

AT A SPECIAL MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 6TH DAY OF FEBRUARY 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

C. INTERVIEWS FOR JAMESTOWN DISTRICT SUPERVISOR

The Board of Supervisors interviewed six candidates who applied to fill the vacant Jamestown District Supervisor seat on an interim basis:

Ms. Robin Bledsoe
Ms. Kelly Mihalcoe
Mr. Bob Hershberger
Mr. Michael Brown
Mr. Wilford Kale
Mr. Sasha Digges

At the conclusion of the interviews, the Board agreed to wait until the regular meeting on February 14 to discuss the appointment and make a decision.

Ms. Jones encouraged citizens to provide feedback to the Board about the appointment and thanked the applicants for their interest in serving the County.

D. ADJOURNMENT

Mr. Kennedy made a motion to adjourn until February 9, 2012, at 11 a.m. at Legislative Day in Richmond, Virginia.

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

At 7:49 p.m., Ms. Jones adjourned the Board.

Robert C. Midaugh
Clerk to the Board

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AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 14TH DAY OF FEBRUARY 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, Roberts 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 – Abigail Sabo, a 4th grade student from Stonehouse Elementary School, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATIONS - none

F. PUBLIC COMMENTS

Ms. Jones announced that the Board discussion regarding the Jamestown appointment is not a public hearing and if anyone wished to speak on that matter now would be the time to do so.

1. Mr. Sasha Digges, 3612 Ironbound Road, expressed thanks and appreciation to the Board for helping to defeat the mausoleum bill. Mr. Digges also thanked the citizens in the community for supporting him in his quest to defeat the bill.

2. Ms. Mary Catherine Digges, 3612 Ironbound Road, expressed thanks and appreciation to the Board, individually and collectively, for helping to defeat HB316 and SB430. Ms. Digges also expressed thanks to Mr. Middaugh and Mr. Rogers for going above and beyond their call of duty in helping to get the bill defeated. Ms. Digges also publically thanked many community associations for their assistance in defeating the bill.

3. Mr. Daniel Smith, 5316 Gardner Court, gave an invocation to the Board.

4. Mr. Keith Sadler, 9929 Mountain Berry Court, Toano, expressed his opposition to the Historic Triangle Comprehensive Plan collaboration. Mr. Sadler read a few excerpts from a resolution from Gaston County Board of Commissioners, North Carolina, rejecting Agenda 21.

5. Mr. Ed Oyer, 139 Indian Circle, talked about supporting the troops. He also read excerpts from the Virginia Driving Manual regarding hand position on the wheel, changing lanes, and lane position. Mr. Oyer also talked about home value depreciation.

G. BOARD REQUESTS AND DIRECTIVES

Ms. Jones proclaimed February 13-17, 2012, as Constitutional Officers Appreciation Week in James City County for the services that they provide to the citizens of the County.

Mr. Icenhour expressed thanks and appreciation to the Virginia Department of Transportation (VDOT) for fixing the pothole problems in a prompt manner. Mr. Icenhour also expressed thanks to New Town Properties for fixing the Windsor Meade erosion problem. Mr. Icenhour thanked Mr. Middaugh and Mr. Rogers for their contributions in helping to defeat HB316 and SB430.

Ms. Jones spoke about attending Legislative Day on February 9, 2012, with Mr. McGlennon and Mr. Icenhour. Ms. Jones expressed appreciation for time spent with Senator Thomas K. Norment, Jr. She also expressed thanks to Mr. Middaugh and Mr. Rogers for their time spent defeating the cemetery bill. Ms. Jones expressed appreciation to Delegate Mike Watson and Delegate Brenda L. Pogge for their efforts on behalf of the citizens of James City County on the cemetery bill.

