant Jamestown District Board of Supervisors seat. He advocated for a process that would be completely open and that there should be no closed sessions during the process. He stated his preference was for Mr. Icenhour to accept the appointment to the Jamestown District seat and to appoint Mr. Rich Krapf to the Powhatan District seat.

Ms. Jones supported Mr. Kennedy's suggestions.

Mr. McGlennon stated that the process proposed by Mr. Kennedy would mean that two members of the Board would be appointed instead of just one and that he did not think the proposal constituted an open process. He also stated his preference would be to appoint someone who is not interested in running for the seat.

Mr. Icenhour stated that he would run for the Jamestown District seat in the November 2012 election, but did not want to be appointed to the seat.

Ms. Jones stated that there seemed to be consensus for an open process.

The Board, by consensus, agreed to ask the County Administrator and County Attorney to develop an application for citizens who want to seek the appointment to the Jamestown District seat with a proposed timeline.

Mr. McGlennon made a motion to adjourn until January 9 at 4 p.m. at Legacy Hall.

On a roll call vote, the vote was: AYE: Kennedy, McGlennon, Icenhour, Jones (4). NAY: (0).

At 5:29 p.m., Ms. Jones adjourned the Board.

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Robert C. Middaugh  
Clerk to the Board

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AT A JOINT WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, THE CITY COUNCIL OF THE CITY OF WILLIAMSBURG, VIRGINIA, AND THE BOARD OF SUPERVISORS OF YORK COUNTY, VIRGINIA, HELD ON THE 9TH DAY OF JANUARY 2012, AT 4:00 P.M. AT 2007 LEGACY HALL, 4301 NEW TOWN AVENUE, JAMES CITY COUNTY, VIRGINIA.

**A. HOST WELCOME**

On behalf of James City County, Ms. Jones welcomed everyone to the meeting.

**B. CALL TO ORDER**

Chairman Mary Jones called the James City County Board of Supervisors to order. Roll Call:

Mary K. Jones, Chairman, Berkeley District  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Roberts District

Robert C. Middaugh, County Administrator

Mayor Haulman called the Williamsburg City Council to order. Roll Call:

Clyde Haulman, Mayor  
Scott Foster  
Paul Freiling  
Doug Pons  
Judy Knudson

Jackson C. Tuttle, City Manager

Vice-Chairman Noll called the York County Board of Supervisors to order. Roll Call:

Sheila Noll, Vice Chairman  
Don Wiggins  
Walt Zaremba  
George Hrichak

J. Mark Carter, Assistant County Administrator

**C. PURPOSE AND EXPECTATIONS FOR MEETING**

Mr. Middaugh said this was a unique meeting where all of the elected officials from all three governing bodies were present. He said expectations should be realistic for the meeting. He said that the

meeting is an opportunity to better understand where each of the governing bodies stands on the issues. He also stated that the meeting would be successful if it created a commitment and a framework for future meetings.

#### **D. DISCUSSION OF SIMULTANEOUS COMPREHENSIVE PLAN UPDATES**

Mr. Carter stated that the idea of simultaneous Comprehensive Plan updates began in 2006 with the Regional Issues Committee. The governing bodies agreed that 2012 would be the target for the update in order to take advantage of 2010 census data.

Mr. Reed Nester, Planning Director for the City of Williamsburg, emphasized that this process coordinated the timing of three separate review processes and that it will not result in one regional Comprehensive Plan. He mentioned a schedule of forums to solicit meaningful public input that all three localities could use. He said that the process should culminate in early 2013 as the three governing bodies consider the recommendations forwarded by their respective planning commissions.

Mr. Tim Cross, Principal Planner for York County, said that while the process is just now formally starting much work has already been done, including:

- Update existing land use maps
- Compile demographic and economic data
- Establish project website; and
- Joint transportation study by Hampton Roads Transportation Planning Organization (HRTPO)

Mr. Cross also highlighted the tasks to be done in the future:

- Joint public forums
- Joint Planning Commission meeting; and
- Summary document prepared

Mr. Cross stated there would be three forums, one in each locality.

Ms. Tammy Rosario, Principal Planner for James City County, said that the three public forums will be held as follows:

February 2 – Magruder Elementary School – will focus on the Riverside/Busch/Marquis area  
February 23 – Warhill High School – will focus on Lightfoot/Pottery area  
February 27 – Williamsburg Community Building – will focus on Northeast Triangle

Mr. Hrichak asked if the meetings were intended to discuss the region as a whole.

Mr. Carter replied that is correct, but they also are intended to focus on the areas of interest specific to each meeting.

Ms. Jones noted that each locality will still have its own Comprehensive Plan but that there would be one or two pages common to all three Comprehensive Plans.

Mr. Freiling stated that there was mention of discussing general topics that cut across borders, but that Comprehensive Plan input tends to be limited and that it was believed that more input would be received if it was focused on certain geographic areas.

Mr. Zaremba said that there should be focus on the areas with common borders.

Mayor Haulman stated that if this effort is successful there could be focus on other geographical areas in the future.

Ms. Noll stated that there has been significant coordination in the past.

Mayor Haulman said that one of the benefits of this process is to raise public awareness of the coordination that already exists.

Mr. Zaremba noted that he did not think residents of the middle and lower parts of York County would participate in this process given the location of the proposed meetings.

Mr. Carter said that the process was not intended to leave parts of York County out, but at the same time the focus of this effort is on areas with common boundaries.

Mr. Freiling asked if residents in York County that are not in District 1 would be interested in this effort.

Ms. Noll stated that it is not just a Comprehensive Plan issue but a cultural issue in York County.

Ms. Jones suggested an additional meeting be scheduled with a location more convenient to middle and lower York County.

Mr. Wiggins said that the York County Board of Supervisors needs to come together to address this issue.

Mr. McGlennon expressed concern that the focus of this effort is on three specific areas. He suggested that the focus should be on more general terms. He said that the conversation should focus on issues such as diversifying the economy or how to maintain the quality of life in the region.

Ms. Jones stated that the public forums should not restrict citizens from speaking on any topic they want.

Mr. Zaremba said that this effort should reinforce that York County is part of the Historic Triangle and reinforce the identity.

Mr. Pons said that the more coordinated the Historic Triangle is the more coordinated the entire Peninsula will be.

Mr. Freiling stated that the question was not answered about an additional meeting.

There was consensus that another meeting should be scheduled in lower York County.

Mr. Middaugh asked the group if they wanted to be broader than the current plan as Mr. McGlennon suggested.

Mr. Pons said that the discussion needs to include housing.

Mr. Carter stated that there will be summary documents on some broader issues such as transportation and possibly economic development.

Mr. Freiling said that the summary document should focus on Mr. McGlennon's comments.

Ms. Noll stated that she agreed with Mr. Freiling.

## **E. DISCUSSION OF THE HISTORIC TRIANGLE VISION PROJECT**

Mr. Tuttle asked Mr. Haulman to provide an overview of the Vision Project.

Mayor Haulman stated that the project is a review and analysis of the mission, vision, values, and plans of significant businesses, organizations, and institutions in the Historic Triangle. The purpose of the study was to identify the implied vision embedded in its long-range thinking. It is not a broad based community vision, but a good starting point. He said that the results indicate organizations are interested in a stable environment in which to operate, an effective multi modal transportation network, diversified regional economy building on the area's strengths, quality education, employment opportunities, and housing options. Mayor Haulman said there are some important issues that are not addressed in the report, such as health care and the fact that the elderly population is going to increase dramatically.

Mr. Tuttle began facilitation of discussion of the project. He asked the group how they defined smart growth and what policies led to it.

Ms. Noll stated that the issue is how can the community expand and still provide for the quality of life that the community wants.

Mayor Haulman said that the issue is how to change while preserving.

Ms. Jones stated that smart growth needs to balance property rights.

Ms. Noll said that the issue is balancing the rights of individuals and the community.

Ms. Knudson said the area is making the same mistakes as other places and is losing its uniqueness.

Mr. McGlennon said there is a sense that the area depends on being different and people are worried that the area is losing what makes it special.

Mayor Haulman stated that the underlying issue is what do citizens identify as unique.

Mr. Kennedy said that a lot of the uniqueness is gone, and small business is an example. He asked what the region could do to renew. He said that the area is devoid of high paying jobs and does not utilize the College of William and Mary.

Mr. Tuttle asked the group what it saw as the comparative advantages of the region.

Mr. Foster stated that growth does not have to equal change. He said that the region should focus on what it already does well. He further stated that location is a comparative advantage for the region. Another comparative advantage is that the area has a quality of life that citizens in other areas don't talk about.

Mr. McGlennon stated that one of the area's comparative advantages is its history. He said that this region is a place people visit because historically important things have happened that other areas cannot recreate. He said that it is hard to maintain the small town atmosphere with extraordinary growth rates. He said another advantage is that the area has a larger than expected development community. The development community could focus on redevelopment of a large housing stock that was built over the past 30 years. Energy retrofits could be exported.

Mr. Wiggins said that he felt the school system and safety were comparative advantages.

Mayor Haulman said that there are three dynamic sectors: education, which includes schools and institutions, Thomas Nelson Community College, the College of William and Mary, Colonial Williamsburg, healthcare, and the development community.

Mayor Haulman stated that the strength of the report is that it spurs thinking. He said that the next step is a broad vision.

Mr. Zaremba said that the region should stop trying to be something it is not.

## **F. CONCLUSION/WRAP UP**

Mr. Middaugh wrapped up the conversation by stating that everyone seemed to agree that the undertaking to synchronize the Comprehensive Plan is good. He noted the interesting conversation about bringing lower York County into the Historic Triangle identity and that there seemed to be agreement among the group that this meeting was productive and would like to meet again in the future.

Mr. Middaugh further stated that there was concern about losing what makes the region special, but that there was no consensus on how to identify and preserve what makes us unique. He said everyone felt the region should focus on its strengths.

## **G. ADJOURNMENT**

At 5:57 p.m., Mr. Freiling made a motion for the City Council to adjourn.

Mr. Knudson seconded the motion.

The motion was approved by a vote of 5-0.

Mr. Icenhour made a motion for the James City County Board of Supervisors to adjourn until January 10, 2012.

The motion was approved by a vote of 4-0.

Ms. Noll adjourned the York County Board of Supervisors sine die.

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Robert C. Middaugh  
Clerk to the Board

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF JANUARY 2012, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

Mary K. Jones, Chairman, Berkeley District  
John J. McGlennon, Vice Chairman, Jamestown District  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Powhatan District

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE** – Daisy Troop 1382 led the Board and citizens in the Pledge of Allegiance.

**E. PUBLIC COMMENT**

1. Mr. David Glass, 3752 Cherry Walk, expressed concern about the impact that the proposed St. Bede mausoleum would have on property values. He further stated his concern about the environmental effects of the proposed mausoleum.

2. Mr. Richard Bradshaw, Commissioner of the Revenue, provided a brief overview of the services available through the Commissioner's office.

3. Mr. Aiden Digges, 3707 Ironbound Road, said that he was a member of St. Bede and expressed his opposition to the proposed mausoleum.

