

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS County Government Center Board Room July 9, 2013

7:00 P.M.

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Stephanie Rubino, a recent graduate of Warhill High School and a resident of the Stonehouse District

E. PRESENTATIONS

1. Clean County Commission Annual Update

F. PUBLIC COMMENT

G. BOARD REQUESTS AND DIRECTIVES

H. CONSENT CALENDAR

1. Minutes –
 - a. June 25, 2013, Regular Meeting

I. PUBLIC HEARINGS

1. Case No. AFD-09-86-1-2013. Gordon Creek AFD, Pickett Holdings Addition
2. SUP-0006-2013. Creative Kids Child Development Center

J. BOARD CONSIDERATION

K. PUBLIC COMMENT

L. REPORTS OF THE COUNTY ADMINISTRATOR

M. BOARD REQUESTS AND DIRECTIVES

N. CLOSED SESSION

1. Consideration of a Personnel Matter, the Appointment of Individuals to County Boards and/or Commissions Pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
 - a) Clean County Commission Committee
 - b) Stormwater Program Advisory Committee
 - c) Colonial Behavioral Health
2. Consideration of acquisition/disposition of a parcel/parcels of property for public use, pursuant to Section 2.2-3711 (A)(3) of the Code of Virginia

O. ADJOURNMENT – to 4 p.m. on July 23, 2013

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 25TH DAY OF JUNE 2013, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

Mr. McGlennon stated that due to a health issue, Mr. Kennedy would be joining the meeting by phone this evening.

B. ROLL CALL

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

Robert C. Middaugh, County Administrator
Lola R. Perkins, Assistant County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Sabrina Fellows, a rising 3rd grade student at Matoaka Elementary and a resident of the Berkeley District, led the Board and citizens in the Pledge of Allegiance.

At 7:03 p.m., Mr. McGlennon recessed the Board in order to conduct the James City Service Authority (JCSA) Board of Directors Meeting.

At 7:08 p.m., Mr. McGlennon reconvened the Board of Supervisors.

E. PRESENTATION - None

F. PUBLIC COMMENTS

1. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board in regard to the Greenspace Easement Acquisitions on the Agenda this evening. She stated that these properties are taxed at a lower rate and questioned the property rights given up by the owners.

2. Ms. Betty Walker, 101 Locust Place, addressed the Board in regard to property rights and State legislation that would protect the rights of farmers.

3. Ms. Pat Groeninger, 3729 Captain Wynne Drive, addressed the Board in favor of the Greenspace Easement Acquisition of the Waltrip Property.

4. Mr. Eric Danuser, 4091 and 4092 South Riverside Drive, addressed the Board in regard to backyard chicken-keeping.

5. Mr. Russ Gibbons, 117 King William Drive, addressed the Board in regard to backyard chicken-keeping.

6. Mr. George Sherer, 114 King William Drive, addressed the Board in regard to backyard chicken-keeping.

7. Ms. Joyce Felix, 115 King William Drive, addressed the Board in regard to backyard chicken-keeping.

8. Ms. Linda Rice, 2394 Forge Road, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

9. Mr. Joe Harrow, 3017 Sweet Gum Lane, addressed the Board, as a representative of the Williamsburg Land Conservancy, in favor of the Greenspace Easement Acquisitions on the Agenda.

10. Mr. Mike Rock, 269 Mill Stream Way, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

11. Mr. Jerre Johnson, 4513 Wimbledon Way, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

12. Mr. Alain Outlaw, 109 Crown Pointe Road, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

13. Mr. Rolf Kramer, 5309 Hillside Way, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

14. Ms. Michelle Fitzgerald, 2906 John Proctor East, addressed the Board in regard to backyard chicken-keeping.

15. Ms. Sheila Ricca, 2502 Manionn Drive, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

16. Ms. Ann Hewitt, 147 Raleigh Street, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

17. Ms. Sarah Kadec, 3800 Treyburn Drive, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

18. Ms. Shereen Hughes, 103 Holly Road, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

19. Dr. Thomas Powers, 123 Jerdone Road, addressed the Board in regard to the excellent quality of life provided by the County and in support of the Greenspace Easement Acquisitions.

20. Mr. John Haldeman, 1597 Founders Hill North, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

21. Mr. John Pottle, 4233 Teakwood Drive, addressed the Board and offered a prayer for the evening.

22. Mr. Chris Henderson, 101 Keystone, addressed the Board in opposition of the Greenspace Easement Acquisitions.

23. Ms. Barbara Scherer, 114 King William Drive, addressed the Board in regard to backyard chicken-keeping.

24. Mr. Sasha Diggs, 37 Ironbound Road, addressed the Board in favor of the Greenspace Easement Acquisitions; however, he stated that the price of the acquisitions is a little high.

25. Ms. Rosanne Reddin, 2812 King Rook Court, addressed the Board in opposition to the Greenspace Easement Acquisitions.

26. Mr. Bob Alteer, 415 Neck-O-Land Road, addressed the Board stating that the drainage problems in Peleg's Point is dumping water across Neck-O-Land Road and onto his property. He stated that he is in support of the Greenspace Easement Acquisitions.

27. Mr. Mike Sloan, 2527 Manyan Drive, addressed the Board in favor of the Greenspace Easement Acquisitions on the Agenda.

28. Ms. Judy Fuss, 3509 Hunters Ridge, addressed the Board, as a representative of the James City County Citizens Coalition (J4C), in favor of the Greenspace Easement Acquisitions on the Agenda.

29. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board in opposition to the Greenspace Easement Acquisitions on the Agenda.

30. Mr. Joseph Swanenborg, 3026 The Pointe Drive, addressed the Board in opposition to the Greenspace Easement Acquisitions on the Agenda.

31. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board in opposition to the Greenspace Easement Acquisitions on the Agenda.

32. Mr. Ed Oyer, 139 Indian Circle, addressed the Board in regard to the storm damage and debris that the County will not pick up. He stated that the County's priorities are not right when the County is considering buying up property rights, but cannot help its citizens.

33. Ms. Lynda Smith, 116 Neighbors Drive, addressed the Board in regard to the road conditions on Neighbors Drive and in support of the Neighbors Drive project.

34. Ms. Yolanda Givens, 118 Neighbors Drive, addressed the Board in regard to the road conditions on Neighbors Drive, poor drainage, and in support of the Neighbors Drive project.

35. Mr. Ron Armistead, 5913 Richmond Road, addressed the Board in support of the Neighbors Drive project.

36. Mr. Kevin O'Shea, 119 Neighbors Drive, addressed the Board in support of the Neighbors Drive project.

G. BOARD REQUESTS AND DIRECTIVES

Ms. Jones requested that staff take a look at some of the ordinance changes that have been made in surrounding jurisdictions in regard to backyard chicken-keeping. She stated that she would like to see staff, and possibly the Board, have a discussion with the citizens that are in favor of backyard chicken-keeping and see if a solution may be reached.

Ms. Jones stated that she attended the Hampton Roads Transportation Planning Organization (HRTPO) meeting last Thursday. She stated that two resolutions were passed. One recognized the need for a third crossing and for ongoing maintenance of the Hampton Roads Bridge-Tunnel (HRBT). The second was an endorsement of the expansion of I-64 from Fort Eustis Boulevard up to Hummelsine Parkway. She stated that the expansion will be done either on the outside or into the medians where available.

Mr. McGlennon stated that Mr. Kennedy has signed off from the meeting due to his illness. He stated the Mr. Kennedy will now be reflected as absent for the remainder of the meeting.

H. CONSENT CALENDAR

Mr. McGlennon stated that staff has requested that Item No. 2 be pulled off the Consent Calendar and deferred until a later date.

Mr. Icenhour made a motion to defer Item No. 2.

The Board voiced its consensus.

2. Dedication of Rural Street Additions in the Williamsburg West Subdivision - Deferred

Mr. Bradshaw requested that Item Nos. 3 and 5 be pulled and voted on separately.

Mr. Bradshaw made a motion to approve Item Nos. 1 and 4.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

1. Minutes –

a. June 11, 2013, Regular Meeting

4. Grant Award – Virginia Department of Agriculture and Consumer Services Agriculture and Forestry Industries Development (AFID) Fund Grant – \$40,000

RESOLUTION

GRANT AWARD – VIRGINIA DEPARTMENT OF AGRICULTURE AND

CONSUMER SERVICES AGRICULTURE AND FORESTRY INDUSTRIES DEVELOPMENT

(AFID) FUND GRANT – \$40,000

WHEREAS, the Office of Economic Development and the Planning Division have been awarded an Agriculture and Forestry Industries Development (AFID) Fund grant for \$40,000 (\$20,000 State funds, \$20,000 local match) from the Virginia Department of Agriculture and Consumer Services; and

WHEREAS, the funds are to be used for projects that advance the interests of agriculture and/or forestry in the locality; and

WHEREAS, the grant requires a 50 percent match of \$20,000, which is available in the FY 2013 grants match account.

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:

AFID Grant	\$20,000
Transfer from General Fund	<u>20,000</u>
Total	<u>\$40,000</u>

Expenditure:

AFID Grant	<u>\$40,000</u>
------------	-----------------

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the County Administrator to sign the Agriculture and Forestry Industries Development Fund Memorandum of Agreement and such other documents as may be necessary to effectuate the project.

Mr. Douglas Powell, Assistant County Administrator, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Mr. Middaugh stated that the Hampton Roads Regional Stormwater Management Organization has been very helpful with our own Stormwater Management Program. He stated that the partnership allows the County to deal collaboratively when dealing with the State and allows for consistent information and answers.

Mr. Bradshaw stated that his reason for pulling the item was to highlight the regional efforts and multijurisdictional efforts that the County is participating in.

Mr. Bradshaw made a motion to approve Item No. 3.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

3. Memorandum of Agreement (MOA) for Participation in the Hampton Roads Regional Stormwater Management Program

RESOLUTION

**MEMORANDUM OF AGREEMENT (MOA) FOR PARTICIPATION IN THE
HAMPTON ROADS REGIONAL STORMWATER MANAGEMENT PROGRAM**

WHEREAS, the Hampton Roads Planning District Commission has been requested to continue its support of local stormwater management programs; and

WHEREAS, working in cooperation with other local governments has resulted in cost efficiencies, increased information sharing, and program consistency that increases the acceptance of the County's program at the State level.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that James City County continues to support and participate in the Hampton Roads Regional Stormwater Management Program Memorandum of Agreement.

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the County Administrator to sign the Hampton Roads Regional Stormwater Management Program Memorandum of Agreement.

Mr. Bradshaw stated that in regard to Item No. 5, he wanted to highlight the partners that have contributed toward the Legal Services.

Mr. Bradshaw made a motion to approve Item No. 5.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

5. Appropriation – Legal Services

RESOLUTION

APPROPRIATION – LEGAL SERVICES

WHEREAS, the County is engaged in a State Corporation Commission (SCC) hearing process regarding the location of a proposed electric transmission line in the County and the costs to the County may be approximately \$385,000; and

WHEREAS, the Board of Supervisors has previously appropriated \$300,000 for these expenses, including \$50,000 pledged to the County by the Save the James Alliance and needs to appropriate an additional \$70,000 to legal services; and

WHEREAS, other partners have helped to offset the costs and approximately \$120,000 has been committed, \$60,000 from the Save the James Alliance, \$20,000 from BASF, \$5,000 from the Williamsburg Area Chamber and Tourism Alliance, \$25,000 from the City of Williamsburg, and \$10,000 from Kingsmill Properties, requiring an additional appropriation of \$70,000 from contributors.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby execute the following appropriation and budget amendment in the FY 2013 operating budget:

Revenue:

Contributions to Legal Services	<u>\$70,000</u>
---------------------------------	-----------------

Expenditures:

Legal Services	<u>\$70,000</u>
----------------	-----------------

I. PUBLIC HEARINGS

1. Ordinance to Amend and Reordain Chapter 2, Administration, by Amending Section 2-4. Election Precincts and Polling Places Established

Mr. Leo Rogers, County Attorney, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

As there were no questions for staff, Mr. McGlennon opened the Public Hearing.

1. Mr. Chris Henderson, 101 Keystone, addressed the Board asking if the Public Library on Croaker Road was considered as a possible polling place.

As no one else wished to speak, Mr. McGlennon closed the Public Hearing.

Mr. McGlennon asked Mr. Alan J. (AJ) Cole, General Registrar, to address the question posed by Mr. Henderson.

Mr. Cole stated that the Public Library was not considered this time as a polling place. He stated that it was considered previously, during the last round of redistricting, and was determined to be unsuitable due to the layout of the library.

Mr. Bradshaw stated that Hickory Neck Church has three buildings on the property and asked which of the buildings would be used as the polling place.

Mr. Cole stated that the building in the back, the Narthax, would be the polling place. He stated that there is also a community building that the Church has offered use of to the officers of election.

Mr. Bradshaw stated that the Church is an excellent facility, has good parking, and is a good location.

Ms. Jones made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

2. Ordinance to Amend and Reordain Chapter 13, Motor Vehicles and Traffic, Article I, In General, Section 13-7, Adoption of State Law; and Article II, Driving Automobiles, Etc. While Intoxicated or Under the Influences of Any Drug, Section 13-28, Adoption of State Law, Generally

Ms. Lola Perkins, Assistant County Attorney, introduced Mr. Adam Young as the Legal Intern for the County Attorney's Office.

Mr. Adam Young, Legal Intern, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Mr. McGlennon asked Mr. Young to elaborate on the changes that will take place as a result of the changes made by the General Assembly.

Mr. Young stated that there will be increased punishments for certain Driving Under the Influence (DUI) convictions. He stated that there were changes to evidentiary rules showing in subsequent DUI convictions and showing blood alcohol concentration (BAC) levels in different incidences.

As there were no other questions, Mr. McGlennon opened the Public Hearing.

As no one wished to speak, Mr. McGlennon closed the Public Hearing.