H. CONSENT CALENDAR

1. Minutes –
 - a. January 21, 2012, Budget Retreat Meeting
 - b. January 24, 2012, Work Session Meeting
 - c. January 24, 2012, Regular Meeting
2. Grant Award – Commonwealth Attorney – V-STOP Grant Program Fund – \$57,378

RESOLUTION

GRANT AWARD - COMMONWEALTH ATTORNEY -

V-STOP GRANT PROGRAM - \$57,378

WHEREAS, the Commonwealth Attorney for the City of Williamsburg and James City County has been awarded a \$57,378 grant from the V-STOP Grant Fund (Federal share \$28,372; County match \$29,006) through the State Department of Criminal Justice Services; and

WHEREAS, this grant would fund the personnel costs of a position to advocate for victims of crimes involving domestic violence, sexual abuse, and stalking beginning January 1, 2012, through December 31, 2012; and

WHEREAS, this grant requires a local cash or in-kind match of \$29,006, which is available in the Commonwealth Attorney’s general fund account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the additional appropriation to the Victim’s Witness Fund through December 31, 2012, for the purpose described above:

Revenues:

CY 12 V-Stop Department of Criminal Justice Services Federal Revenue (DCJS)	\$28,372
CY 12 V-Stop James City County Matching Funds	<u>29,006</u>
Total:	<u>\$57,378</u>

Expenditure:

CY 12 V-Stop Grant Program	<u>\$57,378</u>
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3. Grant Award – Commonwealth Attorney – Virginia Domestic Violence Victim Fund – \$37,981

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

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

RESOLUTION

GRANT AWARD – COMMONWEALTH ATTORNEY –

VIRGINIA DOMESTIC VIOLENCE VICTIM FUND – \$37,981

WHEREAS, the Commonwealth Attorney for the City of Williamsburg and James City County has been awarded a \$37,981 grant from the Virginia Domestic Violence Victim Fund through the State Department of Criminal Justice Services; and

WHEREAS, this grant would fund the personnel costs and travel expenses of a position in the prosecution of misdemeanors and felonies involving domestic violence, sexual abuse, stalking, and family abuse through December 31, 2012.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the additional appropriation to the Special Projects/Grants Fund through December 31, 2012, for the purpose described above:

Revenue:

CY 12 Virginia Domestic Violence Victim Fund	<u>\$37,981</u>
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Expenditure:

CY 12 Virginia Domestic Violence Victim Fund \$37,981

I. PUBLIC HEARING

1. Appropriation – Hurricane Irene – \$2,554,000

Ms. Sue Mellen, Assistant Manager of Financial and Management Services, addressed the Board regarding the appropriation of funds that the County has claimed for reimbursement from its insurance carrier and the Federal Emergency Management Agency (FEMA).

Mr. McGlennon made a motion to approve the appropriation.

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

RESOLUTION

APPROPRIATION – HURRICANE IRENE – \$2,554,000

WHEREAS, in August 2011 Hurricane Irene caused heavy rains and high winds in James City County; and

WHEREAS, Emergency Protective measures were taken to save lives, protect public health, safety, and improved property and damage to public facilities has been repaired; and

WHEREAS, James City County has filed for claims of reimbursement from its insurance carrier and the Federal Emergency Management Agency (FEMA) totaling \$2,554,000; and

WHEREAS, FEMA claims are cost-shared by the Federal government at 75 percent, State government at 15 percent, and James City County at 10 percent, with the County’s share available in fund balance.

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

Revenues:

Federal Government	\$1,900,000
State Government	382,000
Fund Balance	250,000
Insurance Proceeds	<u>22,000</u>
Total:	<u>\$2,554,000</u>

Expenditure:

Storm Expenses	<u>\$2,554,000</u>
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J. BOARD CONSIDERATION

1. Jamestown District Supervisor Discussion

Ms. Jones thanked all the applicants who have expressed interest in applying for the position of Jamestown Supervisor for wanting to serve their community. Ms. Jones stated that the Board will either fill the position or if the Board cannot come to a decision the matter will go before a judge to fill the seat.

Mr. Kennedy expressed concern about the Economic Interest Statements not being received for all the applicants.

Mr. Rogers responded that the paperwork has to be filed, but that there was a period of time allowing the applicant to do so before being sworn in and that this matter was not a prerequisite for the application process.

Mr. Kennedy stated that he received a little public reaction to this matter. Mr. Kennedy explained why he nominated Ms. Robin Bledsoe.