4. Mr. Sasha Digges, 3612 Ironbound Road, stated that he had a copy of legislation that was going to be introduced to the General Assembly which would bypass County control over cemeteries.

5. Mr. Greg Davis, an attorney with Kaufman and Canoles PC, spoke on behalf of St. Bede. He stated that the church was working with the community to address a number of questions and concerns that were discussed at the Planning Commission meeting. He stated that there would be further meetings before St. Bede brought the application to the Board of Supervisors.

6. Ms. Mary Catherine Digges, 3612 Ironbound Road, stated that there was not a representative of St. Bede at the last Meadows Homeowner Association meeting. She said that there had been little effort to reach out and asked that St. Bede act with transparency.

7. Mr. Jeremy Galloway, 3912 Lilly Lane, stated that the proposed mausoleum is a serious issue in the Meadows.

8. Mr. Ralph Spone, 121 Broadwater, said parishioners at St. Bede did not know about the proposed mausoleum until August. He said St. Bede was not interested in telling people what they were doing.

9. Mr. Sam Trapani, 130 Sharps Road, stated his strong opposition to the proposed mausoleum. He said that he believed St. Bede was using stall tactics until the General Assembly acted on the proposed bill.

10. Mr. Ed Oyer, 139 Indian Circle, stated that the time has come for the County to pay its debt. He expressed concern about traffic issues at Monticello and New Town. He stated that the Board voted YEA 442 times and NAY 33 times in public hearings and board considerations in 2011.

11. Mr. Scott Blossom, 168 Old Field Road, thanked the Board for its service and for attending community meetings. He stated his concern about the negative effect of the proposed mausoleum on the entire community and not just the Meadows. He asked the Board to deny the application.

12. Mr. Robert Richardson, 2786 Lake Powell Road, said that he resents being required to provide an address when speaking at Board meetings and asked the Board to discontinue the practice of requiring it. He expressed concern about being gavelled down at the last meeting and about the organization he represents not being recognized.

13. Ms. Ann Trapani, 130 Sharps Road, asked when the Board will act on the proposed mausoleum and if the Board was waiting for proposed legislation.

## **F. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon noted a recent article regarding the Postal Service considering an offer that has been made to purchase the post office on Monticello Avenue. He further noted that if this occurred the post office would be consolidated with the one in Williamsburg. He asked the Board to support communicating with Federal and Postal Service officials and the County's concern with this proposal. He said that now is the time to make the County's position known while the Postal Service is evaluating the offer. He said everyone remembers the congestion that occurred at the Williamsburg Post Office before the Monticello Post Office was opened and that everyone could realize the impact of closing the Monticello Post Office. He said that maintaining the Monticello Post Office is important for economic development and service to citizens. The Board agreed to support Mr. McGlennon's proposal.

Mr. McGlennon stated that he was distressed by the proposed General Assembly legislation pertaining to cemeteries. He stated that the proposed legislation reduced the role of local government. He asked the County Attorney to analyze the proposed bill with an eye toward taking a position on it. The Board agreed to review the issue at the January 24 meeting.

Ms. Jones expressed appreciation to everyone who made possible the joint meeting with the James City County Board of Supervisors, City of Williamsburg City Council, and the York County Board of Supervisors. She acknowledged Mr. Al Woods representing the Planning Commission at the meeting.

Mr. Icenhour stated that he appreciated Mr. Davis speaking during Public Comment, but that he still is not clear about St. Bede's plan for bringing its application for the mausoleum forward. He made a motion to put the case on the January 24 agenda.

Mr. Kennedy stated that if Board members had questions about the application they could contact the applicant. He said that he was also concerned about deferrals, but that a policy needs to be developed before the County changes its current practice.

Mr. McGlennon noted that in the case of the deferral on the Hospice House Cell Tower the Board was made aware of why the applicant wanted a deferral.

Mr. Davis was asked to be more specific about a schedule for public meetings on the proposed mausoleum. Mr. Davis said that he was not aware of a specific schedule. He said he only learned of the proposed General Assembly legislation today and that there was no hidden agenda to delay the project. Mr. Davis agreed to attend the January 24 Board meeting and provide further update about the project's schedule.

Mr. Icenhour asked that staff prepare a deferral policy for consideration at the January 24 Board meeting. He withdrew his motion to put the St. Bede mausoleum case on the January 24 Board meeting.

#### **G. CONSENT CALENDAR**

Mr. McGlennon made a motion to adopt the Consent Calendar.

1. Minutes –
  - a. December 13, 2011, Work Session
  - b. December 13, 2011, Regular Meeting
2. Adoption of Amendments to the Peninsula Hazard Mitigation Plan 2011 Update

### **RESOLUTION**

#### **ADOPTION OF AMENDMENTS TO THE PENINSULA HAZARD MITIGATION PLAN**

##### **2011 UPDATE**

WHEREAS, James City County, seeking Federal Emergency Management Agency (FEMA) approval of its Hazard Mitigation Plan 2011 Update, recognizes the threat that natural hazards pose to people and property within our community; and

WHEREAS, an adopted Peninsula Hazard Mitigation Plan 2011 Update is required as a condition for future funding for mitigation projects under multiple FEMA pre- and post-disaster mitigation grants and flood mitigation assistance; and

WHEREAS, the Virginia Department of Emergency Management and FEMA Region III have reviewed the Peninsula Hazard Mitigation Plan 2011 Update, and approval was contingent upon this official adoption of the participating governments and entities; and

WHEREAS, James City County adopted the Plan 2011 Update on October 25, 2011, and in its final post-adoption review, FEMA has required two changes to the Plan Update 2011; and

WHEREAS, the required changes have been made to the Plan 2011 Update.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the Peninsula Hazard Mitigation Plan 2011 Update as amended as an official plan.

BE IT FURTHER RESOLVED, that James City County will submit this adopted resolution to the Virginia Department of Emergency Management and FEMA Region III to enable the Plan 2011 Update final approval.

- 3. Appropriation to the Commonwealth’s Attorney Office - \$5,000

**RESOLUTION**

**APPROPRIATION TO THE COMMONWEALTH ATTORNEY’S OFFICE - \$5,000**

WHEREAS, the Commonwealth Attorney’s office is losing State funds due to the resignation of a “career prosecutor”; and

WHEREAS, the Commonwealth’s Attorney has requested \$5,000 to offset the loss and allow the ability to hire an experienced prosecutor.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appropriates \$5,000 to the Commonwealth Attorney’s office as follows:

Revenue:

From Commonwealth - Commonwealth Attorney \$5,000

Expenditure:

Operating Contingency \$5,000

On a roll call vote, the vote was AYE: McGlennon, Icenhour, Kennedy, Jones (4). NAY (0).

**H. PUBLIC HEARINGS**

- 1. Pre Budget Public Hearing - FY 2013-2014 Budget

Ms. Sue Mellen, Assistant Manager of Financial and Management Services, stated that the biennial budget would be a challenge as revenue is expected to decline in FY 13 primarily due to declining real estate assessments. She stated that there are positive trends in certain revenues such as meals, sales, and Business, Professional, and Occupational License (BPOL) taxes, and there are savings that can be used in the FY 13 budget as well. Regarding expenditure, capital expenses, and the Virginia Retirement System (VRS) are the biggest challenges along with the Schools.

Ms. Jones opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, asked why James City County salaries were not included in the recent Richmond Times Dispatch article on salaries in local government.

Mr. Middaugh stated that the County provides information on salaries when asked.

2. Mr. Robert Richardson, 2786 Lake Powell Road, stated his concern about the Board's leadership in developing a budget.

Ms. Jones determined Mr. Richardson to be out of order.

The Board took a break at 8:25 p.m.

The Board reconvened at 8:30 p.m.

Mr. McGlennon mentioned the Budget Retreat to be held on January 21.

Mr. Kennedy asked if a representative of the Schools could attend.

Mr. Middaugh stated that he intends to conduct public meetings in the County on the budget, including the schools, in late February or early March.

Mr. McGlennon asked if the County's biggest challenge is funding the VRS payment for schools.

Mr. Middaugh responded that is correct.

Mr. McGlennon noted that the State is highlighting its investment in VRS, but that half of the investment comes from local government.

Mr. Middaugh stated that local government is funding closer to 2/3 of the increased funding to VRS.

2. Case No. Z-0004-2011. Commercial Districts

Mr. Chris Johnson, Principal Planner, stated that following adoption of the six commercial ordinances at the October 11, 2011, meeting, staff became aware of inconsistencies between the draft versions of the M-1 and M-2 ordinances which were posted online prior to the September 7, 2011, Planning Commission meeting and the paper copies of those same ordinances which were distributed to the Planning Commission and the Board. Given the discrepancies between the different ordinance versions that were in circulation prior to Board adoption, the Board voted at its November 8, 2011, meeting, to rescind its prior approvals for all six commercial ordinances and requested that staff and the Planning Commission examine the use list in each of the districts and correct any inconsistencies that were identified.

Mr. Johnson stated that the Planning Commission reviewed the Commercial Districts ordinances at its December 7 meeting. The draft version of the M-1 and M-2 ordinances reviewed by the Planning Commission in October 2011 included fast food restaurants as a permitted use in both districts. Fast food restaurants had previously been permitted by-right in the B-1 District, but were not permitted in either M-1 or M-2. After further review, staff has amended the use list to make fast food restaurants a specially permitted use in the M-1 District and has removed the use entirely from the M-2 District. No other inconsistencies were found and no other changes have been made.

Mr. Icenhour asked staff to provide a summary list of the permitted uses in each of the four commercial districts that had been shifted from specially permitted to permitted as well as brand new uses which had been added to each of the districts.

Mr. Johnson replied with information for each of the four commercial districts.

Ms. Jones opened the Public Hearing.

As no one wished to speak to the matter, Ms. Jones closed the Public Hearing.

Mr. Icenhour asked to vote on each of the six commercial district ordinances individually.

After discussion the Board agreed to consider each amendment separately.

**ARTICLE I. IN GENERAL. Sec. 24-11. Special use permit requirements for certain commercial uses; exemptions.**

Mr. Kennedy made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Jones (2). NAY: McGlennon, Icenhour (2).

The motion failed.

Mr. McGlennon noted that he had previously voted against all of these ordinances because there was more administrative review and fewer provisions for Special Use Permits (SUPs). He stated that he would continue to generally oppose these ordinances on those grounds.

**ARTICLE III. SITE PLAN. Sec. 24-147. Criteria for review.**

Mr. Kennedy made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Icenhour, Jones (3). NAY: McGlennon (1).

**ARTICLE V. DISTRICTS. DIVISION 9, LIMITED BUSINESS, LB**

Mr. Kennedy made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Icenhour, Jones (3). NAY: McGlennon (1).

**ARTICLE V. DISTRICTS. DIVISION 10. GENERAL BUSINESS DISTRICT, B-1**

Mr. Kennedy made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Icenhour, Jones (3). NAY: McGlennon (1).

**ARTICLE V. DISTRICTS. DIVISION 11. LIMITED BUSINESS/INDUSTRIAL DISTRICT, M-1**

Mr. Kennedy made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Icenhour, Jones (3). NAY: McGlennon (1).