Mr. Bradshaw made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

3. Ordinance to Amend the County Code, Chapter 18, Solicitation for Noncharitable Purposes, by Amending Section 18-3, Permit-Application Generally, Section 18-4, Standards for Granting; Issuance or Denial, Section 18-5, Same – Applicant's Photograph, References and Fingerprints, Section 18-12, Permit Denial; Application for Relief

Mr. Adam Young, Legal Intern, addressed the Board giving a summary of the memorandum in the Agenda Packet.

As there were no questions, Mr. McGlennon opened the Public Hearing.

As no one wished to speak, Mr. McGlennon closed the Public Hearing.

Ms. Jones made a motion to approve the ordinance.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

4. Disposition of Property in the Forest Heights Neighborhood Improvement Project Area and the Neighbors Drive/Richmond Road Neighborhood Improvement Project Area

Ms. Marion Paine, Assistant Administrator, Office of Housing and Community Development, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

As there were no questions for staff, Mr. McGlennon opened the Public Hearing.

1. Mr. Chris Henderson, 101 Keystone, addressed the Board stating that it would have been cheaper for the taxpayers to relocate these homeowners to different housing areas and turning the area into commercial property. He also urged the Board to look into connectivity with the Salvation Army building site to prevent curb-cutting off Richmond Road.

As no one else wished to speak, Mr. McGlennon closed the Public Hearing.

Mr. Icenhour stated that he believed that the connectivity to the Salvation Army site was addressed under the Forest Heights project and will allow access off of Forest Heights Road.

Ms. Paine stated that is correct.

Mr. Icenhour stated that Benefit Way also connects the Forest Heights Community and the Neighbors Drive Community together, which allows for exiting the community to occur where there is a cross-over on Richmond Road.

Ms. Paine stated that is correct.

Mr. Icenhour made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

RESOLUTION

DISPOSITION OF PROPERTY IN THE FOREST HEIGHTS NEIGHBORHOOD IMPROVEMENT

PROJECT AREA AND THE NEIGHBORS DRIVE/RICHMOND ROAD

NEIGHBORHOOD IMPROVEMENT PROJECT AREA

WHEREAS, on December 14, 2010, the Board of Supervisors of James City County, Virginia, authorized the acquisition of real property (the "Acquisition Resolution") necessary to complete the Forest Heights Road and Neighbors Drive Concept Plan ("Concept Plan"); and

WHEREAS, on December 13, 2011, the Board of Supervisors of James City County, Virginia, authorized the disposition of 11 parcels of real property (the "Disposition Resolution") that had been acquired pursuant to the Acquisition Resolution; and

WHEREAS, pursuant to the Acquisition Resolution but after the Disposition Resolution, the County purchased the properties known as James City County Parcel Nos. 3220400002, 3220400004, 3220400005, 3220400007, and 3220400020 (the Additional "County Property"); and

WHEREAS, the Disposition Resolution incorrectly stated one parcel number, which parcel should have been named as Parcel Number 3220100091 (the "Corrected Parcel Number Property"); and

WHEREAS, the Concept Plan and the “Neighbors Drive – Conceptual Resubdivision Plat – Revised 6/13/2013” include development of residential lots to be used for single-family dwellings; and

WHEREAS, the Board of Supervisors has considered and approved the Amended Forest Heights and Neighbors Drive/Richmond Road Neighborhood Improvement Projects Lot Sales and Housing Production Plan (the “Amended Lot Sales Plan”); and

WHEREAS, the Board of Supervisors held a public hearing on June 25, 2013, to receive public comment on the sale of all or portions of the Additional County Property and the Corrected Parcel Number Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to sign on behalf of the County, any sale contract, development agreement, deed, and all other documents consistent with the Amended Lot Sales Plan to enable the County to develop and convey, in whole or in part, ownership of the Additional County Property and the Corrected Parcel Number Property in the Forest Heights Neighborhood Improvement Project Area and the Neighbors Drive/Richmond Road Project Areas.

J. BOARD CONSIDERATION

1. Neighbors Drive/Richmond Road Community Development Block Grant (CDBG) Agreement and Appropriation of Funds

Mr. Vaughn Poller, Director of the Office of Housing and Community Development, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Mr. Bradshaw made a motion to approve the resolution.

Ms. Jones stated that she would remain consistent with previous votes and not be supportive of the resolution this evening. She stated that she appreciates the comments made this evening about the need for improved roads and improved drainage. She stated that she is concerned about the strings that are attached with the Community Development Block Grant (CDBG) and believes the redevelopment should be done by private industry and not through government.

Mr. Icenhour stated that he first walked this community back in 2001 and he was shocked at the conditions. He stated that this project is not just about a road, but also stormwater run-off, and citizens having access to conditions like everyone else in the County. He stated that he has been supportive of this project from the beginning and will continue to support it. He stated that there may be a sense to knock it all down and turn it into commercial property, but this is a community and these citizens want to live there and they deserve the same kind of treatment as the rest of the citizens.

Mr. Bradshaw stated that the property was acquired by Mr. Wallace in the 1950s. He stated that Mr. Wallace subdivided the property in 1956, which was prior to the Subdivision Ordinance and the Zoning Ordinances. He stated it was a community designed by, and for, minorities who had very few housing opportunities at that time. He stated that over time, because it was not a public road, no public funds were ever spent to improve it. He stated that the main roads throughout the County were nothing but dirt paths in the beginning and public funds were used to build those roads. He stated that what is being done in this project is much more than just a road; however, the County has standards now that it did not have back then. He stated

that just because this is a public project does not mean that it should be held to a lesser standard than a private project. He stated that this is a community and you do not just move people out because it would be cheaper to do so. He stated that although it is expensive it is the right thing to do.

Mr. McGlennon stated that he agrees with Mr. Bradshaw's comments. He stated that he would like to highlight the fact that when government does acquire land, it is capable of returning it back to private ownership and helping those citizens who would not otherwise be able to afford homes in the community.

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

RESOLUTION

NEIGHBORS DRIVE/RICHMOND ROAD COMMUNITY DEVELOPMENT BLOCK GRANT

(CDBG) AGREEMENT AND APPROPRIATION OF FUNDS

WHEREAS, on March 13, 2012, the Board of Supervisors of James City County, Virginia, authorized the County Administrator to submit an application to the Virginia Department of Housing and Community Development (DHCD) for a Community Development Block Grant (CDBG) for the Neighbors Drive/Richmond Road Neighborhood Improvement Project; and

WHEREAS, James City County has been notified of the award of \$1,070,000 of CDBG funds and has completed all actions required by DHCD to enter into an agreement to receive the CDBG funding; and

WHEREAS, the Board of Supervisors has previously authorized establishment of the Housing Rehabilitation Revolving Loan Fund for housing rehabilitation loans; and

WHEREAS, the Board of Supervisors had appropriated \$30,000 in CDBG funding in FY 13; and

WHEREAS, sufficient funds are available in the County's Community Development Fund and in the Housing Rehabilitation Revolving Loan Fund to provide local funds, not previously appropriated, which are required to complete the activities under the Neighbors Drive/Richmond Road Neighborhood Improvement Project contract.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to sign the Neighbors Drive/Richmond Road Neighborhood Improvement Project CDBG Agreement and contract with the Virginia DHCD.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the Budget, as adopted for the fiscal year ending June 30, 2014, as follows:

Revenues:

Neighbors Drive/Richmond Road Neighborhood Improvement Project Community Development Block Grant	\$1,040,000
Community Development Fund Balance	<u>732,486</u>
	<u>\$1,772,486</u>

Expenditures:

Neighbors Drive/Richmond Road CDBG	\$1,040,000
Neighbors Drive/Richmond Road Local Share	<u>732,486</u>
	<u>\$1,772,486</u>

Housing Rehabilitation Revolving Loan Fund:

Revenues:

Housing Rehabilitation Revolving Loan Fund Balance	<u>\$43,000</u>
--	-----------------

Expenditures:

Housing Rehabilitation Revolving Loans	<u>\$43,000</u>
--	-----------------

2. Community Development Block Grant (CDBG) Local Business and Employment Plan

Mr. Middaugh stated that Mr. Poller would speak to Item Nos. 2, 3, and 4 at one time and then the Board can vote on them individually.

Mr. Poller stated that in accepting the CDBG funding, the grant asks that these three items be put in to place as well. He stated that these three items are perfunctory and were done previously with the Forest Heights project as well.

Mr. Bradshaw made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

RESOLUTION

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

LOCAL BUSINESS AND EMPLOYMENT PLAN

WHEREAS, James City County has been awarded a Community Development Block Grant of \$1,070,000 for the Neighbors Drive/Richmond Road Neighborhood Improvement Project; and

WHEREAS, Section 3 of the Housing and Urban Development Act of 1968 specifies that low-income project area residents and businesses should be utilized to the greatest extent feasible and further requires that recipients of Community Development Block Grant funds must adopt and act in accordance with a written Local Business and Employment Plan Funds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached Local Business and Employment Plan.

3. Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and Residential Anti-Displacement and Relocation Plan

Mr. Bradshaw made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4).
NAY: (0). ABSENT: Mr. Kennedy (1).

RESOLUTION

NEIGHBORS DRIVE/RICHMOND ROAD HOUSING REHABILITATION PROGRAM

DESIGN AND RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION PLAN

WHEREAS, James City County has been awarded a Community Development Block Grant of \$1,070,000 for the Neighbors Drive/Richmond Road Neighborhood Improvement Project; and

WHEREAS, the Virginia Department of Housing and Community Development requires that a locality that utilizes Community Development Block Grant Funds for housing rehabilitation, replacement housing, and relocation assistance have program policies and procedures adopted by its governing body.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and the Residential Anti-Displacement and Relocation Plan as the policies that shall govern the provision of housing rehabilitation, replacement housing, and relocation assistance for the Neighbors Drive/Richmond Road Neighborhood Improvement Project.

4. Section 504 Grievance Procedure for Disability Nondiscrimination

Mr. Bradshaw made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4).
NAY: (0). ABSENT: Mr. Kennedy (1).

RESOLUTION

SECTION 504 GRIEVANCE PROCEDURE FOR DISABILITY NONDISCRIMINATION

WHEREAS, James City County has been awarded a Community Development Block Grant of \$1,070,000 for the Neighbors Drive/Richmond Road Neighborhood Improvement Project; and

WHEREAS, Section 504 provides for prompt and equitable resolution of complaints alleging any action prohibited by the Department of Housing and Urban Development's (HUD) (24 CFR 8.53(b) implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794) and states, in part, that "no otherwise qualified handicapped individual . . . shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. . . .".

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached Section 504 Grievance Procedure for Disability Nondiscrimination.

5. Greenspace Easement Acquisition - Regjag, LLC and Leigh Ann Gilley, Trustee

Mr. John Horne, Director of General Services, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Mr. McGlennon questioned if the purchase of the Conservation Easement and the protection of the Mill Creek Watershed could be applied to stormwater management requirements under the new Stormwater Management Program.

Mr. Horne stated that staff has been in touch with both State and Federal regulators and the County is carefully accounting for the innovative program the County has for preserving Greenspace.

Mr. McGlennon stated that it is important to recognize that this is an area where the County gets the best value for the dollars spent. He stated that instead of putting in structures to deal with increased run-off from a development, preserving land that is adjacent to the waterways is much more cost effective.

Mr. Horne thanked the family for their perseverance in getting to this point.

Mr. Middaugh stated that on the dais this evening is an amended resolution which includes the price of the purchase. He stated that the resolution in the Agenda Packet did not have the purchase price listed.

Mr. Bradshaw made a motion to approve the amended resolution.

Mr. Bradshaw stated that he was gratified by the robust discussion this evening in regard to this item. He stated that this process is a long process that is driven by the landowner, so when the opportunity arises then the County must take it. He stated that Virginia Constitution, Article 11, states how it is the policy of the State to do things such as this to preserve lands and conservation. He stated that a speaker stated that there is no developmental pressure on this land and he is correct. However, if the County was to wait until there was, the price would be astronomical. He stated that the time to acquire property is when a property owner willingly comes forward.

Mr. Icenhour stated that he agrees with the comments made by Mr. Bradshaw. He thanked the family for their perseverance and stated that this has been a long time coming. He stated that adjacent developed properties are dealing with major flooding issues and this easement will preclude those same problems from happening on this area of land in the future.

Mr. McGlennon stated that this property is inside the Primary Service Area (PSA); however, no other area of the County is clearer that the land cannot support any more future development. He stated that residents on either side of Neck-O-Land Road experience flooding every time there is a major storm and it is creating havoc for the residents of that area. He stated that it would be a disaster if this property was to develop. He thanked the family for their efforts and for sticking with their desire to protect this land.

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

RESOLUTION

GREENSPACE EASEMENT ACQUISITION - REGJAG, LLC AND

LEIGH ANN GILLEY, TRUSTEE

WHEREAS, Regjag, LLC and Leigh Ann Gilley, Trustee, have offered to sell a conservation easement and six parcels to James City County; and

WHEREAS, conservation of these parcels would contribute to the goals of the James City County Comprehensive Plan; and

WHEREAS, conservation of these parcels would contribute to the cultural, historic, and scenic characteristics of the County; and

WHEREAS, the conservation of these parcels will protect the water quality of Mill Creek and reduce the traffic on Neck-O-Land and Jamestown Roads.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the purchase of a conservation easement on 241.6 acres owned by Regjag, LLC, consisting of Parcels 4740100040, 4740100041, 4740100042D, 4740100042E, and 4830100042, and .93 acres owned by Leigh Ann Gilley, Trustee, consisting of Parcel 4740100042F, in the amount of \$1,175,000.

6. **Greenspace Easement and Land Acquisition - Jamestown Building Corporation, Inc, 71 Acres, LLC, C. Lewis and Phyllis Waltrip, and PL, LLC**

Mr. John Horne, Director of General Services, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Mr. Bradshaw asked Mr. Horne to clarify the terms of the easement that specifically deal with the historical nature of the property.