Mr. McGlennon and Mr. Icenhour expressed what they were looking for in a candidate.

Mr. Kennedy nominated Ms. Bledsoe for the position of Supervisor for the Jamestown District.

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

Ms. Jones nominated Ms. Kelly Mihalcoe for the position of Supervisor for the Jamestown District.

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

Mr. McGlennon nominated Mr. Wilford Kale for the position of Supervisor for the Jamestown District.

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

Mr. Icenhour nominated Mr. Michael Brown for the position of Supervisor for the Jamestown District.

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

Ms. Jones asked that this matter be referred to the Circuit Court.

K. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, expressed disappointment that the Board could not come to a decision in filling the vacant seat for the Jamestown District.

L. REPORT OF THE COUNTY ADMINISTRATOR

Mr. Middaugh drew attention to the County's new logo which was entirely developed by County staff. He also mentioned that no funds were expended.

Mr. Middaugh asked the Board to consider a motion to amend its calendar to provide for a joint meeting with the Williamsburg City Council and School Board on March 7, 2012, at 8 a.m.

Mr. Middaugh stated that the County offices will be closed on Monday, February 20, 2012, in observance of Presidents Day.

Mr. Middaugh advised the Board that there were originally two items on the agenda that were to be discussed during closed session. Mr. Middaugh stated that the Board agreed to an open discussion regarding the appointments to:

- a. Chesapeake Bay Board/Wetlands Board
- b. Purchase of Development Rights Committee
- c. Clean County Commission

Mr. Middaugh stated that the School Contract Negotiation will be held in Closed Session.

M. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon made a motion to amend the calendar to add March 7, 2012, at 8 a.m. to meet with City Council and School Board and to change the time of a meeting scheduled for May 2, 2012, from 7 p.m. to 4 p.m.

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

Mr. McGlennon made a motion to nominate the following people to the following Boards:

- a. Chesapeake Bay Board/Wetlands Board – Mr. William Apperson
- b. Purchase of Development Rights Committee – Mr. Larry B. Abbott and Ms. Loretta Garrett
- c. Clean County Commission – Mr. Robert Marin

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

N. CLOSED SESSION

Mr. McGlennon made a motion for the Board to go into Closed Session pursuant to Section 2.2-3711(A)(6) of the Code of Virginia to discuss contract negotiations where financial interests of the County are involved.

- a. School Contract Negotiation

Mr. McGlennon made a motion to adopt the closed session resolution.

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, consider a personnel matter(s), the appointment of individuals to County boards and/or commissions; and Section 2.2-3711(A)(6) of the Code of Virginia, to discuss contract negotiations where financial interests of the County are involved.

O. ADJOURNMENT

Mr. McGlennon made a motion to adjourn until February 28 at 4 p.m.

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

At 8:17 p.m., Ms. Jones adjourned the Board.

Robert C. Middaugh
Clerk to the Board

MEMORANDUM COVER

Subject: Ordinance to Vacate Approximately 0.621 Acres of Right-of-Way near the Intersection of Powhatan Secondary and Monticello Avenue

Action Requested: Shall the Board approve the ordinance authorizing the vacation of approximately 0.621 acres of right-of-way located near the intersection of Powhatan Secondary and Monticello Avenue?

Summary: Powhatan Community Services Association ("PCSA"), the homeowners association for the Powhatan Secondary Community, has requested a vacation of a portion of excess right-of-way near Powhatan Secondary. The proposed vacation includes 0.621 acres of property that currently divides two parcels identified as James City County Real Estate Tax Map Parcel No. 3830100032 and a portion of Parcel No. 3830100009 located near the intersection of Powhatan Secondary and Monticello Avenue. The property was intended to be used by the PCSA after the construction of Monticello Avenue. The County agreed to convey this right-of-way to Powhatan Enterprises, Inc., the adjacent landowner at the time and predecessor to PCSA, with the intention of having the 0.621 acres combined with the existing recreation area at Powhatan Secondary. The right-of-way was abandoned by a resolution of the Board of Supervisors on February 8, 2005, but the process was not completed. The conveyance to Powhatan Enterprises, Inc. never occurred, so an action by the Board to vacate the right-of-way is necessary at this time to complete the transaction.