**ARTICLE V. DISTRICTS. DIVISION 12. GENERAL INDUSTRY DISTRICT, M-2**

Mr. Kennedy made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Icenhour, Jones (3). NAY: McGlennon (1).

3. Case No. Z-0010-2011. Wireless Communications Ordinance

Mr. Luke Vinciguerra, Planner, provided an overview of the draft Wireless Communications Ordinance, which has been reviewed and endorsed by the Policy Committee and Planning Commission.

Mr. Vinciguerra stated that the ordinance ensures compatibility with new technologies, promotes by-right options for hidden antennas, and modernizes an ordinance that was adopted in 1998. The proposed notable revisions are as follows:

- Regulations for multi-antenna systems.
- Regulations for Portable Cellular Transmission Facilities with restriction to 90 days unless otherwise approved by the Board.
- Clarification of building mounted/alternatively mounted antennas.
- Clarification of the camouflaged tower provision.
- Elimination of the by-right camouflaged tower provision in the residential districts. This ordinance would require camouflaged towers to obtain an SUP in residential districts. Towers that are not camouflaged in residential districts would not be permitted under any circumstance.

Ms. Jones opened the Public Hearing.

1. Mr. David Neiman, 105 Broomfield Circle, Chairman of the Kingsmill Wireless Communications Advocacy Group, stated that citizens want the Board to be involved in decisions about cell towers in residential districts. He advocated requiring SUPs for camouflaged towers in residential districts. He stated that he was not aware of any locality in Virginia that allows towers by-right in residential districts. He also stated that the impact criteria should be changed to allow for the possibility of a well buffered slick stick in residential districts.

Ms. Jones closed the Public Hearing.

Mr. Icenhour made a motion to approve the ordinance with the amendment to require an SUP for camouflaged towers in residential districts and the performance standards with the addition of a well buffered slick stick.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Jones (3). NAY: Kennedy (1).

**RESOLUTION**

**PERFORMANCE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES**

**THAT REQUIRE A SPECIAL USE PERMIT**

WHEREAS, the Performance Standards for Wireless Communications Facilities That Require a Special Use Permit (“Policy”) is designed to assist the Board in determining the acceptability of a proposed wireless facility; and

WHEREAS, the Policy has been revised due to changes in technology and to reflect new terminology in the Zoning Ordinance; and

WHEREAS, the James City County Planning Commission's Policy Committee endorsed the Policy on September 15, 2011; and

WHEREAS, the James City County Planning Commission, after a public hearing, endorsed the Policy on December 7, 2011 by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the Performance Standards for Wireless Communications Facilities That Require a Special Use Permit policy dated January 10, 2011.

4. Creation of a James City County Tourism Zone

Mr. Russell Seymour, Director of Economic Development, stated that the State Code provides localities the authority to establish a tourism zone for the purpose of granting tax incentives and regulatory flexibility to qualified businesses. The State allows for tax incentives up to 20 years and other incentives for up to 10 years.

Staff proposed the establishment of a tourism zone in James City County that would comprise the entire County and offer incentives to new and existing tourism businesses. In order to qualify for local incentives a business would have to make a capital investment of \$350,000. Benefits would be provided over a five-year period with an opportunity for a second five-year incentive period with an additional capital investment of \$350,000.

Mr. Seymour stated that the Economic Development Authority (EDA) supports the proposed tourism zone and staff recommends approval.

Mr. McGlennon asked how the tourism zone would work, what kinds of businesses would be attracted, and what would the benefit be to the County.

Mr. Seymour said that the tourism zone is a marketing device and gives the County the opportunity to help businesses in an important industry.

Mr. McGlennon asked if all retail would qualify.

Mr. Seymour replied that retail would have to meet the capital investment threshold of \$350,000 and demonstrate that they are an attraction.

Mr. McGlennon asked if staff had an idea of the magnitude of money involved, specifically, how the County would know how much revenue was collected due to the tourism zone and how much would be attributable to general economic growth.

Mr. Seymour stated that is a pertinent question, but one that is very difficult to quantify.

Mr. McGlennon asked if the County would forego any revenue as a result of this proposal.

Mr. Seymour said that the County collects taxes from the company before providing grants so the County would not forego any revenue.

Mr. Icenhour asked for clarification on the source of revenue to fund the incentives.

Mr. Seymour stated that the grants are BPOL and business tangible personal property. The company would pay taxes before the incentive is paid the following year.

Mr. Middaugh stated that there is a provision in the program for other funds pending Board approval.

Mr. Icenhour said that he supported the program, but wanted to be sure he understood the commitment being made.

Mr. McGlennon asked if staff could model what the County might anticipate regarding the effects of the tourism zone.

Mr. John McDonald, Manager of Financial and Management Services, stated that it would be difficult to measure if investments were being made because of the tourism zone or if they would be made regardless.

Mr. McGlennon said that he would be more comfortable if he better understood the State's commitment to the program.

Mr. McGlennon stated that he generally supported the proposal, but wanted additional information before he voted.

Mr. Icenhour asked if staff could report to the Board on the results achieved by the enterprise zone program.

Ms. Jones opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, said that he has researched public-private partnerships and has only found one that paid off. He stated that incentives cost taxpayers and a business should put money in escrow before it is granted incentives. He further stated that parts of the enterprise zone program have worked very well, but that it has not resulted in many jobs for County citizens.

Ms. Jones closed the Public Hearing.

Mr. Kennedy made a motion to approve the resolution.

Mr. McGlennon stated that his preference would be to get more information on the implications of this before acting.

Mr. Icenhour said that he is inclined to support the program, but wants to be certain he understands how it will be funded. He said he also supported deferring this item to the next meeting.

Mr. Kennedy rescinded his motion.

Mr. Icenhour made a motion to defer the item to Board Considerations at the January 24 Board meeting.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Jones (3). NAY: Kennedy (1).

5. Ordinance to Amend Chapter 2, Administration to Adjust Election District Boundaries

Mr. Rogers stated that there are three census blocks which need to be moved that will affect four precinct boundaries. A census block in Jamestown A is being moved to Jamestown B and two census blocks in Roberts A are being moved to Roberts B. Mr. Rogers said that no voters are affected by these minor adjustments.

Ms. Jones opened the Public Hearing.

As no one wished to speak to the issue, Ms. Jones closed the Public Hearing.

Mr. McGlennon made a motion to approve the ordinance and resolution.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Kennedy, Jones (4). NAY: (0).

**RESOLUTION**

**ADOPTING THE AMENDED JAMES CITY COUNTY REDISTRICTING MAP**

WHEREAS, on April 26, 2011, the Board adopted the redistricting map identified as “James City County Redistricting Option 1, submitted by Jeff Ryer” and establishing new boundaries for election districts in James City County; and

WHEREAS, in order to be consistent with the redistricting map approved by the General Assembly, three census blocks need to be changed, affecting four precinct boundaries; and

WHEREAS, making these minor changes to the County’s redistricting map will affect no voters and will not change the size or population of any of the County’s four election districts.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the James City County Redistricting Map as Amended on January 10, 2012.

**I. BOARD CONSIDERATIONS**

1. Discussion of Jamestown District Supervisor Appointment

Mr. Middaugh stated that he and the County Attorney had provided information to the Board and public about the process to fill the vacant Jamestown District Supervisors seat.

The Board had some discussion about the questions that it would ask candidates.

**J. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, suggested that the County call the Post Office about the Monticello Post Office. He stated that he would like to be appointed to the Board if it was an at-large seat. He said that the Board made six deferrals last year.

**K. COUNTY ADMINISTRATOR'S COMMENTS**

Mr. Middaugh stated that offices would be closed Monday, January 16, in observance of the Martin Luther King holiday.

He also stated that the Virginia Department of Transportation (VDOT) was holding a public hearing on January 19 at 6 p.m. at the James City/Williamsburg Community Center.

He stated that he had met with VDOT about its preventative maintenance program and that VDOT would be meeting with each Board member on the topic.

Mr. Middaugh recommended the Board have a closed session and adjourn to January 21 for the Budget Retreat.

Mr. Rogers suggested that the Board amend its meeting calendar which did not include the Budget Retreat.

Mr. Icenhour made a motion to add the Budget Retreat at 8:30 a.m. on January 21 to the Board calendar.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Kennedy, Jones (4). NAY: (0).

Mr. McGlennon made a motion to amend the calendar to begin the Budget Retreat at 8 a.m. on January 21 and clarified that the Board will meet on February 9 at 9 a.m. to participate in Legislative Day.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Kennedy, Jones (4). NAY: (0).

**L. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon asked if anyone attended the Virginia Dominion Power meeting.

Mr. Middaugh replied that Mr. John Carnifax, Director of Parks and Recreation, attended.

Mr. Icenhour asked about the Board and Commission assignments.

Mr. Middaugh stated that they would be on the January 24 agenda.

**M. CLOSED SESSION**

Mr. Kennedy made a motion to go into closed session.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Kennedy, Jones (4). NAY: (0).

At 11:02 p.m., Mr. Kennedy made a motion to certify the closed session.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Kennedy, Jones (4). NAY: (0).

**RESOLUTION**

**CERTIFICATION OF CLOSED MEETING**

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1) of the Code of Virginia, consideration of a personnel matter.

At 11:03 p.m., Mr. Kennedy made a motion to adjourn until January 21 at 8 a.m.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Kennedy, Jones (4). NAY: (0).

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Robert C. Middaugh  
Clerk to the Board

**MEMORANDUM COVER**

**Subject:** Grant Award - Radiological Emergency Preparedness - \$25,000

**Action Requested:** Shall the Board approve the resolution that appropriates grant funds awarded from the Virginia Department of Emergency Management (VDEM)?

**Summary:** Each Virginia locality within 10 miles of a nuclear power plant receives pass-through funding from Dominion Virginia Power through the Virginia Department of Emergency Management (VDEM) to support radiological emergency preparedness (REP).

The James City County Fire Department's Division of Emergency Management has been awarded \$25,000 in radiological emergency preparedness funds from Dominion Virginia Power through VDEM due to the County's proximity to the Surry Power Station nuclear power plant.

The funds are to be used for planning and response for public protective actions related to the Surry Power Station nuclear plant. The County uses the funds to make improvements to the Emergency Operations Center, radiological response equipment, and readiness drills.

Staff recommends adoption of the attached resolution to appropriate funds.

**Fiscal Impact:** The grant requires no match.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

- 1. Memorandum
- 2. Resolution

**Agenda Item No.:** H-2

**Date:** January 24, 2012

**MEMORANDUM**

DATE: January 24, 2012  
TO: The Board of Supervisors  
FROM: William T. Luton, Fire Chief  
SUBJECT: Grant Award – Radiological Emergency Preparedness – \$25,000

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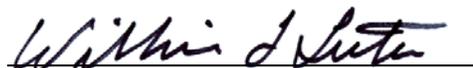
Each Virginia locality within 10 miles of a nuclear power plant receives pass-through funding from Dominion Virginia Power through the Virginia Department of Emergency Management (VDEM) to support radiological emergency preparedness (REP).