Mr. Horne stated that there have been two changes to the standard easement used by the County. In the beginning of the easement, there is a recitation at the beginning of the document stating that it is the intention of both parties to preserve the historical aspects as well as the normal conservation aspects. There is also a section that deals with the treatment of archaeological areas and possible archaeological sites in the future.

Mr. Icenhour made a motion to approve the amended resolution.

Ms. Jones stated that she will not be supporting the resolution this evening. She stated that the County already owns about 40 percent of the land in the County through some type of easement or Resource Protection Area (RPA). She stated that she appreciated all the people that came out and spoke this evening. She stated that she realizes that the citizens approved the bond referendum in 2005; however, the County is in a different economic climate now than it was in 2005. She stated that Mr. Oyer made a valid point earlier this evening about what is more important, buying property or taking care of the citizens of the County.

Mr. Bradshaw stated that at a future meeting he would like to have a discussion about the statement that the County controls or owns 40 percent of the land in the County. He stated that this property fits well with the surrounding property and he is supportive of the purchase.

Mr. Icenhour thanked the family for their willingness and perseverance. He stated that he believes that the original \$6 million from the referendum that was borrowed was mostly used to purchase Mainland Farm and that has been repaid. He stated that these two purchases tonight are not being purchased with money from the bond; they are being purchased with funds allocated to the Greenspace fund. He stated that was money set aside by the Board for this purpose a while ago.

Mr. McGlennon stated that it is important to highlight that this money being used is not bond money, it is not being borrowed. He stated that this money is coming from the Greenspace and Purchase of Development Rights (PDR) accounts. He stated that the staff memorandum clearly states that fact. He thanked the Waltrip family for their commitment to preserving the historic value of the property.

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

RESOLUTION

GREENSPACE ACQUISITION - JAMESTOWN BUILDING

CORPORATION, INC, 71 ACRES, LLC, C. LEWIS AND PHYLLIS WALTRIP, AND PL, LLC

WHEREAS, Jamestown Building Corporation, Inc, 71 Acres. LLC and C. Lewis and Phyllis Waltrip, and PL, LLC have offered to sell a conservation easement and two parcels to James City County; and

WHEREAS, conservation of these parcels would contribute to the goals of the James City County Comprehensive Plan; and

WHEREAS, conservation of these parcels would contribute to the cultural, historic, and scenic characteristics of the Jamestown area and the County as a whole.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the purchase of a conservation easement on 81.794 acres owned by Jamestown Building Corporation and 71 Acres, LLC, consisting of Parcels 4630100001B, 4630200001A, and 4630200001C, and fee simple purchase of two acres owned by PL, LLC and C. Lewis and Phyllis Waltrip consisting of Parcels 4630100010 and 4630100011 in the amount of \$2,611,200.

K. PUBLIC COMMENTS

1. Ms. Shareen Hughes, 103 Holly Road, addressed the Board stating that there is still a lot of debris along Holly Road from the storm and asked if there was going to be any type of debris pick up. She stated that it is not only tree debris, but also wires.

Ms. Jones asked Mr. Middaugh to contact the Virginia Department of Transportation (VDOT) about the wires.

2. Mr. Ed Oyer, 139 Indian Circle, wished Mr. Kennedy a speedy recovery.

3. Mr. Chris Henderson, 101 Keystone, stated that the road in Forest Heights and Neighbors Drive was a private road and not maintained by the citizens of that community. He stated that public dollars are being used on a private road.

4. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in regard to fiscal responsibility of the Board and the impact on taxpayers by the actions of the Board.

L. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh stated in response to Mr. Henderson's comment about the medians on Monticello Avenue, he has already spoken to Mr. Horne about adding it to the County's cut list. He stated that it is VDOT's responsibility, but it does look bad, so the County is going to start cutting it.

Mr. Middaugh stated that tomorrow is the beginning of a series of events on Rural Lands. He stated that the County is also looking for photo submissions of what "rural" means to citizens.

Mr. Middaugh stated that County offices will be closed July 4 for Independence Day.

M. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon asked Mr. Middaugh to summarize the notice from the Judge in regard to the Bond Authority.

Mr. Middaugh stated that the Judge did sign the order, so the time on the Bond Authority has been extended for two additional years.

Mr. McGlennon announced that the County has just received word that the Federal Emergency Management Administration has awarded the County a grant to purchase a generator for James River Elementary so that the school may be used as an emergency shelter during storm events.

Ms. Jones asked when the expiration date on the Bond Authority would be.

Mr. McGlennon stated it was extended for two years, so November 2015.

Ms. Jones requested that the judicial order be communicated electronically to the Board.

Mr. Leo Rogers stated that he would be happy to do so.

Ms. Perkins thanked the Board for welcoming her onto the dais for the past several months. She stated that Mr. Rogers would be returning to the dais at the next meeting.

Mr. McGlennon thanked Ms. Perkins for her excellent work over the past few months.

Mr. Icenhour thanked staff for the excellent meeting that they held with the residents of WindsorMeade and Oxford Properties. He asked Mr. Middaugh to do an “after-action” report on the road closures due to the Triathlon this past weekend. He stated that he was walking some of his neighborhoods during the Triathlon and heard concerns from many citizens about not being given alternate routes to avoid the road closures.

Mr. Middaugh stated that the Rev-3 Triathlon was selected because it is a family event. He stated that there were 1,400 participants from 49 states and six countries and that 84 percent of the participants were from outside the Hampton Roads area. He stated that staff is going to do an analysis of the event, as this is the County’s first experience with a large scale Triathlon event. He stated that the event itself went very well; however, there were some road bumps in the traffic management aspect. He stated that staff would provide a full report of the analysis back to the Board.

Mr. McGlennon stated that he and Mr. Icenhour attended the School Liaison Meeting a few weeks ago and the information was distributed to the rest of the Board members. He stated that on June 15, he and Mr. Icenhour attended the graduation ceremonies of Lafayette High School. He stated that he also attended the graduation ceremonies for Jamestown and Warhill High Schools. He stated that he attended a ribbon cutting ceremony this past Saturday, for Peerless Restoration Services and Carpet Care in the James River Commerce Park. He stated that the owners are very happy with the location and are interested in expanding their business now that they have moved into the County.

N. ADJOURNMENT – 7 p.m. on July 9, 2013, for the Regular Meeting.

Mr. Icenhour made a motion to adjourn.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

At 10:02 p.m., Mr. McGlennon adjourned the Board.

Robert C. Middaugh
Clerk to the Board

MEMORANDUM COVER

Subject: Case No. AFD-09-86-1-2013. Gordon Creek Agricultural and Forestal District (AFD), Pickett Holdings Addition

Action Requested: Shall the Board approve the resolution that enrolls 349 acres into the Gordon Creek Agricultural and Forestal District (AFD)?

Summary: Mr. Meade Spotts has applied to enroll 349 acres of land located at 2171 Bush Neck Road into the Gordon Creek AFD.

On May 9, 2013, the AFD Advisory Committee recommended approval of the application by a vote of 6-0. On June 5, 2013, the Planning Commission recommended approval of the application by a vote of 6-0.

Staff recommends approval of the addition to the Gordon Creek AFD with the conditions listed in the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☒

N/A

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Resolution
2. Location Map
3. Unapproved AFD Committee Minutes
4. Unapproved Planning Commission Minutes

Agenda Item No.: I-1

Date: July 9, 2013

Agricultural and Forestal District-09-86-1-2013. Gordon Creek AFD, Pickett Holdings Addition.**Staff Report for the July 9, 2013, Board of Supervisors Public Hearing**

This staff report is prepared by the James City County Planning Division to provide information to the AFD Advisory Committee, Planning Commission, and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC MEETINGS**Building F Board Room; County Government Complex**

AFD Advisory Committee
Planning Commission
Board of Supervisors

May 9, 2013, 4:00 p.m.
June 5, 2013, 7:00 p.m.
July 9, 2013, 7:00 p.m.

SUMMARY FACTS

Applicant:	Mr. Meade Spotts
Land Owner:	Pickett Holdings, LLC
Proposal:	Addition of 349 acres of land to the Gordon Creek AFD
Location:	2171 Bush Neck Road
Tax Map/Parcel No.:	3510100001
Parcel Size:	349 acres
Zoning:	A-1, General Agricultural
Comprehensive Plan:	Rural Lands/Conservation Area
Primary Service Area:	Outside

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors approve the application to enroll the 349-acre Pickett Holdings property in the Gordon Creek Agricultural and Forestal District (AFD) subject to the conditions listed in the attached resolution.

On May 9, 2013, the AFD Advisory Committee recommended approval of the application by a vote of 6-0.

Staff Contact: Luke Vinciguerra Phone: 253-6783

PLANNING COMMISSION RECOMMENDATION

On June 5, 2013, the Planning Commission recommended approval of the application by a vote of 6-0.

Proposed Changes Made Since the Planning Commission Meeting

None.

PROJECT DESCRIPTION

Mr. Spotts has applied to enroll 349 acres of land located at 2171 Bush Neck Road into the Gordon Creek AFD. The parcel is heavily wooded and is forested. There are no structures on the property. The property is contiguous to many other parcels in the existing AFD.

The Gordon Creek AFD currently consists of approximately 3,203 acres located in and around the Centerville Road/News Road area. The AFD contains parcels which front on the following roads: News Road, John Tyler Highway, Centerville Road, Bush Neck Road, Jolly Pond Road, and Brick Bat Road.

Surrounding Land Uses and Development

This section of the County is largely undeveloped and heavily wooded. Many of the surrounding properties are in the Gordon Creek AFD or Yarmouth AFD.

COMPREHENSIVE PLAN

The Comprehensive Plan designates these parcels as Rural Lands and Conservation Area. Land Use Action 6.1.1 of the 2009 Comprehensive Plan states that the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

Analysis

The proposed addition meets the minimum area and proximity requirements for inclusion into the AFD. Approval of this application would bring the size of the district to 3,552 acres. This addition would be subject to the following conditions, consistent with other properties in the district:

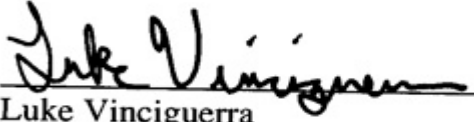
1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner’s immediate family. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area (PSA) and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the AFD may be withdrawn from the District in accordance with the Board of Supervisors’ Policy Governing the Withdrawals of Property from AFDs, adopted September 28, 2010, as amended.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the State Code, Section 15.2-4301 et. seq., which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for wireless communications facilities on AFD properties which are in accordance with the County’s policies and ordinances regulating such facilities.

RECOMMENDATION

Staff recommends that the Board of Supervisors approve the application to enroll the 349-acre Pickett Holdings property in the Gordon Creek AFD subject to the conditions listed in the attached resolution.

On May 9, 2013 the AFD Advisory Committee recommended approval of the application by a vote of 6-0.

On June 5, 2013, the Planning Commission recommended approval of the application by a vote of 6-0.



Luke Vinciguerra

CONCUR:



Allen J. Murphy, Jr.

LV/nb
AFD09-86-1-13GordonC.doc

Attachments:

1. Resolution
2. Location Map
3. Unapproved AFD Committee minutes
4. Unapproved Planning Commission Minutes

ORDINANCE NO. _____

CASE NO. AFD-09-86-1-2013. GORDON CREEK AGRICULTURAL AND

FORESTAL DISTRICT (AFD), PICKETT HOLDINGS ADDITION

WHEREAS, a request has been filed (the "Application") with the Board of Supervisors of James City County, Virginia, (the "Board of Supervisors") to add 349 acres of land owned by Pickett Holdings LLC, located at 2171 Bush Neck Road and identified as James City County Real Estate Tax Map Parcel No. 3510100001 to AFD 9-86, which is generally known as the "Gordon Creek Agricultural and Forestal District" (the "AFD"); and

WHEREAS, at its May 9, 2013, meeting, the AFD Advisory Committee voted 6-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the "Commission") at its June 5, 2013, meeting, pursuant to Section 15.2-4314 of the Code of Virginia, 1950, as amended (the "Virginia Code"), after which the Commission voted 6-0 to recommend approval of the Application; and

WHEREAS, pursuant to Section 15.2-4214 of the Virginia Code a public hearing was advertised and held by the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adds 349 acres owned by Pickett Holdings LLC, as referenced herein to the 3,203 acres of the Gordon Creek AFD with the following conditions:

1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the AFD may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawals of Property from AFDs, adopted September 28, 2010, as amended.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with Section 15.2-4301 et. seq of the Virginia Code, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of July,
2013.

AFD09-86-1-13GordonC_res

UNAPPROVED MINUTES OF THE AGRICULTURAL AND FORESTAL ADVISORY COMMITTEE OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 9th DAY OF MAY, TWO THOUSAND AND THIRTEEN, AT 4:00 P.M. AT THE HUMAN SERVICES BUILDING, 5249 OLDE TOWNE ROAD, WILLIAMSBURG, VIRGINIA.

1. Roll Call:

Members Present

Mr. Hitchens
Ms. Garrett
Mr. Icenhour
Mr. Harcum
Mr. Ford
Mr. Abbott

Also Present

Mr. Luke Vinciguerra (Planning)

Absent

Mr. Bradshaw
Ms. Smith
Mr. Richardson

2. New Business:

Approval of the September 13, 2012 & October 18, 2012 Meeting Minutes

Minutes for both meetings were approved unanimously.

• **Gordon Creek Pickett Holdings Addition**

Mr. Vinciguerra presented the staff report and stated that Mr. Meade Spotts is requesting the addition of +/- 349 acres of land zoned A-1, General Agricultural, into the Gordon Creek Agricultural and Forestal district located at 2171 Bush Neck Road. He noted that the property was designated Rural Lands and Conservation Area by the Comp Plan.

On a motion made by Mr. Abbott, the Committee unanimously recommended the addition of the property into the Gordon Creek AFD to the Planning Commission and Board of Supervisors.

Members discussed the vacancy on the Committee and unanimously endorsed the applications of William C. Taylor and William Rae Harcum to serve on the Committee to the Board of Supervisors.

The meeting was adjourned at 4:06 p.m.