Staff recommends adoption of the attached ordinance.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh 

Attachments:

1. Memorandum
2. Ordinance
3. PCSA Request Letter
4. Plat (under separate cover)

Agenda Item No.: I-1

Date: February 28, 2012

MEMORANDUM

DATE: February 28, 2012

TO: The Board of Supervisors

FROM: Lola Rodriguez Perkins, Assistant County Attorney

SUBJECT: Ordinance to Vacate Approximately 0.621 Acres of Right-of-Way near the Intersection of Powhatan Secondary and Monticello Avenue

Powhatan Community Services Association ("PCSA"), the homeowners association for the Powhatan Secondary Community, has requested a vacation of a portion of excess right-of-way near Powhatan Secondary. The proposed vacation includes 0.621 acres of property that currently divides two parcels identified as James City County Real Estate Tax Map Parcel No. 3830100032 and a portion of Parcel No. 3830100009 located near the intersection of Powhatan Secondary and Monticello Avenue.

On February 8, 2005, the Board of Supervisors adopted a resolution abandoning this right-of-way. The Board's resolution included abandonment of areas that were not needed due to new intersections and roadway realignments constructed as part of the Monticello Avenue Project. The County agreed to convey this right-of-way to Powhatan Enterprises, Inc., the adjacent landowner at the time (predecessor to PCSA), with the intention of having the 0.621 acres combined with the existing recreation area at Powhatan Secondary. Following the abandonment, no further steps were taken to vacate the right-of-way and convey the property to Powhatan Enterprises, Inc. The attached ordinance serves to complete the transaction.

PCSA intends to use the 0.621 acres as common open space and recreational area. The proposed ordinance authorizes the vacation of the right-of-way and the recordation of a plat entitled, "Plat of Boundary Line Extinguishment Being a Portion of Abandoned Powhatan Secondary Road and the Property of Powhatan Community Services Association." The plat demonstrates as Area A and Area B, the right-of-way to be vacated. The plat has received all necessary County approvals and approval by the Virginia Department of Transportation (VDOT).

Staff recommends adoption of the proposed ordinance.


Lola Rodriguez Perkins

CONCUR:


Leo P. Rogers

LRP/gb
Ord-VacateROW_mem

Attachment

ORDINANCE NO. _____

ORDINANCE TO VACATE APPROXIMATELY 0.621 ACRES OF RIGHT-OF-WAY NEAR THE
INTERSECTION OF POWHATAN SECONDARY AND MONTICELLO AVENUE

WHEREAS, the Powhatan Community Services Association has submitted an application to vacate certain lines, numbers, and symbols on a plat more particularly described below; and

WHEREAS, notice that the Board of Supervisors of James City County would consider such request has been given pursuant to Section 15.2-2272 of the Code of Virginia, 1950, as amended; and

WHEREAS, the Board of Supervisors held a public meeting and considered such application on February 28, 2012, pursuant to such notice; and

WHEREAS, the Board was of the opinion that the vacation would not result in any inconvenience and was in the interest of public welfare.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

1. A portion of that certain subdivision plat entitled "Plat of Powhatan Secondary Right of Way Being a Subdivision of Property of Powhatan Enterprises, Inc." prepared by Langley and McDonald, P.C. and dated March 14, 1994, be so vacated as to permit recordation of a new plat that will serve to remove certain lines, words, numbers, and symbols as more specifically set forth in the above-mentioned plat and thereby vacating the portion of the right-of-way near the intersection of Powhatan Secondary and Monticello Avenue as more particularly described and shown on the plat entitled "Plat of Boundary Line Extinguishment Being a Portion of Abandoned Powhatan Secondary Road and the Property of Powhatan Community Services Association" prepared by AES Consulting Engineers and dated August 19, 2011.
2. A new plat entitled "Plat of Boundary Line Extinguishment Being a Portion of Abandoned Powhatan Secondary Road and the Property of Powhatan Community Services Association" prepared by AES Consulting Engineers, dated August 19, 2011, and approved by James City County be put to record in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia.
3. Upon recordation of the new plat, the title in the vacated right-of-way shall vest in the Powhatan Community Services Association.