The James City County Fire Department’s Division of Emergency Management has been awarded \$25,000 in radiological emergency preparedness funds from Dominion Virginia Power through VDEM due to the County’s proximity to the Surry Power Station nuclear power plant.

The funds are to be used for planning and response for public protective actions related to the Surry Power Station nuclear plant. The County uses the funds to make improvements to the Emergency Operations Center, radiological response equipment, and readiness drills.

The grant requires no match.

Staff recommends adoption of the attached resolution to appropriate funds.

  
\_\_\_\_\_  
William T. Luton

CONCUR:

\_\_\_\_\_  
Robert C. Middaugh

WTL/gb  
GA-REP\_mem

Attachment

**RESOLUTION**

**GRANT AWARD – RADIOLOGICAL EMERGENCY PREPAREDNESS – \$25,000**

WHEREAS, the James City County Fire Department’s Division of Emergency Management has been awarded pass-through funds in the amount of \$25,000 to support radiological emergency preparedness (REP) from the Virginia Department of Emergency Management (VDEM); and

WHEREAS, the funds are to be used for planning and response for public protective actions related to the Surry Power Station nuclear plant; and

WHEREAS, the grant requires no match.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and authorizes the following budget appropriation to the Special Projects/Grants fund:

Revenue:

Radiological Emergency Preparedness Funds - VDEM	<u>\$25,000</u>
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Expenditure:

Radiological Emergency Preparedness Funds - VDEM	<u>\$25,000</u>
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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of January, 2012.

GA-REP\_res

**MEMORANDUM COVER**

**Subject:** Contract Award – Architectural Design Services for Fire Station #4, New Construction - \$255,378

**Action Requested:** Shall the Board approve the contract to HVC-Chenault in the amount of \$255,378 for Architectural Services for Fire Station #4, New Construction?

**Summary:** The Fire Department solicited competitive proposals for architectural services for new construction of Fire Station #4.

The Request for Proposals (RFP) was publicly advertised and 14 proposals were received. Based on the evaluation criteria listed in the RFP, the Evaluation Committee determined HVC-Chenault was the most fully qualified firm and their proposal best suited the County’s needs as defined in the Request for Proposals. A price of \$255,378 was negotiated with HVC-Chenault for Architectural Services for Fire Station #4, New Construction.

Staff recommends approval of the attached resolution.

**Fiscal Impact:** Funded through the Capital Improvements Program budget.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

- 1. Memorandum
- 2. Resolution

**Agenda Item No.:** H-3

**Date:** January 24, 2012

**M E M O R A N D U M**

DATE: January 24, 2012  
TO: The Board of Supervisors  
FROM: Kitty Hall, Purchasing Director  
SUBJECT: Contract Award – Architectural Services for Fire Station #4, New Construction – \$255,378

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The Fire Department solicited competitive proposals for Architectural Services for Fire Station #4 New Construction. This project for new construction of Fire Station #4 will replace the existing fire station that has significant building problems, and does not fit the needs of a modern Fire & EMS system.

The Request for Proposals (RFP) was publicly advertised and 14 proposals were received from Ballou, Justice,Upton; Bignell-Watkins; H&A Architects; MMM Design Group; Samaha Associates; LeMay Erickson Wilcox; Abell & Associates; Caro Monroe & Laing; Hopke & Associates; RRMM Associates; HBA; HVC-Chenault; Guernsey-Tingle; and Arkitects, LLC.

The Evaluation Committee composed of staff members from the Fire Department, General Services, Building, Safety & Permits and Purchasing reviewed the proposals and interviewed five short-listed firms: RRMM, Guernsey-Tingle, HVC-Chenault, Samaha Associates, and HBA. Based on the evaluation criteria listed in the RFP (understanding of project scope; depth and breadth of experience; demonstrated ability to provide services; experience of the firm in completing similar project, and experience with LEED certification and energy efficient facilities), the Evaluation Committee determined HVC-Chenault was the most fully qualified firm and their proposal best suited the County’s needs as defined in the Request for Proposals. A price of \$255,378 was negotiated with HVC-Chenault for the Architectural Design Services for Fire Station #4, New Construction.

Funds are available in the approved FY 12 Capital Improvements Program for the award.

Staff recommends adoption of the attached resolution authorizing the award of the contract for Architectural Services for Fire Station #4, New Construction to HVC-Chenault in the amount of \$255,378.

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Kitty Hall

CONCUR:

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John E. McDonald

KH/tlc  
CA\_FireSta4Des\_mem

Attachment

**RESOLUTION**

**CONTRACT AWARD – ARCHITECTURAL SERVICES FOR FIRE STATION #4,**

**NEW CONSTRUCTION - \$255,378**

WHEREAS, a Request for Proposals for Architectural Services for Fire Station #4, New Construction was publicly advertised and staff reviewed proposals from 14 firms interested in performing the work; and

WHEREAS, upon evaluating the proposals, staff determined that HVC-Chenault was the most fully qualified and submitted the proposal that best suited the County's needs as presented in the Request for Proposals.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the \$255,378 contract for Architectural Services for Fire Station #4, New Construction to HVC-Chenault.

\_\_\_\_\_  
Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of January, 2012.

CA\_FireSta4Des\_res

**MEMORANDUM COVER**

**Subject:** Appropriation of Grant Award - Office of Emergency Medical Services (OEMS) Rescue Squad Assistance Fund (RSAF) Grant – \$269,840

**Action Requested:** Shall the Board approve the resolution that appropriates grant funds awarded from the Commonwealth of Virginia, Department of Health, Office of Emergency Medical Services (OEMS)?

**Summary:** The James City County Fire Department has been awarded a Rescue Squad Assistance Fund (RSAF) grant for \$269,840 (\$134,920 grant funds, \$134,920 local match) from the Commonwealth of Virginia Department of Health, Office of Emergency Medical Services (OEMS).

The funds are to be used for the purchase of an ambulance and two E-series Automatic External Defibrillators (AEDs). The ambulance will replace an older ambulance in the Department’s fleet. The AED units will replace two older AEDs and provide consistency with our equipment in ambulances and Advanced Life Support (ALS) engines.

Staff recommends adoption of the attached resolution to appropriate funds.

**Fiscal Impact:** The grant requires a 50 percent match of \$134,920, which is budgeted in the FY 2012 Capital Improvements Program (CIP) (\$107,500 for the ambulance) and Grants Match (\$27,420 for the AEDs) accounts.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution

**Agenda Item No.:** H-4  
  
**Date:** January 24, 2012

**MEMORANDUM**

DATE: January 24, 2012

TO: The Board of Supervisors

FROM: William T. Luton, Fire Chief

SUBJECT: Grant Award – Office of Emergency Medical Services (OEMS) Rescue Squad Assistance Fund (RSAF) Grant – \$269,840

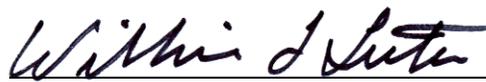
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The James City County Fire Department has been awarded a Rescue Squad Assistance Fund (RSAF) grant for \$269,840 (\$134,920 grant funds, \$134,920 local match) from the Commonwealth of Virginia Department of Health, Office of Emergency Medical Services (OEMS).

The funds are to be used for the purchase of an ambulance and two E-series Automatic External Defibrillators (AEDs). The ambulance will replace an older ambulance in the Department's fleet. The AED units will replace two older AEDs and provide consistency with our equipment in ambulances and Advanced Life Support (ALS) engines.

The grant requires a 50 percent match of \$134,920, which is budgeted in the FY 2012 Capital Improvements Program (CIP) (\$107,500 for the ambulance) and Grants Match (\$27,420 for the AEDs) accounts.

Staff recommends adoption of the attached resolution to appropriate funds.

  
William T. Luton

CONCUR:

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Robert C. Middaugh

WTL/nb  
RSAFgrant\_mem

Attachment

**RESOLUTION**

**GRANT AWARD – OFFICE OF EMERGENCY MEDICAL SERVICES (OEMS)**

**RESCUE SQUAD ASSISTANCE FUND (RSAF) GRANT – \$269,840**

WHEREAS, the James City County Fire Department has been awarded a Rescue Squad Assistance Fund (RSAF) grant for \$269,840 (\$134,920 grant funds, \$134,920 local match) from the Commonwealth of Virginia Department of Health, Office of Emergency Medical Services (OEMS); and

WHEREAS, the funds are to be used for the purchase of an ambulance and two E-series Automatic External Defibrillators (AEDs); and

WHEREAS, the grant requires a 50 percent match of \$134,920, which is budgeted in the FY 2012 Capital Improvements Program (CIP) (\$107,500 for the ambulance) and Grants Match (\$27,420 for the AEDs) accounts.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and the following budget appropriation to the Special Projects/Grants fund:

Revenues:

RSAF-Ambulance and AEDs	\$134,920
Transfer from Capital Projects Fund	107,500
Transfer from General Fund	<u>27,420</u>
Total	<u>\$269,840</u>

Expenditure:

RSAF-Ambulance and AEDs	<u>\$269,840</u>
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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of January, 2012.

RSAFgrant\_res

**MEMORANDUM COVER**

**Subject:** Freedom Park Lease - Go Ape Freedom, LLC

**Action Requested:** Shall the Board approve a lease to Go Ape Freedom, LLC for the construction and operation of a ropes course at Freedom Park?

**Summary:** In order to increase revenue-generating opportunities and partnerships to support park development and operations, James City County Parks and Recreation proposes to partner with Go Ape Freedom, LLC for the installation and operation of a ropes course in Freedom Park. A ropes course is consistent with the park Master Plan, and is a recreational amenity that will be enjoyed by citizens and individuals on a regional level. Go Ape Freedom, LLC will pay to build and operate the course, and the County will be paid a monthly rent that is equivalent to three percent of annual gross revenues. A lease has been negotiated between Go Ape Freedom, LLC and the James City County Attorney's Office.

Staff recommend approval of the attached resolution.

**Fiscal Impact:** The County will be paid a monthly rent that will increase over time to coincide with growth for Years One through Five as follows: \$2,200, \$2,750, \$3,437, \$3,850, and \$4,166. After Year Five the monthly rent will hold at \$4,166 a month or approximately \$50,000 per year.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

- 1. Memorandum
- 2. Resolution

**Agenda Item No.:** I-1

**Date:** January 24, 2012

**MEMORANDUM**

DATE: January 24, 2012

TO: The Board of Supervisors

FROM: John H. Carnifax, Director of Parks and Recreation

SUBJECT: Freedom Park Lease Agreement – Go Ape Freedom, LLC

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James City County purchased the land for Freedom Park in 1995, and in 1997 created a Master Plan for a passive outdoor park. Since that time, several amenities have been added to include walking and biking trails, a Free Black Settlement, the Williamsburg Botanical Garden, and most recently a new interpretive building. In keeping with goals outlined in the approved park master plan, the County would like to enter a lease agreement with Go Ape Freedom, LLC for the addition of a high ropes initiative course in Freedom Park.