Ms. Martha Smith, Chair

Luke Vinciguerra, Planner

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIFTH DAY OF JUNE, TWO-THOUSAND AND THIRTEEN, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-F MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Planning Commissioners

Present:

George Drummond
Robin Bledsoe
Chris Basic
Mike Maddocks
Rich Krapf
Al Woods

Staff Present:

Paul Holt, Planning Director
Adam R. Kinsman, Deputy County Attorney

A. Case No. AFD-09-86-1-2013, Gordon Creek Pickett Holdings Agricultural and Forestal District Addition

Mr. Luke Vinciguerra, Planner, stated that Mr. Meade Spotts has applied to enroll 349 acres of heavily wooded property located at 2171 Bush Neck Road into the Gordon Creek AFD. The parcel is zoned A-1, General Agricultural and is designated rural lands by the Comprehensive Plan and is undeveloped. The property meets the minimum size and location requirements for inclusion in the AFD. The AFD Advisory Committee unanimously voted to endorse the application. Staff recommends that the Planning Commission recommend approval to the Board of Supervisors.

Mr. Woods inquired if the applicant was present.

Mr. Vinciguerra stated that the applicant was not present.

Mr. Woods opened the public hearing.

There being none, Mr. Woods closed the public hearing.

Mr. Krapf noted that the parcel is contiguous with other parcels in the Gordon Creek AFD and that it is in an area that currently remains pristine.

Mr. Krapf moved to recommend approval of the addition of the property to the Gordon Creek AFD.

In a roll call vote, the Commission recommended approval of the application. (6-0)

MEMORANDUM COVER

Subject: Case No. SUP-0006-2013. Creative Kids Child Development Center

Action Requested: Shall the Board approve a child day-care center for up to 20 children?

Summary: This proposal seeks to increase the number of children in an existing child daycare center which has been operating with complete licensure from the Virginia Department of Social Services (DSS), but without a Special Use Permit (SUP) as required by the Zoning Ordinance. Ms. Tracey Williams currently operates a child daycare center for nine children out of her residence at 701 Mosby Drive located in the James Terrace subdivision. The property is zoned R-2, General Residential, and designated Low Density Residential on the 2009 Comprehensive Plan.

The Zoning Ordinance establishes that child daycare facilities with five children or less are permitted by-right as a home occupation. In 2006, Ms. Williams submitted an application for a child daycare center which was approved by the County as a home occupation. According to Ms. Williams, she was unaware that an SUP was required at the time she applied for a license with the Virginia Department of Social Services (DSS) to increase the capacity of her program from five to nine children. Approval of this application would bring the use into compliance with the Zoning Ordinance and increase the number of children in the daycare center from nine to 20.

During the review of this application, staff became aware of restrictive covenants associated with the James Terrace neighborhood. Prior to becoming aware of the covenants, staff had indicated support for bringing the use into compliance with current zoning regulations and permitting a modest increase in the number of children at the daycare center from nine to 12, but not 20 children as requested. However, based on current County policy, staff could not recommend approval of this application unless the covenants are amended.

On June 5, 2012, the Planning Commission recommended approval of this application by a vote of 6-0.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

12 Attachments

Agenda Item No.: I-2

Date: July 9, 2013

**SPECIAL USE PERMIT-0006-2013. Creative Kids Child Development Center
Staff Report for the July 9, 2013, Board of Supervisors Public Hearing**

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

June 5, 2013, 7:00 p.m.
July 9, 2013, 7:00 p.m.

SUMMARY FACTS

Applicant: Ms. Tracey Williams

Land Owner: Ms. Tracey Williams

Proposal: To operate a child daycare center in a residential neighborhood and to increase the number of children in the existing center from nine to 20.

Location: 701 Mosby Drive

Tax Map/Parcel No.: 4140300103

Parcel Size: 0.39 acres

Existing Zoning: R-2, General Residential

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

STAFF RECOMMENDATION

This proposal seeks to increase the number of children in an existing child daycare center which has been operating with complete licensure from the Virginia Department of Social Services (DSS) but without a Special Use Permit (SUP) as required by the Zoning Ordinance.

On May 13, 2013, staff became aware of restrictive covenants associated with Ms. William's neighborhood, James Terrace, and subsequently informed the applicant. Prior to becoming aware of the covenants, Planning staff had indicated to the applicant support for bringing the use into compliance with current zoning regulations and permitting a modest increase in the number of children at the daycare center from nine to 12, but not 20 children as requested.

Restrictive covenants for James Terrace state that "no lot in the tract shall be used except for residential purposes." In a memorandum explaining the role of private covenants in zoning decisions, (Attachment No. 5) the County Attorney has indicated that the Board should not, as a matter of public policy, take action which conflicts with restrictive covenants and that staff should recommend denial of such applications. Therefore, based on current County policy, staff could not recommend approval of this application unless the covenants are amended.

However, should the Board of Supervisors wish to approve the application and allow for up to twelve children (as recommended by staff) while the applicant pursues an amendment to the restrictive covenants, staff has proposed conditions outlined in the first attached resolution which would help mitigate the impacts created by the existing use and bring the existing child daycare center into compliance with the Zoning Ordinance.

Staff Contact:

Jose Ribeiro, Planner III

Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

On June 5, 2013, the Planning Commission recommended approval of this application by a vote of 6-0. The Planning Commission recommendation is found on the attached resolution number 1.

Proposed Changes Made Since Planning Commission Meeting

Staff is proposing a twelve month time limitation on the SUP (Condition No. 4). This will provide the applicant an opportunity to continue to operate the daycare for another year while pursuing an amendment to the restrictive covenants to eliminate the conflict which currently exists. According to the County Attorney, an amendment to the Declaration of Covenants must be approved by the majority of the property owners (above 50 percent) of James Terrace and recorded in the real estate records. The owner/operator should continue to be aware that should this SUP be approved, and until the Declaration of Covenants are amended, that they are still open to a civil challenge under the existing covenant language by their neighbors. To mitigate potential traffic impacts, with the extended hours of operation discussed below, staff is also proposing an amendment of a condition offered by the applicant that transportation outside normal operating hours will be provided by the daycare owner/operator.

Per the recommendation of the Planning Commission, two SUP conditions have been revised and are as follows:

- Condition No. 1 was amended to increase the maximum number of children in the day care from up to nine (current enrollment) to up to 20 (as requested by the applicant). As amended this condition now reads:

“No more than 20 children shall be cared for at the child daycare center at any one time.”

- Condition No. 2 was amended to increase the hours of operation from 6:00 a.m. to 8:00 p.m., Monday through Friday (as recommended by staff) to the hours proposed by the applicant. As amended this condition now reads:

“Hours of operation shall be limited from 5:30 a.m. to midnight, Monday through Friday, and 7:00 a.m. to midnight, Saturday through Sunday.”

These revisions are reflected in an alternate resolution (Attachment No. 2) should the Board of Supervisors concur with the Planning Commission recommendations.

PROJECT DESCRIPTION

Ms. Tracey Williams has applied for an SUP to allow for the operation of a child daycare center in an existing single-family detached house located at 701 Mosby Drive. This property is zoned R-2, General Residential, which requires an SUP for the operation of a child daycare center.

A daycare service is currently operating from her residence with a maximum of nine children. Child daycare facilities of five children or less are permitted by-right as a home occupation. In 2006, Ms. Williams submitted an application for a child daycare center which was approved by the County as a home occupation. According to Ms. Williams, she was unaware that an SUP was required at the time she applied for a license with Virginia

DSS to increase the capacity of her program from five to nine children. A child daycare center is defined by the ordinance as “an establishment offering group care to six or more children away from their home for any part of the day.”

In addition to bringing the use into compliance with the Zoning Ordinance, Ms. Williams is proposing to increase the capacity of her program to 20 children. Ms. Williams also proposes to move out of her residence and turn the entire dwelling into a daycare center. Ms. Williams has submitted to DSS a functional design plan (a footprint of her house) which is used to determine the adequacy of square footage required per each child. According to DSS, the calculation is based on one child per 35 net square feet of area on a per floor basis. On May 3, 2013, DSS submitted a letter (Attachment No. 6) to Ms. Williams indicating that the reported square footage will provide for a projected capacity of 24 children. However, final determination for licensure is based upon an on-site investigation by the assigned licensing inspector and a review of the filed application. Actual inspection of this area may alter the projected capacity for the center.

Ms. Williams proposes to operate her child daycare center from 5:30 a.m. to midnight, Monday through Friday, and from 7:00 a.m. to midnight, Saturday through Sunday. Currently, Ms. Williams is licensed by DSS to operate 24 hours a day, 7 days a week. On March 27, 2013, the DRC considered Ms. Williams request to increase the occupancy at her child daycare center. The DRC members provided input to both the applicant and staff and recommended that Mrs. Williams inform her neighbors of her proposal. Copies of letters from neighbors stating their support to Ms. William’s proposal and letters of recommendation from clients are included for your reference (Attachment Nos. 9 and 10 respectively).

The Planning Commission previously approved a policy for child daycare centers located in the interior of residential neighborhoods. The policy recommends that three conditions be placed on any such application: 1) a three-year limit in order to monitor the impacts of the daycare center; 2) no signage shall be permitted; and 3) no additional exterior lighting shall be permitted. Staff has included these conditions as part of this application and a copy of the policy has also been provided for your reference (Attachment No. 7).

PUBLIC IMPACTS

Engineering and Resource Protection (ERP)

Staff Comments: Staff has reviewed this application and has recommended approval. Staff notes that should additional improvements resulting in any increase in impervious area occur the applicant shall have to comply with stormwater regulations.

James City Service Authority (JCSA)

Staff Comments: The site is located within the Primary Service Area (PSA) and it is served by public water and sewer. JCSA has reviewed this application and has recommended approval. A Water Conservation Agreement (SUP Condition No. 7) for the proposed use will be reviewed and approved by JCSA.

Virginia Department of Transportation (VDOT)

VDOT Comments: VDOT had no concerns with the proposed SUP. No traffic improvements were recommended or proposed by VDOT.

Staff Comments: Staff acknowledges that, due to the varying parental schedules, children will be picked up and dropped off at varying times, thus helping to ease potential traffic congestion at peak hours. However, staff has concerns that an increase in the number of children from nine to 20 will increase the volume of traffic above what could be expected in a residential neighborhood on a cul-de-sac street. Also, staff has concerns that parking may not be adequate. While the ordinance does not specify a minimum parking calculation for daycares, staff has typically used a formula of one space per employee, plus one space per four children. Accordingly, a minimum of five parking spaces will be required plus additional spaces for employees. Ms. Williams has indicated that her driveway is wide enough to accommodate multiple vehicles at one time.

Virginia Department of Health (VDH)

Staff Comments: The VDH is the agency responsible for monitoring food preparation and cleanliness standards at the day-care facility. The VDH has recommended that the applicant contact the Peninsula Health Department to discuss a plan for food service.

Virginia Department of Social Services (DSS)

Staff Comments: The DSS is the agency responsible for monitoring and licensing the daycare facility. The DSS granted a license for the child daycare serving nine children ranging from 11-months through 12-years, which is due to expire August 20, 2013. As part of the licensure renew process, Ms. Williams has indicated her desire to serve children 16-months through five-years of age.

Building Safety and Permits (BSP)

Staff Comments: Staff notes that should the child daycare center maintain its current occupancy or increase to 12 children, no structural alterations to the house or installation of fire/safety mechanisms, such as a sprinkler system, will be required. However, once the occupancy number rises above 12 children, monitored fire alarms along with the installation of exit doors in every room where children are cared for would be required in accordance with Virginia Uniform Statewide Building Code (USBC).

COMPREHENSIVE PLAN

The 2009 Comprehensive Plan Land Use Map designates this parcel as Low Density Residential. Recommended uses are primarily residential but schools, churches, and very limited commercial uses are also allowed upon meeting the following standards (2009 Comprehensive plan, article 4-d, page 141) with staff analysis in *italics*:

- a. Complements the residential character of the area;
Staff finds that a daycare center for 20 children is more appropriately located in a commercial or mixed-use zoned area. Of particular concern for staff are the proposed hours of operation from 5:30 a.m. to midnight, Monday-Friday, and from 7:00 a.m. to midnight, Saturday-Sunday. Staff is concerned that these hours of operation have the potential to bring activity, particularly in the evening hours, which may disturb the quieter character associated with a residential neighborhood. Staff is also concerned with the possibility of Ms. Williams moving out and turning her residence into a complete commercial use, therefore affecting the residential character of the neighborhood.
- b. Have traffic, noise, lighting, and other impacts similar to surrounding residential uses;
Staff finds that a daycare center for 20 children has the potential to create additional vehicular traffic and noise in the neighborhood. Staff is particularly concerned that these impacts would occur during evening hours. While staff does not expect the increase in vehicular traffic to be substantial, it will likely create more traffic, and potentially more noise, than what would be generally expected in a residential neighborhood.
- c. Generally be located on collector or arterial roads at intersections;
The property is not located on a major road. However, it is situated near the intersection of Mosby Drive and Penniman Road. The fact that the property is not located deep into the neighborhood, but near a major road, may alleviate some of its traffic impacts to the rest of the neighborhood.
- d. Provide adequate screening and buffering to protect the character of nearby residential areas; and
Adjacent property to the east appears to have some vegetation that creates a natural buffer. Staff is not aware of any fences or other screening materials located at the child daycare center.
- e. Generally intended to support the residential community in which they are located.
According to Mrs. Williams, the child daycare center supports the needs of parents not only in her neighborhood, but also in other areas in the County and nearby localities.

STAFF RECOMMENDATION

Staff finds that the increase from nine to 20 children and the hours of operation, as proposed, to be inconsistent with the residential character of the neighborhood. Staff does not support the applicant moving out of the home in order to accommodate more than 12 children and turning the residence into a purely commercial use. Absent the restrictive covenants, staff would be supportive of a modest increase from nine to 12 children and hours of operation that are more typical of other daycare centers. However, given the existing conflict between the proposed land use and the restrictive covenants, staff does not support this application.