This ordinance shall be in full force and effect from the date of its adoption.

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 28th day of
February, 2012.

Ord-VacateROW_res

Powhatan Community Services Association (PCSA)

c/o Berkeley Realty Property Management
150 Strawberry Plains Road, Suite A-1
Williamsburg, VA 23188
Tel: 229-6810 Fax: 229-8208

May 18, 2011

Mr. Adam R. Kinsman
Deputy County Attorney
James City County
101-C Mounts Bay Road
Williamsburg, VA 23185

RE: Request for excess right of way abandonment

Dear Mr. Kinsman:

Powhatan Community Services Association (PCSA), the homeowners association for Powhatan Secondary, is the owner of certain property near the intersection of Powhatan Secondary Road (State Route 1471) and Monticello Avenue (State Route 776). While in the process of preparing for improvements to our recreational facilities in this area, I discovered an issue with the former right of way of Powhatan Parkway that was demolished with the construction of Monticello Avenue as part of the Alternate Route 5 project. Attached is an exhibit prepared by James City County GIS which shows the location of the site.

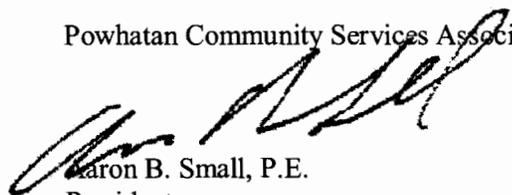
The PCSA owns property on both sides of the former road and it appears from the VDOT plans that the right of way was intended to be abandoned; however, there are no records of this transaction. As shown on the attached aerial photograph, all signs of the original pavement have been removed and PCSA has been maintaining it as part of our recreational area. For us to improve the recreational area (for minor parking expansion, a new pier, and picnic tables), we must prepare a site plan and this cannot be approved if we do not own the property.

Because the road was originally dedicated to the Commonwealth by the developer, it is my understanding that only the Board of Supervisors needs to act on the abandonment and not Commonwealth Transportation Board. Therefore, the PCSA would like to formally request the James City County Board of Supervisors to abandon this right of way as excess property.

Thanks again for your assistance on this matter.

Respectfully,

Powhatan Community Services Association



Aaron B. Small, P.E.
President

cc: C.J. Jones, Berkeley

Powhatan Secondary of Williamsburg

<i>Wythe Section</i>	<i>Essex Section</i>	<i>Sussex Section</i>	<i>Cluster Village</i>	<i>Westover Section</i>	<i>Berkeley Section</i>
<i>Waterford</i>	<i>Powhatan Woods</i>	<i>The Villages at Powhatan</i>		<i>Cromwell Ridge</i>	<i>Powhatan Place</i>
<i>The Colonies</i>		<i>Steeplechase Apartments</i>		<i>Monticello at Powhatan Apartments</i>	

MEMORANDUM COVER

Subject: Approval of a Memorandum of Agreement for the Westport Subdivision

Action Requested: Shall the Board adopt a resolution authorizing the County Administrator to enter into a Memorandum of Agreement (MOA) for the purpose of installing infrastructure in the Westport Subdivision?

Summary: Several lots in the Westport Subdivision have been purchased, but since the necessary infrastructure to provide road access and water is not present, building permits cannot be issued for these lots. The attached resolution authorizes the County Administrator to enter into a Memorandum of Agreement (MOA) with Realtec, Incorporated, a North Carolina corporation, the property owner, and Meridian Land Company, LLC, a Minnesota company, the successor in interest to Meridian Bank, the lien holder on the Property, for installing infrastructure in the Westport Subdivision. The County's liability is limited to the amount of the bond, \$2,245,000. The required infrastructure improvements are estimated to cost approximately \$4,000,000. Under a proposed MOA, the County would call the Bond and either have the bonding company make the improvements or pay the Bond amount to the County. The County's liability would be limited to the amount of the bond and any additional costs for the infrastructure would be the responsibility of the bonding company. This MOA would allow for the necessary infrastructure to be installed and for property owners to move forward in the construction process for the lots.