During the development of the County's Comprehensive Plan and the Parks and Recreation Master Plan, a need for pursuing alternative methods for funding park development was identified. Therefore, staff was very receptive when Go Ape approached the County to explore bringing their revenue producing ropes course to Freedom Park. The company has a proven track record in Europe and has opened their first course in the United States in Maryland. Staff, to include the County's Risk Management/Safety Officer, visited the site to review the layout, witness operations, and to participate in the course. After their assessment and discussions with the staff at the Maryland course, staff decided the attraction would be a good addition for Freedom Park and would complement the other outdoor activities that occur there.

Staff met with Go Ape representatives to select the location, discuss operations, and to create a lease agreement that mirrors the Maryland agreement that would guide the partnership. While the Maryland location did not complete an RFP prior to entering their contract, Fairfax recently issued one to select Go Ape as its ropes course provider. As a result, the County secured Go Ape as the Freedom Park provider per Fairfax Contract No. 4400001810 that contains the cooperative language allowing other public bodies or public agencies or institutions or localities to purchase from another public body contract, even if it did not participate in the request for proposal (Virginia Public Procurement Act, 2.2-4304).

The initial term of the lease is for ten years with the option for two extensions of five years. During this time, Go Ape will pay the County a rent of three percent of annual gross revenues. An estimated "monthly rent" will be paid and increased over time to coincide with growth for years one through five as follows: \$2,200, \$2,750, \$3,437, \$3,850, and \$4,166. After year five, the "monthly rent" will hold at \$4,166 to result in a payment which calculates to approximately \$50,000 per year. The lease also stipulates that all residents will receive a 10 percent discount and a specified number of passes and discounts will be given to Parks and Recreation to administer for identified special needs individuals and program groups.

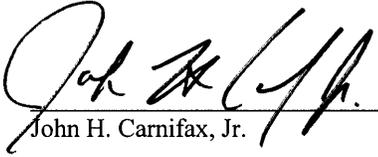
Go Ape has submitted a site plan that has been given preliminary approval. They will pay and install the entire course and a small cabin that will serve as their office. On-site Go Ape staff will oversee all daily operations of the site and operate as an independent contractor. The addition of the amenity will have no adverse impacts on the park, and their eco-friendly practices will ensure that the flora and fauna are protected.

Freedom Park Lease Agreement – Go Ape Freedom, LLC

January 24, 2012

Page 2

Staff recommends adoption of the attached resolution authorizing the County Administrator to execute the Go Ape Lease to add a ropes course and office within Freedom Park.



John H. Carnifax, Jr.

JHC/gb

GoApeAgr\_mem

Attachment

**RESOLUTION**

**FREEDOM PARK LEASE AGREEMENT – GO APE FREEDOM, LLC**

- WHEREAS, James City County Parks and Recreation has been tasked with enhancing revenue-generating opportunities to support the operations of parks, programs, and facilities; and
- WHEREAS, funds are needed to continue to develop Freedom Park based upon the approved Master Plan; and
- WHEREAS, Go Ape Freedom, LLC will design, construct, and operate a high ropes course while paying a monthly rent to James City County; and
- WHEREAS, a lease between James City County and Go Ape Freedom, LLC has been prepared that details the usage of the site; and
- WHEREAS, the addition of the ropes course provides significant public benefit, protects the integrity of Freedom Park, allows the citizen to participate for a reduced rate, and produces new park revenue.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator or his designee to execute the Freedom Park Lease with Go Ape Freedom, LLC for the operations of a ropes course in Freedom Park.

\_\_\_\_\_  
Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of January, 2011.

GoApeAgr\_res



**MEMORANDUM COVER**

**Subject:** Creation of a James City County Tourism Zone

**Action Requested:** Shall the Board approve the creation of a Tourism Zone?

**Summary:** Virginia Code authorizes localities to establish tourism zones for the purpose of granting tax incentives and for providing regulatory flexibility to qualified businesses. The State allows for tax incentives to be provided for a period of up to 20 years and other incentives for a period of up to 10 years. Qualifications and incentives for the program are set by the locality following the guidelines established by State Code.

Staff recommends that the Board consider the creation of a James City County Tourism Zone as presented. Applications will be submitted to the Office of Economic Development (OED) for initial review. The application will be forwarded to the EDA for a final decision and will be administered in a format similar to the County’s Enterprise Zone program.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution  
3. Draft Ordinance  
4. Virginia Acts of Assembly - 2008 Session, 58.1-3851

**Agenda Item No.:** J-1  
  
**Date:** January 24, 2012

## M E M O R A N D U M

DATE: January 24, 2012

TO: The Board of Supervisors

FROM: Russell C. Seymour, Director, Office of Economic Development

SUBJECT: Creation of a James City County Tourism Zone

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The tourism industry continues to be a significant part of James City County's overall economic prosperity. Many of our local existing businesses rely heavily upon the tourism industry for their business's success. As part of James City County's continued commitment to the economic stability of our local economy and to our existing businesses, staff is recommending that the Board of Supervisors (BOS) consider the creation of a James City County Tourism Zone.

Virginia Code authorizes localities to establish tourism zones for the purpose of granting tax incentives and for providing regulatory flexibility to qualified businesses. The State allows for tax incentives to be provided for a period of up to 20 years and other incentives for a period of up to 10 years. Qualifications and incentives for the program are set by the locality following the guidelines established by State Code.

The proposed Tourism Zone boundaries include all of James City County. Incentives would be available for both new and existing tourism-based businesses that meet the required qualifications, including a new Capital Investment of at least \$350,000. Benefits of the program would be provided over a five-year period with the opportunity for a second five-year incentive period with an additional capital investment of \$350,000.

Currently, only a small number of jurisdictions in the State have established Tourism Zones, including the City of Fredericksburg, Spotsylvania County, and the Town of Pocahontas. However, with the recent addition of the state's new tourism development financing program as a potential incentive tied to established tourism zones, other jurisdictions are beginning to look into the possible use of this program.

This proposal was presented to the Economic Development Authority (EDA) on December 15, 2011. The EDA offered its support contingent upon the establishment a Memorandum of Understanding between the EDA and the BOS regarding the disbursement of incentives.

Staff recommends that the Board consider the creation of a James City County Tourism Zone as presented.



Russell C. Seymour

RCS/nb  
TourZone2\_mem

## Attachments:

1. Resolution
2. Draft Ordinance
3. James City County Enterprise Zone Attachment Summary
4. Tourism Zone Scenario
5. EZ Report Card
6. Virginia Acts of Assembly - 2008 Session, 58.1-3851

**RESOLUTION**

**CREATION OF A JAMES CITY COUNTY TOURISM ZONE**

WHEREAS, the tourism industry continues to be an important part of James City County's overall economic and employment base; and

WHEREAS, many of the County's existing businesses rely heavily upon the tourism industry for their business's success; and

WHEREAS, the Commonwealth of Virginia allows for the establishment of Tourism Zones for the purpose of granting tax incentives and for providing regulatory flexibility.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the creation of a James City County Tourism Zone that encompasses the entire County.

\_\_\_\_\_  
Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of January, 2012.

TourZone2\_res

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 7, ENTERPRISE ZONE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY RENAMING THE CHAPTER FROM ENTERPRISE ZONE TO ECONOMIC INCENTIVE ZONES; BY CREATING ARTICLE I WITH EXISTING SECTIONS 7-1 THROUGH 7-10, AS ENTERPRISE ZONE; BY ADDING ARTICLE II, TOURISM ZONE, BY ADDING SECTION 7-20, STATEMENT OF PURPOSE; SECTION 7-21, BOUNDARIES OF THE JAMES CITY COUNTY TOURISM ZONE; SECTION 7-22, DEFINITIONS; SECTION 7-23, QUALIFICATION FOR INCENTIVES; SECTION 7-24, INCENTIVE PERIOD; SECTION 7-25, LOCAL TOURISM ZONE INCENTIVES; SECTION 7-26, APPLICATION; AND SECTION 7-27, CONSTRUCTION AND SEVERABILITY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 7, Economic Incentive Zones, is hereby amended by creating Article I, Enterprise Zone, with existing Sections 7-1 through 7-10; by adding Article II, Tourism Zone, Section 7-20, Statement of purpose; Section 7-21, Boundaries of the James City County tourism zone; Section 7-22, Definitions; Section 7-23, Qualification for incentives; Section 7-24, Incentive period; Section 7-25, Local tourism zone incentives; Section 7-26, Application; and Section 7-27, Construction and severability.

Chapter 7. ~~Enterprise~~ *Economic Incentive Zones*

*Article I. Enterprise Zone*

Section 7-1. Statement of purpose.

Section 7-2. Boundaries of the James River Enterprise Zone.

Section 7-3. Definitions.

Section 7-4. Qualification for incentives.

Section 7-5. Local enterprise zone incentives.

Section 7-6. Application.

Section 7-7. Appeals.

Section 7-8. Enterprise zone administrator.

Section 7-9. Administrative regulations.

Section 7-10. Construction and serviceability.

*Sections 7-11 – 7-19. Reserved.*

## *Article II. Tourism Zone*

### *Section 7-20. Statement of purpose.*

*The Virginia Code authorizes Virginia localities to establish, by ordinance, one or more tourism zones for the purpose of granting tax incentives and providing regulatory flexibility to qualified businesses.*

*The purpose of the Tourism Zone is to promote James City County's tourism industry by providing incentives to eligible business entities that will attract visitors, create new employment opportunities and/or promote educational opportunities while increasing travel-related revenue within the County.*

### *Section 7-21. Boundaries of the James City County Tourism Zone.*

*The entire county shall be designated as a Tourism Zone.*

### *Section 7-22. Definitions.*

*For the purpose of this Chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless clearly indicated to the contrary:*

*Base year. The calendar year preceding the calendar year in which the applicant submits the Tourism Zone Program Application to Office of Economic Development.*

*Business. Any corporation, partnership, electing small business (subchapter S) corporation, limited-liability company or sole proprietorship authorized to conduct business in the Commonwealth and subject to the state income tax on net corporate rate income (section 58.1-400, et seq. of the Virginia Code). A business does not include organizations which are exempt from state income tax on all income except unrelated business taxable income as defined in the Federal Internal Revenue Code, Section 512, nor does it include homeowners associations as defined in Federal Internal Revenue Code, Section 528.*

*Capital investment. Money used by a tourism business to purchased fixed assets and not money used for day-to-day operating expenses.*

*Development review fees. Fees assessed by the county divisions of engineering and resource protection and planning.*

*Existing tourism business. A tourism business that actively engaged in the conduct of trade or business in the county before being included within a tourism zone pursuant to this chapter.*

*Fixed asset. A long-lived tangible piece of property owned by a tourism business used by the tourism business in the production of income including real estate and plant, machinery and tools which triggers the payment of taxes to the county.*

*Incentive period. A five year period during which a qualified tourism business receives the benefit of tourism zone incentives.*

*New tourism business. A tourism business not already in existence within the county prior to an area being designated as a tourism zone pursuant to this chapter.*

*Office of economic development (OED). The James City County office of economic development.*

*Qualified tourism business. A tourism business that has met the qualifications set forth in Section 7-23 and continues to meet such qualifications as required by this chapter.*