This proposal seeks to increase the number of children in an existing child daycare center which has been operating with complete licensure from the Virginia Department of Social Services (DSS) but without a Special Use Permit (SUP) as required by the Zoning Ordinance.

On May 13, 2013, staff became aware of restrictive covenants associated with Ms. William's neighborhood, James Terrace, and subsequently informed the applicant. Prior to becoming aware of the covenants, Planning staff had indicated to the applicant support for bringing the use into compliance with current zoning regulations and permitting a modest increase in the number of children at the daycare center from nine to 12, but not 20 children as requested.

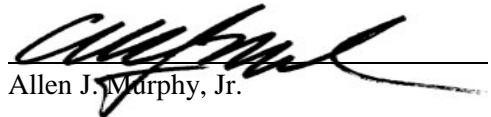
Restrictive covenants for James Terrace state that "no lot in the tract shall be used except for residential purposes." In a memorandum explaining the role of private covenants in zoning decisions, (Attachment No. 5) the County Attorney has indicated that the Board should not, as a matter of public policy, take action which conflicts with restrictive covenants and that staff should recommend denial of such applications. Therefore, based on current County policy, staff could not recommend approval of this application unless the covenants are amended.

However, should the Board of Supervisors wish to approve the application and allow for up to twelve children (as recommended by staff) while the applicant pursues an amendment to the restrictive covenants, staff has proposed conditions outlined in the first attached resolution which would help mitigate the impacts created by the existing use and bring the existing child daycare center into compliance with the Zoning Ordinance. This is shown as resolution number 2.

Handwritten signature of Jose Ribeiro in black ink, consisting of two large loops and the letters 'JR'.

Jose Ribeiro

CONCUR:

Handwritten signature of Allen J. Murphy, Jr. in black ink, written in a cursive style.

Allen J. Murphy, Jr.

JR/nb

SUP06-13CreativeKid

ATTACHMENTS:

1. Resolution
2. Alternate Resolution
3. Location Map
4. Unapproved Minutes from June 5, 2013, Planning Commission Meeting
5. Memorandum from the County Attorney, dated May 28, 2009
6. Letter from the Department of Social Services, dated May 3, 2013
7. Planning Commission Policy Child Day-Care Centers Located in the interior of Residential Neighborhoods
8. Map showing location of letters of support for the proposed use
9. Support letters from neighbors for the proposed use (8 letters)
10. Letters of recommendation from clients (7 letters)
11. Restrictive Covenants for James Terrace Subdivision

RESOLUTION (2)

CASE NO. SUP-0006-2013. CREATIVE KIDS CHILD DEVELOPMENT CENTER

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (the "SUP") process; and

WHEREAS, Ms. Tracey Williams has applied for an SUP to operate a child daycare center for a maximum of 20 children on a parcel totaling 0.39 acres and zoned R-2, General Residential; and

WHEREAS, the subject parcel is located at 701 Mosby Drive and can be further identified as James City County Real Estate Tax Map Parcel No. 41403300103; and

WHEREAS, if approved, this SUP application will bring the use into conformance with the current Zoning Ordinance regulations; and

WHEREAS, the Planning Commission, following its public hearing on June 5, 2013, voted 6-0 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0006-2013 as described herein with the following conditions:

1. Occupancy: No more than twelve children shall be cared for at the child daycare center at any one time.
2. Hours of Operation: Hours of operation shall be limited from 5:30 a.m. to midnight, Monday through Friday, and from 7:00 a.m. to midnight, Saturday through Sunday. Except for transportation provided directly by the owner/operator of the daycare all pick-ups and drop-off's to the daycare shall be limited to between 6:00 a.m. to 8:00 p.m.
3. Residency: The owner/operator of the child daycare center shall reside on the property for the duration of the validity of the SUP.
4. Validity of Special Use Permit: This SUP shall be valid for a period of 12 months from the date of approval during which the child daycare center owner shall maintain (and renew or obtain as necessary) all needed County and State permits to operate the child daycare center.
5. Signage: No signage shall be permitted which relates to the use of the property as a child daycare center.

6. Lighting: No additional exterior lighting shall be permitted on the property, other than lighting typically used at a single-family residence.
7. Water Conservation Agreement: The Applicant shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources. The JCSA shall receive and approve the standards within 90 days after approval of this SUP.
8. Food Preparation: No commercial food preparation or laundry services shall be provided as part of the operation of the child daycare center. For purposes of this condition, "commercial food preparation or laundry services" shall be defined as meaning any food preparation or laundry services provided at the center that are not directly related to and intended to serve the needs of, the children being cared for and/or the daycare center staff.
9. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentences, or paragraph shall invalidate the reminder.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of July, 2013.

SUP06-13CreativeKids_res

RESOLUTION (1)

CASE NO. SUP-0006-2013. CREATIVE KIDS CHILD DEVELOPMENT CENTER

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (the "SUP") process; and

WHEREAS, Ms. Tracey Williams has applied for an SUP to operate a child daycare center for a maximum of 20 children on a parcel totaling 0.39 acres and zoned R-2, General Residential; and

WHEREAS, the subject parcel is located at 701 Mosby Drive and can be further identified as James City County Real Estate Tax Map Parcel No. 41403300103; and

WHEREAS, if approved, this SUP application will bring the use into conformance with the current Zoning Ordinance regulations; and

WHEREAS, the Planning Commission, following its public hearing on June 5, 2013, voted 6-0 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0006-2013 as described herein with the following conditions:

1. Occupancy: No more than 20 children shall be cared for at the child daycare center at any one time.
2. Hours of Operation: Hours of operation shall be limited from 5:30 a.m. to midnight, Monday through Friday, and from 7:00 a.m. to midnight, Saturday through Sunday.
3. Residency: The owner/operator of the child daycare center shall reside on the property for the duration of the validity of the SUP.
4. Validity of Special Use Permit: This SUP shall be valid for a period of 36 months from the date of approval during which the child daycare center owner shall maintain (and renew or obtain as necessary) all needed County and State permits to operate the child daycare center.
5. Signage: No signage shall be permitted which relates to the use of the property as a child daycare center.
6. Lighting: No additional exterior lighting shall be permitted on the property, other than lighting typically used at a single-family residence.

7. Water Conservation Agreement: The Applicant shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources. The JCSA shall receive and approve the standards within 90 days after approval of this SUP.
8. Food Preparation: No commercial food preparation or laundry services shall be provided as part of the operation of the child daycare center. For purposes of this condition, "commercial food preparation or laundry services" shall be defined as meaning any food preparation or laundry services provided at the center that are not directly related to, and intended to serve the needs of, the children being cared for and/or the daycare center staff.
9. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentences, or paragraph shall invalidate the reminder.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of July, 2013.

SUP06-13CreativeKid_alt_res

JCC-SUP-0006-2013

Creative Kids Child Day Care Center



UNAPPROVED MINUTES FROM JUNE 5, 2013, PLANNING COMMISSION MEETINGCase No. SUP-0006-2013, Creative Kids Child Development Center

Mr. José Ribeiro, Senior Planner stated that Ms. Tracey Williams has applied for a SUP to operate a child day care center in residential neighborhood and to increase the number of children from 9 to 20. The property is located at 701 Mosby Drive, zoned R-2, General Residential and designated as low density residential by the Comprehensive Plan. A Special Use Permit is required for the operation of child day care centers in the R-2 district.

Mr. Ribeiro stated that in 2006, Ms. Williams submitted an application for a home occupation to operate a child day care center for up to five children. Subsequently Ms. Williams applied for a license with the Virginia Department of Social Services to increase the capacity of her program to 9 children 24 hours a day; seven days a week and was unaware that the increase in capacity would require an SUP.

Mr. Ribeiro noted that if the SUP is approved, it will bring her child day care center into conformance with the Zoning Ordinance in addition to increasing the capacity of her program to 20 children.

Mr. Ribeiro noted on March 27, 2013, the DRC considered Ms. Williams request to increase the occupancy at her child day care center and offered comments and recommendations.

Mr. Ribeiro stated that in discussion with the applicant, staff supported bringing the use into conformance with the Zoning Ordinance and a modest increase in the number of children up to 12. Staff's main concerns are the impacts of traffic and noise associated with the larger increase on the residential neighborhood. Mr. Ribeiro further noted that Ms. Williams also proposes to move out of her residence in order to have sufficient space to accommodate 20 children. Mr. Ribeiro stated that staff does not support turning the residence into a commercial facility as this would be in conflict with the character of the neighborhood.

Mr. Ribeiro stated that on May 13, 2013 staff became aware of restrictive covenants associated with the neighborhood. The covenants state that no lot in the tract shall be used except for residential purposes. Mr. Ribeiro stated that staff informed the applicant that, based on the language in the covenants, staff would no longer be able to support an increase in the number of children from 9 to twelve.

Mr. Ribeiro noted that in 2009, in a similar case, the County Attorney's office issued a memorandum explaining the role of private covenants in zoning decisions and indicated that the Board of Supervisors should not, as a matter of public policy, take action which conflicts with restrictive covenants and that staff should recommend denial of such applications.

Mr. Ribeiro stated that there is no question that the applicant's child day care is a valuable resource for the community as evidenced by the number of letters received in support of her application; however, from a land use standpoint, staff does not find that a child day care center is a use appropriate to the interior of a residential neighborhood, particularly if the applicant moves out of the residence.

Mr. Ribeiro further stated that given the existence of covenants restricting the use of the lots, staff does not support this application. Mr. Ribeiro noted that should the Commission wish to approve the application and allow for up to 20 children, staff has proposed conditions to mitigate impacts associated with the proposed use.

Mr. Woods opened the floor to discussion.

Mr. Krapf inquired whether, if the number of children was 5 or less, the day care center could continue to operate as a home occupation.

Mr. Ribeiro confirmed that under those conditions it would be considered a home occupation.

Mr. Krapf noted that the restrictive covenants seemed to limit the number of children to 5 and inquired if the applicant had any recourse to have the covenants waived or changed.

Mr. Ribeiro responded that all property owners who are bound by the covenants must be in agreement with any changes and an amendment must be recorded among the land records with the Clerk of Circuit Court.

Mr. Krapf inquired what percentage of the neighborhood the letters of support represent and approximately how many property owners in James Terrace would have to acquiesce to any waivers.

Mr. Ribeiro responded that there are 16 lots on Mosby Drive. Residents on seven of those lots submitted letters of support. Letters were also received from property owners not on

the cul-de-sac. Mr. Ribeiro noted that he would research the number of lots that comprise the entire subdivision.

Mr. Adam Kinsman clarified that the private covenants state that no lot shall be used except for residential purposes and that the County's policy is to not recommend approval of any use that is in direct conflict with the private covenant. Mr. Kinsman noted that in terms of the Zoning Ordinance, day care for 5 or fewer children is permissible as a home occupation and interpreted as a residential use. Mr. Kinsman further noted that property owners may feel differently regarding the interpretation of what constitutes a commercial or residential use.

Mr. Kinsman further clarified that an amendment to private covenants is more than just a survey of the property owners and would require drafting legal documents and filing them with the Court.

Mr. Basic inquired how many property owners would need to approve the amendment to the covenants.

Mr. Kinsman stated that an amendment would require approval by 100% of the property owners. Mr. Kinsman further noted that ascertaining the number of lots which are bound by the private covenants would require extensive research among the land records.

Ms. Bledsoe inquired if the residents enforce the covenants or if there was a homeowners association.

Mr. Kinsman stated that he was not aware of a homeowners association for the neighborhood and that any individual resident who benefits from the covenants would be able to file suit to enforce the covenants. Mr. Kinsman further noted that the County is not a party to the covenants and has no standing to enforce them. Mr. Kinsman noted again that the County's policy is to not recommend approval of any use that is in obvious and direct conflict with a private covenant.

Ms. Bledsoe inquired if anyone has complained about the existing day care.

Mr. Ribeiro stated that he was not aware of any complaints.

Mr. George Drummond inquired what number of children staff feels would be appropriate if the Commission recommended approval.

Mr. Ribeiro stated that the applicant is currently licensed by the Virginia Department of Social Services for 9 children. In the initial discussions with the applicant staff supported bringing the use into conformity with the Zoning Ordinance and a modest increase to 12; children; however, given the existence of the covenants, staff is no longer able to support the application.

Mr. Drummond inquired if the current number of children is in conflict with the Zoning Ordinance.

Mr. Ribeiro stated that prior to discovering the existence of the private covenants, staff had been supportive of a modest increase in the number of children from 9 to 12; however, there were concerns about increasing the number to 20.

Mr. Drummond inquired about when the covenants were established.

Mr. Ribeiro stated that the covenants were executed in 1956.

Mr. Basic inquired about the purpose of the County Attorney's position on private covenants.

Mr. Kinsman responded that it is a matter of public policy. Mr. Kinsman noted again that the County did not create the covenants and is not party to them and cannot enforce them; however, the County does not want to approve a use that would put the applicant in jeopardy of being in conflict with the other property owners to whom the covenants apply. Mr. Kinsman further noted that in terms of the Zoning Ordinance, 5 or fewer children is a home use and the County supports that.

Mr. Maddocks inquired what the DRC requested the applicant to do regarding proof of support from surrounding property owners.

Mr. Ribeiro stated that the applicant was to obtain letters of support from her neighbors and clients.

Mr. Maddocks inquired whether the DRC had recommended the applicant be limited to 9 children.

Mr. Ribeiro responded that the DRC had not made a recommendation on the number of children and that the focus of the request from the DRC was regarding showing support from adjacent property owners.

Ms. Bledsoe inquired what the ramifications to the County would be if the Commission voted in favor of the application.

Mr. Kinsman responded that there would be no ramifications to the County. Mr. Kinsman noted that it would put the applicant in jeopardy of enforcement action by the other property owners to whom the covenants apply.

Ms. Bledsoe inquired if the applicant proceeded with the applications, knowing the risks, whether it would be the applicant who would be responsible for dealing with enforcement actions.