Staff recommends adoption of the attached resolution.

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

Agenda Item No.: J-1

Date: February 28, 2012

MEMORANDUM

DATE: February 28, 2012

TO: The Board of Supervisors

FROM: Leo P. Rogers, County Attorney
Christopher Johnson, Principal Planner

SUBJECT: Approval of a Memorandum of Agreement for the Westport Subdivision

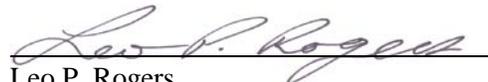
As the Board is aware, several lots in the Westport Subdivision (the "Property") have been purchased by individuals. The developer of Westport Subdivision has not made the necessary public improvements to the property and the lot owners have no road access or water. As a result, these lot owners cannot get a building permit or use their lot for its intended purpose.

Attached for your consideration is a resolution authorizing the County Administrator to enter into a Memorandum of Agreement (the "MOA") with Realtec, Incorporated, a North Carolina corporation, the property owner, and Meridian Land Company, LLC, a Minnesota company, the successor in interest to Meridian Bank, the lien holder on the Property, for installing infrastructure in the Westport Subdivision. Since Realtec is unable to install the necessary improvements, the MOA would allow the County and Meridian Land to install the improvements. The County's liability is limited to the amount of the bond (the "Bond"), \$2,245,000. The required infrastructure improvements are estimated to cost approximately \$4,000,000.

Under a proposed MOA, the County would call the Bond and either have the bonding company make the improvements or pay the Bond amount to the County. Given that the estimated costs exceed the Bond amount, it is unlikely the bonding company would take on the responsibility of installing the improvements. The bonding company could simply pay the Bond amount or it could assert all defenses typically reserved for a property owner. It is possible that the County may need to file suit against the bonding company in order to collect on the Bond.

Assuming the County collects the Bond proceeds, Meridian Land would obtain the title to the Property and assume responsibility for any additional costs for the improvements in excess of the Bond proceeds; in addition, the County would need to follow the Public Procurement Act in order to install the necessary public improvements. Meridian Land would be responsible for the additional cost and could be a party to the public contract or enter into a separate agreement. Meridian Land would be the project manager. Under any of these circumstances, the County's liability would be limited to the amount of the Bond proceeds.

Staff recommends adoption of the attached resolution.


Leo P. Rogers


Christopher Johnson

LPR/CJ/nb
MOAWestport_mem

Attachment

RESOLUTION

APPROVAL OF A MEMORANDUM OF AGREEMENT FOR THE WESTPORT SUBDIVISION

WHEREAS, Realtec Incorporated, a North Carolina corporation, is the owner of certain land in James City County (the "County") commonly known as the Westport Subdivision; and

WHEREAS, Meridian Land Company, LLC, a Minnesota company, is the successor in interest to Meridian Bank, National Association, and Meridian Construction Capital, LLC, the lien holder on the Westport Subdivision; and

WHEREAS, lots in the Westport Subdivision have been sold to individuals; and

WHEREAS, certain infrastructure and improvements, such as a central well system, water system, and roads, have not been developed to allow the lot owners to use their property for its intended purpose; and

WHEREAS, the County is holding a public improvement bond in the amount of \$2,245,000 which is insufficient to construct the necessary improvements in the Westport Subdivision; and

WHEREAS, the County, Realtec Incorporated, and Meridian Land Company, LLC desire to enter into a Memorandum of Agreement (MOA) to identify responsibilities of each of the parties in constructing the necessary improvement to the Westport Subdivision; and

WHEREAS, the County's liability under the MOA is limited to the amount it receives from drawing on the public improvement bond.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that Robert C. Middaugh, County Administrator, is hereby authorized and directed to execute a MOA with Realtec Incorporated and Meridian Land Company, LLC to provide necessary infrastructure improvements to the Westport Subdivision.

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 28th day of February, 2012.

MOAWestport_res