*Tourism business. A business whose primary purpose is to provide tourism products, processes or related services and establish a desirable destination to attract tourists from outside of the community and create an environment for those visitors that will deliver a memorable experience or promote educational opportunities and increase travel-related revenue in James City County.*

*Tourism products, processes or related services. Activities which promote and provide an experience for visitors to the county including, but not limited to: cultural or historical sites; recreation or athletic facilities; areas of scenic beauty or distinctive natural phenomena; family oriented destinations; tours; special events within the county; museums; wineries or related activities; and lodging that involves restoration or rehabilitation of an existing structure or includes new construction of a facility supporting rooms for overnight stay and conference space.*

*Tourism zone. A specific geographic area or areas created pursuant to Chapter 38, Title 58.1 of the Code of Virginia, 1950, as amended, to foster the development and expansion of tourism businesses in the county.*

*Tourism zone administrator. The tourism zone administrator shall be the county's director of economic development.*

#### *Section 7-23. Qualification for incentives.*

*For a tourism business to be a qualified tourism business eligible to receive the benefit of tourism zone incentives, it must be located within the boundaries of the tourism zone and meet the following criteria:*

- a) Provide new capital Investment of at least \$350,000.
  - i) Tourism businesses must meet and maintain the minimum qualifying investment levels through year five of the incentive period.**
- b) Submit a tourism zone application as required in section 7-26.*

*The qualified tourism business must commit to a performance based agreement guaranteeing certain investments, sales revenues, or other criteria as determined by the county. In those areas designated by multiple incentive zones, a business may receive local incentives from only one.*

*The following limitations apply:*

- a) *An existing tourism business shall not qualify for tourism zone incentives by reorganizing or changing its form in a manner that does not alter the basis of the tourism business assets or result in a taxable event.*
- b) *If a qualified tourism business fails to pay in full any taxes imposed by the county by the due date, this may result in the forfeiture of the tourism zone incentives for that year.*
- c) *If a qualified tourism business files for bankruptcy during any five-year incentive period, this will result in disqualification and the business will be ineligible to receive tourism zone incentives for the remainder of the incentive period.*
- d) *In the event that a qualified tourism business ceases to meet the minimum capital investment criteria or removes itself from operation from within the county at any time within any five-year incentive period, it shall be required to repay the total amount of the tourism zone incentives received.*
- e) *If a qualified tourism business leaves the county to conduct business in another location within five years of completing any five-year incentive period, it will be required to repay the county the total amount of tourism zone incentives received.*

*Section 7 -24. Incentive period.*

*Qualified tourism businesses shall receive the benefits of the tourism zone incentives for a five year incentive period. Qualified tourism businesses that have completed one five-year incentive period may seek qualification for one additional incentive period of five years and will be required to provide a new capital investment of \$350,000.*

*Section 7-25. Local tourism zone incentives.*

*Qualified tourism businesses located within the boundaries of the tourism zone shall be eligible for the following:*

- a) *Reduction of selected development review fees. The county shall reduce by 50%, development review fees (as defined in Section 7-22) associated with the qualifying project.*
- b) *Business professional and occupancy license (BPOL) grant. - Qualified businesses located within a tourism zone may be eligible to receive from the economic development authority a five year declining grant to compensate the qualified business for the increase in BPOL based upon the increased capital investment.*
- c) *Business tangible personal property grant. Qualified businesses located within the tourism zone may be eligible to receive from the economic development authority a five year declining grant to compensate the qualified business for the increase in business tangible personal property tax triggered by the increased capital investment.*

*The percentage for a five-year declining grant in shall be determined by the following schedule:*

*Year 1 – 90%*

*Year 2 – 70%*

*Year 3 – 50%*

*Year 4 – 40%*

*Year 5 – 30%*

*For existing tourism businesses, grants shall be based only on the taxes assessed on the portion of gross receipts directly attributable to the increased capital investment.*

*d) Expedited review process. The qualified business may be eligible for the county's expedited review process. The standard expedited review process fee will be waived.*

*Nothing herein shall be construed as limiting the county or the economic development authority from granting any additional incentives as may be permitted by law to tourism businesses on a case-by-case basis including, but not limited to, incentives granted pursuant to performance agreements and individualized arrangements with or without the involvement of the James City County economic development authority.*

#### *Section 7-26. Application.*

*Prior to submitting an application, a tourism business will schedule a preliminary meeting with the OED, prior to any investment. Once an application is submitted, the OED will perform an initial review to determine if the applicant is a qualified tourism business and that the proposed project meets the required criteria and is in compliance with the tourism zone qualifications.*

*Once the review is completed, the application and recommendation will be forwarded to the economic development authority for a decision.*

#### *Section 7-27. Construction and Severability.*

*This chapter shall be liberally construed so as to effectuate the purposes hereof. If any clause, sentence, paragraph, section or subsection of this chapter shall be adjudged by any court of competent jurisdiction to be invalid for any reason, including a declaration that is contrary to*

*the constitution of the Commonwealth or of the United States, or if the application thereof to any government agency, person or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application hereof, directly involved in the controversy in which the judgment or holding shall be rendered or made and shall not in any way affect the validity of any other clause, sentence, paragraph, section or subsection hereof, or affect the validity of the application thereof to any other government agency, person or circumstance.*

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of January, 2012.

TourismZone\_ord

## James City County Tourism Zone Attachment Summary

As requested during the January 10, 2012, Board of Supervisors meeting, staff, in conjunction with the Commissioner of Revenue's Office, has prepared several potential scenarios regarding the impact of the proposed Tourism Zone initiative and a breakdown of the current Enterprise Zone program (please see attached). The Tourism Zone example illustrates five possible scenarios, including their potential impact on both Business Professional and Occupancy (BPOL) and Business Tangible Personal Property (BTTP) tax revenues. Both the BPOL and BTTP grants are based upon new revenue received, similar to the existing Enterprise Zone program.

In addition, staff had the opportunity to meet with Supervisors Icenhour and McGlennon to address some additional questions.

Mr. Icenhour was interested in the funding for both the Business Professional and Occupancy License (BPOL) and Business Tangible Personal Property (BTTP) grants and if the incentives were available for both new and existing businesses. Staff's response was that the funding for both grants are based upon a percentage of both the BPOL and BTTP taxes paid and awarded at the end of the year. With regard to qualified businesses, both new and existing businesses would be eligible provided they met the required new capital investment.

Mr. McGlennon was interested in the following areas, with the first three questions expressed to him by local citizens. Staff's responses follow each question.

- **Why does the County provide incentives for businesses?** Incentives are a common part of most business attraction programs. Given current economic conditions, localities are becoming increasingly aggressive. The critical issue is to ensure (to the best of our ability) that obtainable Return on Investment (ROI) expectations can be met. With the program being proposed, grants are based upon a percentage of new funds provided to the County as a result of the business's expansion.
- **Was this program developed to benefit a specific business?** No. The development of a tourism zone, along with other potential programs, has been discussed for over a year. The timing has a lot to do with the development of a state program whose incentives would be tied to established Tourism Zones.
- **Will this program result in a reduction of reviews by the County?** The Expedited Review process is an initiative that has been offered by the County for some time. The idea being to assist businesses in going through the County's process as efficiently as possible. The proposed program would waive the fee for this process and reduce certain development fees.
- **What will be the role of the EDA? Is it necessary?** Mr. Rogers provided the explanation that, as a locality it is not permitted to reduce or rebate taxes, by law, however, the State Constitution has separate provisions that makes EDA involvement less apt to be challenged.

## Potential Tourism Zone Scenarios

Scenario	BPOL Tax Before <sup>1</sup>	BPOL Tax After	BPOL Tax Difference	BPP Tax Before <sup>2</sup>	BPP Tax After	BPP Tax Difference
1. New hotel with conference center & restaurant assume multi-million dollar capital investment		\$10,000 to 25,000	\$10,000 to 25,000		\$6,000 to 11,000	\$6,000 to \$11,000
2. Existing hotel with 350K capital investment assume 300k real estate improvements and 50K BPP assume 250k real estate improvements and 100K BPP	\$800 to \$3,200	<i>cannot estimate</i>	<i>N/A</i>	\$1,200 to 4,000 \$1,200 to 4,000	\$1,700 to \$4,500 \$2,200 to \$5,000	\$500 \$1,000
3. New sports facility drawing out of town teams assume multi-million dollar capital investment		\$2,500 to \$5,000	\$2,500 to \$5,000		\$1,000 to \$4,000	\$1,000 to \$4,000
4. New winery with hotel and restaurant <sup>3</sup> assume multi-million dollar capital investment		\$1,500 to \$2,500	\$1,500 to \$2,500		\$3,000 to \$7,000	\$3,000 to \$7,000
5. Small for-profit museum in rented venue assume maximum \$350K capital investment		\$360 to \$1,500	\$360 to \$1,500		\$3,500	\$3,500

<sup>1</sup> Assuming full calendar year (12 months) of operation; does not include meals or lodging taxes

<sup>2</sup> Does not include leased equipment, furniture, etc.

<sup>3</sup> Wineries are exempt from BPOL and BPP taxes. Only the associated restaurant and hotel, if any, would pay those taxes.

The above examples were provided by the Commissioner of Revenue's Office. Scenarios 1, 3 and 4 are based upon existing industry examples and assume an investment greater than \$350,000, but in line with a range of typical projects from that type of industry.

Using Scenario 1 as an example, and holding both BPOL and BPP Tax Revenues constant, the following would apply:

	BPOL Tax Paid	Incentive
Year 1	\$10,000	(90%) - \$9,000
Year 2	\$10,000	(70%) - \$7,000
Year 3	\$10,000	(50%) - \$5,000
Year 4	\$10,000	(40%) - \$4,000
Year 5	<u>\$10,000</u>	<u>(30%) - \$3,000</u>
	<b>\$50,000</b>	<b>\$28,000</b>

	BPP Tax Paid	Incentive
Year 1	\$6,000	(90%) - \$5,400
Year 2	\$6,000	(70%) - \$4,200
Year 3	\$6,000	(50%) - \$3,000
Year 4	\$6,000	(40%) - \$2,400
Year 5	<u>\$6,000</u>	<u>(30%) - \$1,800</u>
	<b>\$30,000</b>	<b>\$16,800</b>