Mr. Kinsman confirmed that the applicant would be the sole party responsible for dealing with any enforcement action by other property owners.

Mr. Woods noted that much of the focus has been on the number of children and requested that staff highlight some of the additional concerns related to the application.

Mr. Ribeiro stated that the actual request is for 20 children. Mr. Ribeiro further stated that the applicant would like to move out of the residence in order to accommodate that number. The applicant has also proposed atypical hours of operation from 6:00 a.m. to 12:00 a.m. Monday-Friday and from 7:00 a.m. to 12:00 a.m. from Saturday-Sunday. Mr. Ribeiro noted that staff considered the request from a land use perspective and the impacts of the proposal and arrived at conditions that would mitigate those impacts. Staff was comfortable supporting the application prior to discovering the existence of the restrictive covenants.

Mr. Maddocks inquired if a conflict over the covenants would be between the applicant and another property owner.

Mr. Ribeiro confirmed that the covenants are a private contract between the property owners which the County is not party to and does not enforce or interpret.

Mr. Maddocks inquired why the County would be concerned about a potential conflict between the applicant and another property owner.

Mr. Kinsman confirmed that it was a matter of public policy which was developed in 2009 and issued as a memorandum during consideration of a similar case.

Mr. Maddocks requested confirmation that there is no risk to the County as it relates to the covenants.

Mr. Kinsman confirmed.

Mr. Drummond noted that there was a similar situation in his neighborhood related to Dee's Day Care which was ultimately approved.

Mr. Ribeiro stated that there were several similarities between the two cases. Mr. Ribeiro stated that in the Dee's Day Care case, staff supported the application and the existence of restrictive covenants was discovered only after the Commission had recommended approval. Based on the guidance of the County Attorneys, staff had to change its recommendation. Mr. Ribeiro stated that the Board of Supervisors did ultimately approve the request.

Mr. Drummond inquired about the number of children approved for the Dee's Day Care case.

Mr. Ribeiro stated that the Dee's Day Care proposal was for 12 children.

Mr. Drummond inquired about the considerations related to allowing 12 or 20 children.

Mr. Ribeiro stated that it was a matter of the impacts on the neighborhood. The impacts of noise and traffic increase as the number of children increases.

Mr. Drummond noted that it appeared that the majority of adjacent property owners supported the application.

Mr. Ribeiro confirmed.

Mr. Holt noted that there were also life, safety and building code impacts related to the requirements for increasing the number of children above 12 including monitored fire alarms, installation of exit doors and other factors which alter the structure of the dwelling and introduce a more commercial element.

Mr. Basic noted that the applicant's license from the Virginia Department of Social Services allows operation of the business 24 hours a day to accommodate those clients who work night shift. Mr. Basic inquired why the proposed hours are now significantly less.

Mr. Ribeiro stated that Planning and Building Safety and Permits staff met with the applicant to discuss how building code regulations would affect the proposal. It was

determined that a certificate of occupancy to operate 24 hours a day with 20 children could not be obtained for a wood frame structure, therefore, the applicant was required to reduce the hours of operation.

Mr. Woods inquired if the reduction in hours of operation are reflected in the SUP conditions.

Mr. Ribeiro stated that the reduced hours of operation which were agreed to by the applicant are noted in the staff report. The hours noted in the SUP conditions reflect what staff believes would have less impact on the neighborhood.

Mr. Basic inquired how a lower number of children might affect the ability to operate 24 hours a day.

Mr. Ribeiro stated that it was not the number of children that triggered the building code requirements but the hours of operation.

Mr. Drummond inquired about the intent of the document provided by the Virginia Department of Social Services.

Mr. Ribeiro stated that it was not so much a letter of support but a preliminary determination that there was sufficient floor space for the proposed number of children based on a floor plan submitted by the applicant; however, physical inspection of the structure is still required for final determination.

Mr. Drummond inquired if the floor plan reflected the current conditions.

Mr. Ribeiro stated that the floor plan was based on proposed changes to the interior.

Mr. Woods invited the applicant to speak.

Ms. Williams thanked the Commission for the opportunity to speak.

Ms. Williams stated that she wanted to clarify several items.

Ms. Williams stated that the SUP application is for up to 20 children and that the Virginia Department of Social Services approval is for 24 children.

Ms. Williams shared with the Commission the proposed functional design of the residence which had been submitted to the Virginia Department of Social Services.

Ms. Williams further stated that she has approval from Building Safety and Permits for a certificate of occupancy for up to 20 children but this will require approval from the Planning Division. Ms. Williams noted that the options for a Certificate of Occupancy fell under both the I-4 group and the E group. The I-4 group pertains to a facility other than a family day home that provides supervision and personal care on a less than 24 hour basis for more than 5 children 21/2 years of age or less; excepting a child day care facility that provides care for more than 5 but no more than 100 children 21/2 years of age or less where the rooms in which the children are cared for have an exit which discharges directly to the exterior which is classified as an E group. Group E occupancies under 20,000 do not require sprinkler systems but still require a monitored fire alarm. Ms. Williams stated that she had agreed to apply for a certificate of occupancy as an E group which would allow more than 5 but fewer than 100 children in a structure with a combustible wood frame structure.

Ms. Williams further noted that in regard to the concerns about operating 24 hour a day; seven days a week, she has been conducting business on that schedule for over 12 years. Since there were concerns about the hours of operations, she proposed to scale back the hours of operation encompass 5:30 or 6 a.m. to 12 a.m. Monday through Friday and 7 a.m. to 12 a.m. Saturday and Sunday which was acceptable to Building Safety and Permits staff. Ms. Williams noted that the time frames proposed are to accommodate clients who work varying shifts.

Ms. Williams noted that her clients encompass a diverse group of individuals who require the services that she provides to enable them to have child care while they work. Ms. Williams shared a letter of thanks from the County's Division of Social Services for her work with their clients.

Ms. Williams stated that she is aware of the private covenants and that she has obtained letters of support from both adjacent property owners and clients.

Ms. Williams further stated that she has documented approval from the James City Service Authority for the increase in use.

Ms. Williams stated that Engineering and Resource Protection has reviewed the application and recommends approval. Ms. Williams further noted that the Virginia Department of Transportation has no traffic concerns related to the proposal and no traffic improvements were recommended. Ms. Williams stated that the Virginia Department of Health only requested that Ms. Williams apply for the necessary food handling permits.

Ms. Williams stated that the Virginia Department of Social Services had granted her a license for the child day care serving 9 children ranging from 11-months through 12-years old which is due to expire August 20, 2013 and that as part of the license renewal process, she has applied to serve children 16-months through five-years of age.

Ms. Williams offered further documentation in support of her application regarding the need for the requested hours of operation and the location of commercial uses directly adjacent to residential zoning in the vicinity of her home.

Ms. Williams noted that her driveway provided adequate parking for both employees and clients picking up or dropping off. Ms. Williams further stated that to mitigate the traffic impacts she would be providing transportation.

Ms. Williams further stated that she is aware of child day care operations which do not have the appropriate licenses and permits. She is making an effort to ensure that she is in compliance with all regulations.

Mr. Woods opened the floor to questions.

Mr. Krapf inquired how many of the current clients came from the neighborhood.

Ms. Williams responded that there were no neighborhood children in her day care.

Mr. Krapf requested Ms. Williams confirm the hours of operation that she would be willing to conform to.

Ms. Williams responded that the hours would be 5:30 a.m. to 12 a.m. Monday through Friday and 7 a.m. to 12 a.m. Saturday and Sunday.

Mr. Basic noted that there are 22 children enrolled in the program and asked Ms. Williams to confirm whether all 22 children were in the building at the same time.

Ms. Williams responded that not all the children were there at the same time.

Ms. Bledsoe inquired if Ms. Williams' plan was to move out of the house.

Ms. Williams confirmed that she intended to move out of the house in order to provide better accommodations for her own family.

Ms. Bledsoe inquired how many additional children might be enrolled.

Ms. Williams stated that the Virginia Department of Social Services had approved the functional design of the structure for 24 children; however, she is only intending to have 20.

Ms. Bledsoe inquired if that would be 20 children at any given time.

Ms. Williams confirmed that it would be 20 children at any given time. Ms. Williams further noted that the state provides a way of monitoring and regulating pick-ups and drop-offs so that the approved maximum number of children in the dwelling is not exceeded.

Ms. Bledsoe asked Ms. Williams if it would be necessary for to move out of the residence if she had 20 children in the structure.

Ms. Williams confirmed that she would either need to move out or add on to the structure.

Mr. Maddocks inquired how long Ms. Williams has been operating the day care in the current location.

Ms. Williams stated that she has been operating in the current location for seven years and has been in business for over 12 years with no complaints.

Mr. Woods asked for clarification on whether the child day care center could continue to operate in the wood frame structure with the increased number of children and which agency is responsible for those regulations.

Mr. Ribeiro stated that this regulation falls under Building Safety and Permits.

Mr. Woods inquired whether the child day care center could continue to operate in the current structure if the number of children were increased to 20.

Mr. Ribeiro clarified that it was the 24 hour a day use that would trigger the prohibition on the wood frame structure.

Mr. Woods asked Ms. Williams if she was in agreement with the SUP conditions set forth in the staff report.

Ms. Williams stated that she did not agree with the conditions.

Mr. Woods asked Ms. Williams if she would be willing to work with staff to bridge the gap between her needs, the concerns of the Commission and the SUP conditions proposed by staff.

Ms. Williams stated that she would be willing work further with staff to develop a compromise.

Mr. Holt stated that staff would be happy to continue the conversation with the applicant.

Mr. Woods commended the applicant for her efforts to do things the right way. Mr. Woods further noted that the Commission is approaching the application from a land use perspective and trying to mesh the requirements of the Zoning Ordinance with her proposal to arrive at the best resolution for everyone.

Mr. Woods asked Mr. Holt how the Commission should now proceed.

Mr. Holt stated that it was necessary to hold the Public Hearing.

Mr. Holt noted that many of the Uniform State Wide Building Code requirements kick in at 12 children such as additional means of egress and other structural changes. For staff the structural changes are a clear line between what transforms a traditional single family detached dwelling into a more commercial use. Mr. Holt further noted that it was important for the Commission to keep in mind that the conditions proposed by staff would remain based on some of the Building Code requirements and may not change significantly.

Mr. Basic also noted that regardless of the technical issues, there is still the issue of the private covenants.

Mr. Kinsman noted that although he is not able to interpret the covenants, there is a provision in the covenants which only requires a majority of the property owners to approve changes as opposed to requiring all property owners to approve.

Mr. Maddocks noted that the issue of the covenants was between the applicant and her neighbors.

Mr. Kinsman confirmed and noted that his comment was made to clarify how many property owners would be required to approve changes to the covenants.

Mr. Maddocks inquired if it would alleviate some of staff's concerns if the applicant were to obtain letters of support from a broader segment of the subdivision.

Mr. Holt noted that additional letters of support would not have an impact on the current status of the covenants. Mr. Holt further noted that the Planning Division's recommendation is based on trying to mitigate impacts to the existing residential neighborhood. Mr. Holt stated that based on all of the information in hand staff has done a good job of articulating the conditions, hours of operation notwithstanding under which staff would be comfortable having this use as part of an existing single family neighborhood.

Ms. Williams inquired why there were other more obviously commercial businesses on residentially zoned property in and adjacent to her neighborhood.

Mr. Holt stated that he would need to research those businesses to determine the history of their status.

Ms. Bledsoe asked Ms. Williams how many children she currently serves.

Ms. Williams stated that she serves 22 children but only has nine under her care at any one time.

Ms. Bledsoe stated that she would like to see the Commission arrive at a point where a decision could be made so that the business could continue to operate legally.

Ms. Bledsoe stated that she has concerns about approving the increase to 20 children because of the additional requirements that would come into play to allow the business to function legally under the Uniform Statewide Building Code and Virginia Department of Social Services.

Ms. Bledsoe inquired if there was a number below 20 that would allow the applicant to continue operate her business legally.

Mr. Kinsman noted that it is the number of children in the structure at any given time, not the number of students which triggers the Uniform Statewide Building Code requirements.

Mr. Drummond stated that he believed the greatest consideration in land use cases is the impact on the neighborhood. Mr. Drummond further stated that he felt the proposal would not have a negative effect on the neighborhood. Mr. Drummond also noted the existence of other commercial businesses in the neighborhood; therefore, this case would not be that much of an exception.

Mr. Basic noted that the Commission also considers public benefit. Denying the application would be contrary to public benefit because a number of children would then be without day care.

Ms. Bledsoe asked Mr. Kinsman if it would be the applicant's responsibility to deal with everything that comes afterward should the Planning Commission recommend approval of the application.

Mr. Kinsman confirmed that it would be the applicant's responsibility to comply with all the requirements of other governmental regulations. The applicant would also assume the risk, if any, related to the private covenants.

Ms. Bledsoe asked Ms. Williams if she fully understands those responsibilities.

Ms. Williams confirmed that she understands the responsibilities.

Mr. Woods opened the public hearing.

There being none, Mr. Woods closed the public hearing.

Mr. Woods opened the floor to discussion.

Mr. Woods stated that what appears to be on the table is an agreement from the applicant to continue to work with staff to develop conditions which are satisfactory to staff and meet her expectations and needs for the business.

Mr. Woods asked Ms. Williams if she would be willing to bring the case back to the Planning Commission in a month.

Ms. Williams agreed but noted that her license expires on August 20, 2013 and the application needs to be submitted 60 days in advance. Ms. Williams noted that she would need to submit a form from the Zoning Administrator stating that she is going through the local approval process.

Mr. Holt noted that he would prefer that the applicant not be in the position of not being successful with the DSS permitting process, even if she is successful with the SUP.

Mr. Purse stated that he has reviewed the DSS form; however, he is not able to sign it for the number of students indicated because the SUP has not been approved. Mr. Purse further noted that he would only be able to sign the form for 5 children until the Board of Supervisors acts on an approval for an increase in the number of students. Mr. Purse noted that the applicant would not be able to meet the DSS renewal time frame if the case is deferred.