**James City County Enterprise Zone**

	Capital Investment							James City County Incentive Value					
Company	Real Estate	Real Estate Tax (5yr)	M&T/ BPP	M&T/BPP Tax (5yr)	Jobs	Total Investment	Total Tax Paid	Real Estate	M&T/BPP	Permits Fees	Employees	Total	ROI for JCC
1	\$ 2,489,000	\$ 95,827	\$ -	\$ -	60	\$ 2,489,000	\$ 95,827	\$26,881.20	\$ -	\$ 13,599	\$ 6,000	\$ 46,480	\$ 49,347
2	\$ 2,310,100	\$ 88,939	\$ -	\$ -	0	\$ 2,310,100	\$ 88,939	\$18,711.81	\$ -	\$ 13,366	\$ -	\$ 32,078	\$ 56,861
3	\$ 3,100,600	\$ 119,373	\$ 1,408,800	\$ 70,440	0	\$ 4,509,400	\$ 189,813	\$41,858.10	\$ 21,132	\$ 12,225	\$ -	\$ 75,215	\$ 114,598
4	\$ 2,487,600	\$ 95,773	\$ 7,575	\$ 379	0	\$ 2,495,175	\$ 96,151	\$33,582.60	\$ 76	\$ 20,059	\$ -	\$ 53,717	\$ 42,434
5	\$ 12,228,800	\$ 470,809	\$ 13,346,800	\$ 667,340	120	\$ 25,575,600	\$ 1,138,149	\$165,088.80	\$ 133,468	\$ 69,364	\$ -	\$ 367,921	\$ 770,228
6	\$ 5,200,000	\$ 200,200	\$ 14,672,175	\$ 733,609	0	\$ 19,872,175	\$ 933,809	\$70,200.00	\$ 220,083	\$ 13,366	\$ -	\$ 303,649	\$ 630,160
7	\$ 1,158,700	\$ 44,610	\$ -	\$ -	0	\$ 1,158,700	\$ 44,610	\$ -	\$ -	\$ 9,947	\$ -	\$ 9,947	\$ 34,663
8	\$ 3,130,600	\$ 120,528	\$ -	\$ -	0	\$ 3,130,600	\$ 120,528	\$42,263.10	\$ -	\$ 16,905	\$ -	\$ 59,168	\$ 61,360
9	\$ 1,006,137	\$ 38,736	\$ 3,100	\$ 155	0	\$ 1,009,237	\$ 38,891	\$13,582.85	\$ 31	\$ 3,790	\$ -	\$ 17,404	\$ 21,487
10	\$ 32,203,000	\$ 1,239,816	\$ -	\$ -	450	\$ 32,203,000	\$ 1,239,816	\$434,740.50	\$ 14,135	\$ 219,723	\$ 19,200	\$ 687,798	\$ 552,018
11	\$ 30,998,700	\$ 1,193,450	\$ -	\$ -	0	\$ 30,998,700	\$ 1,193,450	\$418,347.45	\$ -	\$ -	\$ -	\$ 418,347	\$ 775,103
12	\$ 34,826,600	\$ 1,340,824	\$ 8,464,075	\$ 423,204	0	\$ 43,290,675	\$ 1,764,028	\$425,623.50	\$ 84,641	\$ 223,169	\$ -	\$ 733,433	\$ 1,030,595
<b>Total</b>	<b>\$ 131,139,837</b>	<b>\$ 5,048,884</b>	<b>\$37,902,525</b>	<b>\$ 1,895,126</b>	<b>630</b>	<b>\$ 169,042,362</b>	<b>\$ 6,944,010</b>	<b>\$ 1,690,880</b>	<b>\$ 473,565</b>	<b>\$ 615,513</b>	<b>\$ 25,200</b>	<b>\$ 2,805,157</b>	<b>\$ 4,138,853</b>

\* All Tax and Incentive values are for the 5-yr incentive period

\*\* Based on total capital investments of \$169 million, taxes due to the County total approximately \$6.9 million. Enterprise Zone Incentives on the \$169 million capital investments total \$2.8 million, resulting in net positive revenue to the county of approximately \$4.1 million .

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 462

*An Act to amend and reenact § 58.1-3851 of the Code of Virginia, relating to local tourism zones.*

[S 591]

Approved March 7, 2008

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-3851 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3851. Creation of local tourism zones.

A. Any city, county, or town may establish, by ordinance, one or more tourism zones. Each locality may grant tax incentives and provide certain regulatory flexibility in a tourism zone.

B. The tax incentives may be provided for up to ~~10~~ 20 years and may include, but not be limited to (i) reduction of permit fees, (ii) reduction of user fees, and (iii) reduction of any type of gross receipts tax. The extent and duration of such incentive proposals shall conform to the requirements of the Constitutions of Virginia and of the United States.

C. The governing body may also provide for regulatory flexibility in such zone that may include, but not be limited to (i) special zoning for the district, (ii) permit process reform, (iii) exemption from ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.), the Erosion and Sediment Control Law (§ 10.1-560 et seq.), or the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.), and (iv) any other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to 10 years.

D. The establishment of a tourism zone shall not preclude the area from also being designated as an enterprise zone.

**MEMORANDUM COVER**

**Subject:** Analysis of House Bill No. 316 and Senate Bill No. 430 Cemeteries

**Action Requested:** Shall the Board adopt resolutions expressing opposition to House Bill No. 316 and Senate Bill No. 430 Cemeteries?

**Summary:** Attached for your review is an analysis of the impacts of House Bill No. 316 (HB 316) and Senate Bill No. 430 (SB 430). HB 316 and SB 430 proposed to amend the Virginia Code to change the definition of cemetery in Va. Code Section 54.1-2310 to add new uses, create a new vesting provision for cemeteries to limit local governmental actions such as rezoning, special use permitting, etc., and also provide for longer approval periods and vesting for approved subdivision plats associated with a cemetery. HB 316 and SB 430 also propose to exempt all structures located within a cemetery from provisions of the building code “provided such structures are not designed or intended for occupancy by living persons.”

The changes proposed by HB 316 and SB 430 would impact the pending special use permit application for a mausoleum by St. Bede Catholic Church by limiting the County’s ability to apply its regulations and codes.

Should the Board wish to oppose HB 316 and SB 430, it may do so by motion, which will be transmitted to the County’s General Assembly representatives via letter. Alternatively, two resolutions are attached for the Board’s consideration.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

- 1. Memorandum
- 2. Resolution – HB 316
- 3. Resolution – SB 430

**Agenda Item No.:** J-2

**Date:** January 24, 2012

## M E M O R A N D U M

DATE: January 24, 2012  
TO: The Board of Supervisors  
FROM: Leo P. Rogers, County Attorney  
SUBJECT: Analysis of House Bill No. 316 and Senate Bill No. 430 Cemeteries

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Delegate Ingram has introduced House Bill 316 (HB 316) and Senator Ruff has introduced Senate Bill 430 (SB 430). These bills are identical, except for the headings, and will be considered by the House and Senate during the 2012 General Assembly. Both bills greatly expand the definition of a cemetery, expand the approval time for cemetery subdivision plats and site plans, create a new vesting provision for zoning and exempt all structures in a cemetery from the building code or "any other applicable code utilized by localities."

Both HB 316 and SB 430 change the definition of cemetery in Va. Code Section 54.1-2310 to add new uses. Below is the proposed definition of a cemetery with the additions noted in italics:

"Cemetery" means any land or structure used or intended to be used for the interment of human remains *and shall include all uses necessarily or customarily associated with interment of human remains, including but not limited to mausoleums, benches, ledges, walls, columbaria, graves, roads, paths, landscaping, soil storage, grading, maintenance and storage areas, chapels, and administrative offices.* The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

This definition is then incorporated by reference in land use and zoning chapter of the Code by the addition of Virginia Code Section 15.2-2288.5 as shown below:

*§ 15.2-2288.5. Meaning of "cemetery" for purposes of zoning.*

*A "cemetery" shall be deemed for purposes of zoning and state law to consist of all forms of interment and all uses necessary and customarily associated with interment. As used herein "cemetery" shall have the meaning set forth in § 54.1-2310.*

In addition both HB 316 and SB 430 create a new vesting provision for cemeteries. Essentially a cemetery that has received a "significant affirmative governmental act" (e.g., approval of rezoning, special use permit, subdivision plan, site plan, plan of development) shall be vested under zoning provided a declaration restricting the use of the land as a cemetery is recorded in the land records. Below is the proposed new Code Section creating such vesting:

*§ 15.2-2307.2. Vesting of land for cemetery use.*

*Any land owner, having been the beneficiary of any significant affirmative governmental act approving use of the land as a cemetery, shall be vested in such cemetery use upon recordation in the office of the clerk of the circuit court for the locality in which the land is located, of a declaration restricting the use of the land to use as a cemetery.*

HB 316 and SB 430 also provide for longer approval periods and vesting for approved subdivision plats. The bills propose to amend Va. Code Section 15.2-2241 to exempt cemeteries from the standard five-year expiration period and from any changes in the law, provided the property has recorded a final plat for a section of the cemetery. Unlike other uses, future plats for remaining sections of a cemetery would not need to comply with “engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded.” Also, once a preliminary subdivision plat has been approved for a cemetery, the property owner would have the right to record final plats for sections of the cemetery with no time restriction.

With regard to site plans, HB 316 and SB 430 triple approval time for an approved site plan. Rather than the five-year period of approval for other site plans, a site plan for a cemetery would be valid for not less than 15 years from the date of approval. In addition, HB 316 and SB 430 provided that a site plan shall remain valid so long as any portion of the property subject to the site plan has been developed or used as a cemetery.

HB 316 and SB 430 also exempt all structures located within a cemetery from provisions of the building code “provided such structures are not designed or intended for occupancy by living persons.” This is done by amending Va. Code Section 36-99. There is another part of the amendment to Va. Code Section 36-99 that exempts such structures from “any other applicable code utilized by localities.” It is unclear whether this clause relates to building code or is intended to exempt such structures from all local laws such as fire codes, setbacks, environmental laws, etc.

HB 316 and SB 430 would affect the pending Special Use Permit (SUP) application for a mausoleum by St. Bede. First, a mausoleum would be included in the definition of cemetery. On December 19, 2000, St. Bede received approval of an SUP with an accompanying master plan. A cemetery and a columbarium are shown as future uses on the master plan. A site plan for a columbarium/prayer garden was administratively approved on December 29, 2003, following a master plan consistency determination by the Development Review Committee/Planning Commission on April 30, 2003. Under the amendments proposed by HB 316 and SB 430, St. Bede could record a declaration restricting use of its property to a cemetery and have a vested right under zoning to use the property for all uses contained in the new definition of cemetery. Any structures, not designed for occupancy by living persons, such as Mausoleum units would be exempt from the building code and may be exempt from all other local regulation.

Should the Board wish to oppose HB 316 and SB 430, attached are two resolutions for the Board to adopt.

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Leo Rogers

LPR/nb  
HB316Cemet\_mem

Attachments

## RESOLUTION

### ANALYSIS OF HOUSE BILL NO. 316 CEMETERIES

WHEREAS, the Virginia General Assembly will be considering House Bill No. 316 (HB 316) during its 2012 session; and

WHEREAS, HB 316 greatly expands the definition of cemetery in Virginia Code Section 54.1-2310 by adding additional uses; and

WHEREAS, the amendments proposed in HB 316 lengthen the approval time for cemetery subdivision plats and site plan; and

WHEREAS, HB 316 would exempt development of future sections from complying with any changes to local laws and regulations different from any other land uses; and

WHEREAS, HB 316 would create a new vesting provision for zoning and exempt all structures in a cemetery from the County's building code or "any other applicable code utilized by localities," and

WHEREAS, the erosion of local control in the locating, developing, designing, and construction of cemeteries could negatively impact the residents of the community; and

WHEREAS, HB 316 would eliminate not only local regulation of cemeteries, but also the citizens ability to voice their concerns; and

WHEREAS, local land use decision have been and should continue to be made on a local level giving citizens of the locality and the Commonwealth of Virginia an opportunity to express their opinion.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby opposes HB 316 and calls upon the members of the General Assembly to oppose HB 316.