Mr. Drummond stated that he moved to approve the application.

Mr. Woods inquired if there were any further discussion before the motion is called.

Mr. Krapf stated that he appreciated the applicant's intentions in seeking approval for her business through proper channels.

Mr. Krapf stated that he could not support the motion at this time and that he had several concerns about the proposal.

Mr. Krapf further stated that he would not support the applicant moving out of the residence. Mr. Krapf noted that the covenants were in place to maintain the residential flavor of the neighborhood. If the applicant moves out of the residence and raises the number of children, it becomes a commercial enterprise which he could not support.

Mr. Krapf also noted that he could support flexibility with the hours of operation to accommodate clients on shift work. Mr. Krapf also stated that he would also support an increase up to 12 children because of the building code requirements.

Mr. Krapf noted that he was also making a distinction between County policy not to approve a land use that conflicts with private covenant versus a legally binding ordinance requirement.

Mr. Krapf clarified that he cannot support the application as it is currently presented; however he could support an increase in the number of children up to but not more than 12 and that he could support some additional flexibility in the hours of operation and noted that he supports the other staff restrictions particularly the requirement to renew the SUP every three years.

Mr. Drummond recommended approving the SUP with the exception of approving the applicant's plan to move out of the residence.

Mr. Woods asked Mr. Kinsman if the Commission could approve the SUP with the condition that she may not move out of the residence.

Mr. Kinsman responded that one of the staff conditions was that Ms. Williams remain in residence for the duration of the validity of the SUP and that Mr. Woods' motion was to approve the SUP with those restrictions. Mr. Kinsman stated that the Commission could amend the motion in order to amend some of the conditions.

Mr. Holt requested Mr. Drummond to clarify whether his motion was to approve with the nine conditions in the staff report and it appears that there is no consensus on the first three conditions relating to occupancy, hours of operation and residency.

Mr. Krapf stated that he appreciated the clarification because he believed Mr. Drummond's motion was to approve the applicant's request, not the staff conditions.

For clarification, Mr. Holt stated that Mr. Drummond's motion was for approval of the application with an occupancy not to exceed 20 children at any one time, with the hours

of operation being Monday through Friday 5:30 a.m. to 12 a.m. and Saturday and Sunday 7 a.m. to 12 a.m. and leaving in place staff condition number 3 which requires residency on the property and leaving in place proposed conditions numbers 4 through 9 as presented in the staff report.

Mr. Drummond confirmed that Mr. Holt captured his intent in the motion as clarified.

Mr. Maddocks asked Ms. Williams if she had any concerns about doing any building modifications that might be required.

Ms. Williams responded that she has no concerns about going forward with the required modifications. Ms. Williams further stated that the only modifications that would currently be required are a monitored fire alarm and the exit doors.

Mr. Basic stated that he could support the modification of condition number 2 for the hours of operation. Mr. Basic stated that he had concerns about the occupancy but noted that he would rely on the applicant to obtain the necessary permits. Mr. Basic noted that the hours of operation would in fact benefit the traffic situation in that not all children would be arriving and leaving at the same time. Mr. Basic noted that the location might not be the best fit for everything the applicant hopes to do. Mr. Basic commented that the applicant might be better served to consider finding a location that accommodated the proposal without the number of significant hurdles encountered with the current location.

Ms. Williams stated that she would be willing to look into an alternate location.

Ms. Bledsoe stated that in general if there were a public policy in place, she would not go against it; however, she recognizes the public need for the applicant's services. Ms. Bledsoe stated that she agrees with the motion as set forth.

Mr. Krapf asked Ms. Williams if the business was currently operating 24 hours a day.

Ms. Williams confirmed.

Mr. Krapf noted that the new hours of operation proposed would actually increase traffic volume because the traffic flow would not be spread out over the longer time. Mr. Krapf inquired if the applicant would be amenable to a cap of twelve children.

Ms. Williams stated that she hoped to go over 12. Ms. Williams further stated that she provides transportation which would minimize the impact on the neighborhood.

Mr. Krapf asked Ms. Williams if she would be picking up the majority of the children.

Ms. Williams confirmed that she would be picking up the majority of children at night.

Mr. Basic noted that in this instance he did not have concerns about going against the County policy on private covenants in this one instance because this is not a new use. Mr. Basic further noted that if the application were denied, it would impact a number up to sixteen families needing reliable child care which is contrary to the public good.

Mr. Woods asked Mr. Holt to call the vote.

Mr. Holt restated that Mr. Drummond's motion was to approve subject to total occupancy being for up to a total of 20 children as condition 1; hours of operation being limited to Monday through Friday 5:30 a.m. to 12 a.m.; and Saturday and Sunday 7 a.m. to 12 a.m. as condition 2; and for conditions 3 through 9 as presented in the staff report including a residency requirement would remain in place as proposed.

Mr. Drummond confirmed.

In a roll call vote, the Commission recommended approval of the application as modified and as noted. (6-0)

MEMORANDUM

DATE: May 28, 2009
TO: Allen J. Murphy, Planning Director
FROM: Leo P. Rogers, County Attorney *L.P.R.*
SUBJECT: The Role of Private Covenants in Zoning Decisions

ISSUE

In light of a recent conflict between a land use requested via special use permit and restrictions contained in restrictive covenants to which the subject parcel is bound, I am providing guidance as to what effect such restrictive covenants have on the pending special use permit request. Further, I will elaborate upon the County's general policy regarding restrictive covenants.

RESTRICTIVE COVENANTS GENERALLY

Restrictive covenants are deed restrictions that apply to parcels of property, which are usually located within a neighborhood. The method by which restrictive covenants may be interpreted or enforced is usually set forth within the covenants themselves; however, in all cases the interpretation and enforcement is handled privately and not by the County. While the Board of Supervisors has acknowledged that interpretation and enforcement of covenants is indeed a private matter, historically the Board has declined to approve rezoning or special use permit requests to establish a use which is in clear violation of known restrictive covenants. This precedent is grounded in public policy concerns, as it makes no practical sense to approve a land use which violates community rules and may result in private enforcement.

In 1986, the Board declined to approve a SUP request in the Poplar Hall neighborhood, in part, because of a conflict with the applicable restrictive covenants. While deliberating on a previous request for the establishment of a child care facility in Poplar Hall, a restrictive covenant which stated that "all lots shall be used only for residential purposes" was brought to the Board's attention. After determining that the child care facility as proposed was clearly in conflict with this restrictive covenant, the Board did not approve the SUP.

Based upon a recent case decided by the Virginia Supreme Court, the Board's 1986 decision appears to have been correct. When determining that daily rental of a parcel was a "residential" use and in compliance with restrictive covenants to which the parcel was subject, the Court found that unless it was defined otherwise, restricting the property to a "residential" use or purpose basically means that use of the property is limited to living purposes only. Clearly, operation of a child care facility, which requires a special use permit, on a parcel is not limiting its use to living purposes only; consequently, such use is not "residential" and is therefore, in my opinion precluded by the restrictive covenants.

SUP-0004-2009

Special use permit number SUP-0004-2009 (the "SUP") was submitted to the County on January 23, 2009. The SUP seeks to establish a child day care facility located in the Poplar Hall neighborhood. The proposed facility will handle a maximum of twelve children.¹ Following an analysis of the proposed expansion, staff recommended approval of the SUP. At the May 6, 2009 meeting of the Planning Commission, a resident of the neighborhood stated that the child care facility was in conflict with the restrictive covenants to which each parcel in the Poplar Hall neighborhood was bound. Neither staff nor the Planning Commission was previously aware of these private covenants.

Following the May Planning Commission meeting, a copy of the restrictive covenants was provided to staff. As previously mentioned, one of the Poplar Hall restrictive covenants states that "[a]ll lots shall be used only for residential purposes."

CONCLUSION

General Policy

While the interpretation and enforcement of restrictive covenants is a private matter, recommending approval of a use which is clearly contrary to an applicable restrictive covenant makes no practical sense and runs afoul of public policy. That said, staff is not responsible for researching the land records for restrictive covenants in each case. As I have previously recommended, staff should amend the rezoning and special use permit application forms to include an affirmation by the applicant that there are no restrictive covenants which preclude establishment of the proposed use and that the applicant has consulted with the homeowners association, if any. Should staff later become aware of a restrictive covenant which clearly precludes a proposed use, staff should immediately alert the applicant and offer an opportunity to cure (via withdrawal of the application or proof that the covenant is inapplicable or otherwise not relevant). Assuming the applicant does not satisfactorily cure the problem, staff should recommend denial of the application.

SUP-0004-2009

There is an existing, applicable restrictive covenant limiting use of the subject parcel to "residential purposes." Based upon the recent Virginia Supreme Court case and upon the Board's previous determination, it is clear that establishment of a child day care facility is not a "residential purpose." In my opinion, this application conflicts with the restrictive covenants and the Board should not, as a matter of public policy, take action which conflicts with restrictive covenants. Accordingly, staff should recommend denial.

¹ Currently, the owner of the property provides child care for five children on the property. "Child day care centers" are defined by County Code as "an establishment offering group care to six or more children away from their own home for any part of a day"; accordingly, the provision of child care services to five or fewer children does not require prior County approval. It is unclear whether the covenants could be privately enforced to require closing the current operation.

PENINSULA LICENSING OFFICE
11751 ROCK LANDING DRIVE, SUITE 116
NEWPORT NEWS, VA 23606-4233
TELEPHONE (757) 247-8020
FAX (757) 247-8024



COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

May 3, 2013

Ms. Tracey Butler
Creative Kids CDC, LLC
701 Mosby Drive
Williamsburg, Virginia 23185

Dear Ms. Butler,

This letter will confirm receipt and review of the functional design features and floor/site plans for a child day center to be located at 701 Mosby Drive, Williamsburg, Virginia. The site plan details a one-story building with four rooms of the building being used by the children in care. The number of toilets and sinks will allow for a capacity of 40 children based on the applicable ratio for preschoolers; however, the reported square footage will provide for a projected capacity of 24 children. Please note the reported square footage did not include measurements for obstructions noted on the diagram and the square footage may be altered when actual measurements of all areas are taken.

This drawing has been reviewed for the required square footage standards as well as toilets and sinks relevant to the Standards for Licensing Child Day Centers and they appear to meet all of the requirements. Your request indicates you will serve children 16 months through five years. Please note your Certificate of Occupancy obtained from the city/county in which you reside must specify the population you are permitted to serve. Changing tables must be located in a manner that allows for sight and sound supervision during diapering.

The playground will provide for a projected capacity of 290 children based on your reported acreage. This projected capacity is based on the playground square footage provided. Please be advised that equipment with climbing or moving parts will require resilient surfacing of some type and the appropriate fall zones as required by the American Society for Testing and Materials standards and National Program for Playground Safety.

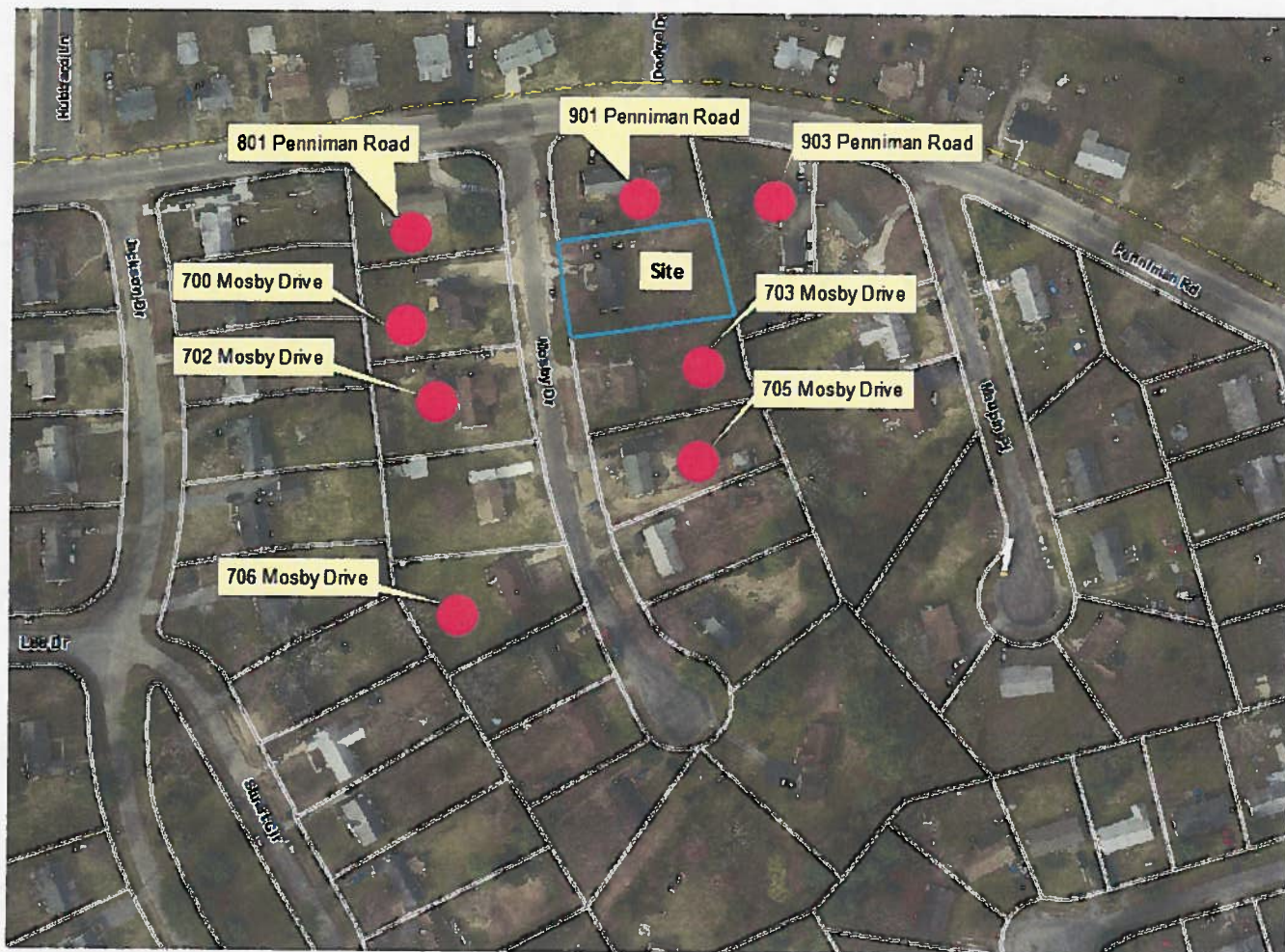
Please note that the final determination for licensure is based upon an on-site investigation by the assigned licensing inspector and a review of the filed application. Actual inspection of this area may alter the projected capacity for the center.