BE IT FURTHER RESOLVED that the County Administrator and the County Attorney are hereby authorized and directed to express James City County's opposition to House Bill No. 316 and to send a certified copy of this resolution to the County's legislative delegation and to members of the General Assembly who will be considering it.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of  
January, 2012.

Hb316Cemet-R1\_res

## RESOLUTION

### ANALYSIS OF SENATE BILL NO. 430 CEMETERIES

WHEREAS, the Virginia General Assembly will be considering Senate Bill No. 430 (SB 430) during its 2012 session; and

WHEREAS, SB 430 greatly expands the definition of cemetery in Virginia Code Section 54.1-2310 by adding additional uses; and

WHEREAS, the amendments proposed in SB 430 lengthen the approval time for cemetery subdivision plats and site plan; and

WHEREAS, SB 430 would exempt development of future sections from complying with any changes to local laws and regulations different from any other land uses; and

WHEREAS, SB 430 would create a new vesting provision for zoning and exempt all structures in a cemetery from the County's building code or "any other applicable code utilized by localities," and

WHEREAS, the erosion of local control in the locating, developing, designing, and construction of cemeteries could negatively impact the residents of the community; and

WHEREAS, SB 430 would eliminate not only local regulation of cemeteries, but also the citizens ability to voice their concerns; and

WHEREAS, local land use decision have been and should continue to be made on a local level giving citizens of the locality and the Commonwealth of Virginia an opportunity to express their opinion.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby opposes SB 430 and calls upon the members of the General Assembly to oppose SB 430.

BE IT FURTHER RESOLVED that the County Administrator and the County Attorney are hereby authorized and directed to express James City County's opposition to Senate Bill No. 430 and to send a certified copy of this resolution to the County's legislative delegation and to members of the General Assembly who will be considering it.

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Mary K. Jones  
Chairman, Board of Supervisors

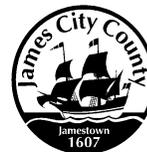
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of  
January, 2012.

HB316Cemet-R2\_res



## MEMORANDUM COVER

**Subject:** Appointments to Boards and Commissions

**Action Requested:** Shall the Board make appointments to: Community Action Agency, Hampton Roads Economic Development Authority, Virginia Peninsula Chamber of Commerce and the Regional Issues Committee?

**Summary:** The Board has not made appointments to four boards and commissions for 2012: Community Actions Agency, Hampton Roads Economic Development Authority, Virginia Peninsula Chamber of Commerce and the Regional Issues Committee. Additional information about each of these boards is provided in the memorandum.

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachment:**

1. Memorandum
2. Listing of Board of Supervisors Boards/Commissions

**Agenda Item No.:** J-3

**Date:** January 24, 2012

**MEMORANDUM**

DATE: January 24, 2012  
TO: The Board of Supervisors  
FROM: Robert C. Middaugh, County Administrator  
SUBJECT: Appointments to Boards and Commissions

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The Board has not made appointments to four boards and commissions for 2012: Community Action Agency, Hampton Roads Economic Development Authority, Virginia Peninsula Chamber of Commerce and the Regional Issues Committee. Additional information about each of these boards is provided in this memorandum.

Community Action Agency (CAA)

Meetings are held at noon at the Historic Triangle Community Services Building on the following dates:

February 16  
April 19  
June 21  
August 16  
October 18  
December 7 (at Towne Bank)

Board of Supervisors members are the members of the CAA Board, however the Board appointed alternates as follows:

Roberts District – Reverend William Dawson  
Berkeley District – Nancy Ellis  
Powhatan District – John Carnifax  
Stonehouse District – John Filichko  
Jamestown District – no alternate appointed

As noted at the organizational meeting, Mr. Filichko is no longer a resident of the Stonehouse District. In addition, Ms. Ellis no longer resides in the Berkeley District and Mr. Carnifax no longer resides in Powhatan District. It should be noted that the Board delegates do not necessarily have to reside in the Board members district. Included in the Reading File are CAA bylaws and current applications from citizens who have expressed an interest in serving on the CAA Board:

Philip Neubia - Jamestown  
Darlene Ingram - Roberts

Hampton Roads Economic Development Authority

The Board meets quarterly at Thomas Nelson Community College Workforce Development Center in Hampton or the Virginia Modeling and Simulation Center in Suffolk. There is currently no established schedule for meetings in 2012, although the annual meeting is scheduled for January 12 at 11:30 a.m. at the Westin Virginia Beach Town Center

Appointments to Boards and Commissions

January 24, 2012

Page 2

Virginia Peninsula Chamber of Commerce

Board meetings are held quarterly at 8 a.m. on the 4th Thursday of January, April, July, and October. Meetings are held at the Chamber's offices in Hampton.

Regional Issues Committee

The Regional Issues Committee meets quarterly at 8:30 a.m. at the Williamsburg Municipal Building on the following dates:

January 24

April 24

July 24

October 23

The James City County representative will serve as Chair in 2012.

In addition, there are vacancies on the Planning Commission and Parks and Recreation Advisory Commission.

Planning Commission

The terms of Mr. Jack Fraley, Roberts District, and Mr. Joe Poole, Jamestown District, expire January 31. Mr. Fraley has not expressed an interest to be reappointed and Mr. Poole has asked to be reappointed. Applications from citizens who have expressed an interest in serving are included in the Reading File:

Lara Overy - Jamestown

Barbara Moody - Jamestown

Kathi Mestayer - Jamestown

Ron Campana, Jr. - Jamestown

Robin Bledsoe - Jamestown

Parks and Recreation Advisory Commission

There is currently a vacant position on the Parks and Recreation Advisory Commission. While the Board does not historically make these appointments by district, it should be noted that only the Jamestown District is not represented on the Commission. Applications from citizens who have expressed an interest in serving are included in the Reading File:

Nancy Cote Sullivan - Jamestown

Dean Neff - Stonehouse

Casey Duplantier - Powhatan

James Blubaugh - Powhatan

Roger Allen - Powhatan

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Robert C. Middaugh

RCM/tlc

BCApptmnts\_mem

Attachments

**MEMORANDUM**

DATE: January 24, 2012  
 TO: The Board of Supervisors  
 FROM: Robert C. Middaugh, County Administrator  
 SUBJECT: List of Seats for Boards and Commissions for 2012

Below is a listing of requested Board/Commission/Committee appointments for 2011. These appointments were made at the Board’s Organizational Meeting on January 3, 2012.

<u>Board/Commission Committee</u>	<u>Current Board Member 2012</u>
Community Action Agency Board of Directors	[REDACTED] (Alternate – Rev. Dawson) Jones (Alternate – Nancy Ellis) Icenhour (Alternate – Caroline Rhodes) Kennedy (Alternate – John Filichko)
Hampton Roads Economic Development Authority (HREDA)	
Hampton Roads Military and Federal Facilities Alliance (HRMFFA) (Chair)	Mary Jones
Hampton Roads Planning District Commission	Mary Jones/Robert Middaugh
Hampton Roads Transportation Planning Organization	Mary Jones
Local Enterprise Zone Association (LEZA)	John J. McGlennon
Virginia Peninsula Chamber of Commerce	
School Liaison (Chair)	James O. Icenhour, John J. McGlennon –
Historic Triangle Collaborative (Chair)	James G. Kennedy
Agricultural and Forestal District (AFD) Advisory Committee	James G. Kennedy
Economic Development Authority Liaison	James G. Kennedy
Farmers Advisory Committee	James G. Kennedy
Williamsburg Area Destination Marketing Committee	James G. Kennedy, Alternate – Robert Middaugh
Community Services Coalition Board of Directors	James O. Icenhour

List of Seats for Boards and Commissions for 2012

January 27, 2012

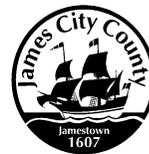
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<u>Board/Commission Committee</u>	<u>Current Board Member 2012</u>
Greater Peninsula Workforce Development Consortium	James O. Icenhour
Peninsula Council for Workforce Development	James O. Icenhour
Virginia Peninsula Regional Jail Authority	John J. McGlennon
Williamsburg Land Conservancy	James O. Icenhour
Local Emergency Preparedness	Mary Jones
Peninsula Public Sports Facility Authority (PPSFA) Board	Mary Jones
Regional Issues Committee (RIC)	
Greater Williamsburg Area Chamber and Tourism Alliance	James G. Kennedy
High Growth Coalition	John J. McGlennon
Williamsburg Area Medical Assistance Corp (WAMAC)	John J. McGlennon

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Robert C. Middaugh

RCM/nb  
BoardAppts12\_mem



## MEMORANDUM COVER

**Subject:** Legislative Application Deferral Policy

**Action Requested:** Shall the Board adopt the Legislative Application Deferral Policy?

**Summary:** At its meeting on January 10, 2012, the Board of Supervisors requested a legislative application deferral policy for consideration.

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachment:**

1. Memorandum

**Agenda Item No.:** J-4

**Date:** January 24, 2012

**MEMORANDUM**

DATE: January 24, 2012

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Legislative Application Deferral Policy

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At its meeting on January 10, the Board of Supervisors (the “Board”) requested a legislative application deferral policy for consideration. The following is staff’s proposed deferral policy for your consideration.

1. Applications that have received action from the Planning Commission (the “Commission”) shall be placed on the agenda for the first Board meeting the month following the Commission meeting. An applicant may request a one-month administrative deferral. In this circumstance, the County Administrator, or his designee (the “Administrator”) shall determine whether to grant the deferral in accordance with the criteria expressed herein. If the administrator approves the administrative deferral, the application shall not be advertised and will instead be scheduled for the first Board meeting on the second month following action by the Commission.
2. Any application for a legislative case is expected to go before the Board, either as a request for further deferral or consideration of approval with an advertised public hearing, within 75 days of action on that application by the Commission. The applicant may withdraw the application at any time.
3. An applicant may request from the Board of Supervisors two additional deferrals that shall, in total, be valid for no more than 12 months from the date the application was submitted to the Planning Division. In this circumstance, the application shall be advertised and the Board shall determine whether to grant a deferral following a public hearing on the matter. If the Board grants a deferral, the application will be scheduled for a Board meeting requested by the applicant and approved by the Board. The applicant shall be required to pay a deferral fee to cover the costs of advertising the application. Such fee shall reimburse the County for expenses associated with deferring the application. If the Board does not grant the deferral, the Board may either approve or deny the application at that meeting.
4. The Administrator and/or the Board may grant a deferral as noted above for one of the following reasons:
  - The Commission requests substantive changes to the application, supplemental materials, proffers, or conditions that must be addressed prior to the Board hearing.
  - Substantive issues are raised by a County or external reviewing agency that must be addressed prior to the Board hearing.
  - Delays have occurred with County or external reviewing agency comments that affect the case.
  - Errors in legally required advertising are discovered and must be rectified.
  - Adjacent property owner concerns have been expressed that generate the need for substantive changes or additional public meetings.
  - The applicant demonstrates that there are extenuating circumstances that are unique to this specific application that require additional time.

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Robert C. Middaugh