**James City County Planning Commission's Policy Committee
Child Day Care Centers Located in the Interior of Residential Neighborhoods
June 22, 2001**

Policy Committee Recommendation for Child Day Care Centers Located in the Interior of Residential Neighborhoods:

1. If planning staff determines there are significant impacts on a neighborhood as a result of a child day care center, staff shall recommend denial of any child day care center located on a residential lot in the interior of a subdivision.
2. The Policy Committee recommends that the current threshold for requiring a special use permit for a child day care center shall remain as is (more than 5 children requires a special use permit), and each application will continue to be reviewed on a case by case basis. This threshold is based upon state licensing requirements, building permit requirements, land use impacts and home occupations limitations, and the Policy Committee finds that this threshold is appropriate for Commission and Board review.
3. ~~Should the Planning Commission and Board of Supervisors choose to recommend~~ approval of a special use permit application for a child day care center located on a residential lot in the interior of a subdivision, the Policy Committee recommends adding the following conditions:
 - there shall be a three-year time limit in order to monitor the impacts of the day care center;
 - no signage shall be permitted on the property;
 - no additional exterior lighting shall be permitted on the property, other than lighting typically used at a single-family residence.

**Location Map for Adjacent Property Owners Who Have
Submitted Letters of Support for SUP-0006-2013**



5/7/13 (DATE)

Neighbor 706

I am acknowledging that I am or we are aware that my neighbor Tracey Williams @ 701 Mosby Drive is requesting for an increase of 24 kids at her residence where she has been residing for 22 years. I also have been told that Tracey Williams has been operating her 24hour child care service in the same location for 7years. I am the neighbor at 706 Mosby Drive, Williamsburg, VA, 23185. I am for or not for the increase of 20-24 children in my community which would be classified as a daycare center.

Chang W. N. N. N. (Signature)

Comments:

4-9-13 (DATE)

Neighbor 705

I am acknowledging that I am or we are aware that my neighbor Tracey Williams @ 701 Mosby Drive is requesting for an increase of 24 kids at her residence where she has been residing for 22 years. I also have been told that Tracey Williams has been operating her 24hour child care service in the same location for 7years. I am the neighbor at 705 Mosby Drive, Williamsburg, VA, 23185. I am for or not for the increase of 20-24 children in my community which would be classified as a daycare center.

Tracey Williams (Signature)

Comments:

5/7/13 (DATE)

Neighbor 703

I am acknowledging that I am or we are aware that my neighbor Tracey Williams @ 701 Mosby Drive is requesting for an increase of 24 kids at her residence where she has been residing for 22 years. I also have been told that Tracey Williams has been operating her 24hour child care service in the same location for 7 years. I am the neighbor at 103 Mosby Drive, Williamsburg, VA, 23185. I am for or not for the increase of 20-24 children in my community which would be classified as a daycare center.

John D. Brown (Signature)

Comments:

5/7/13 (DATE)

Neighbor 702

I am acknowledging that I am or we are aware that my neighbor Tracey Williams @ 701 Mosby Drive is requesting for an increase of 24 kids at her residence where she has been residing for 22 years. I also have been told that Tracey Williams has been operating her 24hour child care service in the same location for 7 years. I am the neighbor at 702 Mosby Drive, Williamsburg, VA, 23185. I am for or not for the increase of 20-24 children in my community which would be classified as a daycare center.

Lauren Williams (Signature)

Comments:

Great!

4/9/13 (DATE)

Neighbor 700

I am acknowledging that I am or we are aware that my neighbor Tracey Williams @ 701 Mosby Drive is requesting for an increase of 24 kids at her residence where she has been residing for 22 years. I also have been told that Tracey Williams has been operating her 24hour child care service in the same location for 7years. I am the neighbor at 700 Mosby Drive, Williamsburg, VA, 23185. I am for or not for the increase of 20-24 children in my community which would be classified as a daycare center.

~~DG~~ DG (Signature)

Comments:

5/7/13 (DATE)

Neighbor 103 St. Ann's Pl

I am acknowledging that I am or we are aware that my neighbor Tracey Williams @ 701 Mosby Drive is requesting for an increase of 24 kids at her residence where she has been residing for 22 years. I also have been told that Tracey Williams has been operating her 24hour child care service in the same location for 7years. I am the neighbor at _____ Mosby Drive, Williamsburg, VA, 23185 or neighbor at 763 Penniman Rd. I am for or not for the increase of 20-24 children in my community which would be classified as a daycare center.

Abhinav, Bhattacharya (Signature)

Comments:

5-7-13 (DATE)

Neighbor 901

I am acknowledging that I am or we are aware that my neighbor Tracey Williams @ 701 Mosby Drive is requesting for an increase of 24 kids at her residence where she has been residing for 22 years. I also have been told that Tracey Williams has been operating her 24hour child care service in the same location for 7years. I am the neighbor at _____ Mosby Drive, Williamsburg, VA, 23185 or neighbor at 901 Penniman Rd. I am for or not for the increase of 20-24 children in my community which would be classified as a daycare center.

Robert H. Smith (Signature)

Comments:

7-26-13 (DATE)

Neighbor 601

I am acknowledging that I am or we are aware that my neighbor Tracey Williams @ 701 Mosby Drive is requesting for an increase of 24 kids at her residence where she has been residing for 22 years. I also have been told that Tracey Williams has been operating her 24hour child care service in the same location for 7years. I am the neighbor at _____ Mosby Drive, Williamsburg, VA, 23185 or neighbor at 861 Penniman Rd. I am ~~for~~ or not for the increase of 20-24 children in my community which would be classified as a daycare center.

[Signature] (Signature)

Comments:

Damica R. Faison
246 New Hope Road
Williamsburg VA 23185

757 603 7561

3/26/13

To Whom it may concern:

Tracey Butler is favored by both of my young girls for her high energy and nurturing attitude. Since my almost 3 year old has been attending, her speech and social development has progressed greatly. Also the playground in her backyard has helped her develop physically.

My now 5 year old had a harder time getting to know Tracey as she had no previous experience in a daycare setting before attending her elementary school.

The convenience of having Tracey so close to my home is wonderful. I would greatly benefit if she were able to have more children in her

care because often she does not have the room to keep ~~her~~^{them} in the evening and I work mostly evenings. So it would cut down on my cost for daycare to not have to send them to someone else.

I fully believe that Tracey is a great role model for my girls. and I fully intend to keep her as a sitter/daycare provider as long as possible

Damecia Faison

To whom this may concern:

I have known Tracy Butler a Child Care Provider for a number of years.

Tracy is very good with children and gives her Child Care children, much love and attention.

There aren't many 24 hour childcare providers around in Williamsburg, VA.

I know I have worked with children 46 years and Tracey puts her all into her Child Care as well as her love for her own family.

Sincerely,

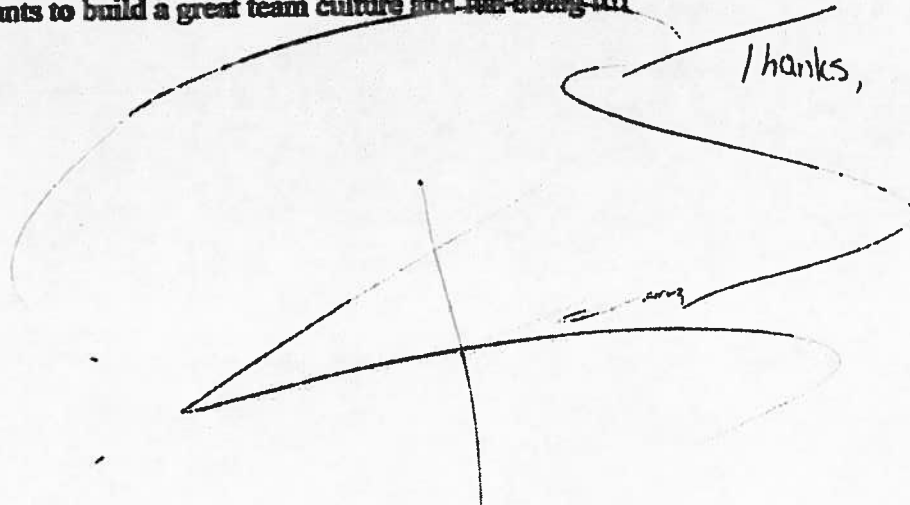
Evette Jemerson

Recommendation for Tracey Butler:

Tracey Butler is a dynamic, self-directed consummate Leader. Tracey is a very talented leader who brought a great deal to children at her day care center and the community. Inspiring and motivating is certainly one of her signature strengths and she leveraged this to help build excitement and momentum around key priorities with children in the community and in the center she led. Tracey is a passionate leader that delivers great results while making development and recognition a key part of her talent strategy. During the 15 years knowing Tracey, she helped me be a more effective leader with communication and strategy.

Tracey is a creative leader who thinks about a total solution. She is proactive and progressive in her thinking. She focuses on training and development which in turn creates long-term solutions. Tracy possesses a high emotional IQ and a senior level understanding of operating a business. She gives honest and valued feedback to her subordinates and peers. She can manage both across and up the chain of command. Her insight allows her to get to the root cause and diminish or eliminate problems. Tracey has strong qualities around teaching and coaching and she is a fabulous trainer. Tracey brings a very sound and well-rounded skill set as well as innate enthusiasm and is a key contributor to children. I would recommend Tracey to any business that wants to build a great team culture and ~~fun doing it!!~~

Thanks,



To Whom It May Concern:

I have known Tracey Butler in a variety of capacities for many years. She has been my daughter's child care provider for the past 8 years and my son's for 8 months. In addition, she is the god mother to my children and takes full responsibility for my shortcoming with them. She is a true definition of Acts of Kindness! Her heart is huge and she does not mind assisting others who may be in need, no individual in her eyes is a stranger.

Tracey is organized, efficient, extremely competent, a great caregiver and has an excellent rapport with people of all ages and ethnicities. Her communication skills, both written and verbal are marvelous. I would not trade the level of care Tracey provides to my children to anyone else unless it was an immediate family member.

In summary, I highly recommend approving the expansion of TYI Home Care request or endeavor she may pursue. Other parents should be granted the high level of comfort, professionalism and love for their children that Tracey provides. Every child in she cares for has advanced in academics and achieve on a higher level than their peers. She will be a valuable asset and great instructor to any child and or parent that comes into her presence.

If you have any questions, please do not hesitate to contact me. I can be reached via email; tolland81@live.com or by phone; 804-501-0053.

Regards,

Tasha Holland

3-25-13

To whom it may concern

Mrs Tracy Butler was highly recommended to me by my single father coach from CDR. She has been exceptional in caring for my daughter while I have to work. Penelope loves going in the morning ^{she enjoys} her time here everyday. Mrs Butler has been great w/ working with my long hours & transporting her to + from her pre-school during the week. I would advise anyone looking for childcare her direction

Thank you,
Walter Garner
~~like~~

494 Penniman rd
Williamsburg VA
23185

**Annette Robinson
321 Peachtree Lane
Yorktown, VA. 23693
March 25, 2013**

To: Whom It May Concern

It is with great pleasure that I submit a letter of reference on behalf of Tracey Butler.

I had the pleasure of working with Tracey Butler for several years while I was employed as the Child Care Coordinator with the City of Williamsburg Human Services. As a child care worker Tracey proved to be a hard worker, and committed to providing quality child care services to the children she cared for. She always went that extra mile to assist parents who were looking for jobs, in school or attending mandated court appearances. She would work extra hours to accommodate their schedules; during the hours other child care centers was closed or refuse to service customers.

Tracey is a person who parents can depend to care for their children. She provides a safe and loving environment.

Respectfully submitted,

**Annette Robinson
757-508-1607**

3/26/2013

TO: It whom may concern.

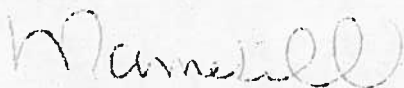
Mrs. Tracey Butler has been such a great help to me after struggling trying to find a provider .

She is reliable, dependable, professional and most of everything she is flexible with my schedule and hours that changes every week. She has a great personality and positive attitude.

My son enjoys her great activities and being under her care.

Norma Tannehill 757 5615981

108 Cooley Rd Apt E Williamsburg VA 23188

A handwritten signature in cursive script, appearing to read "Norma Tannehill", written in dark ink.

CORPORATION.

IN WITNESS WHEREOF, the said BENEL CORPORATION has caused these presents to be executed on its behalf by G. BEN LEVINSON and its corporate seal hereunto affixed. duly attested by SIDNEY B. FRANK, its Secretary, both of said officers being duly authorized therefor, the day and year hereinabove written.

BENEL CORPORATION

Seal Affixed:

BY G. Ben Levinson, President

ATTEST:

Sidney B. Frank
Secretary

STATE OF VIRGINIA

AT LARGE, to-wit:

I, David G. Blalock, a Notary Public in and for the State aforesaid, at large, whose commission expires on the 23rd day of August, 1954, do hereby certify that G. BEN LEVINSON and SIDNEY B. FRANK, President and Secretary respectively of BENEL CORPORATION, whose names are signed to the foregoing writing or instrument, hereto annexed, bearing date on the 30th day of April, 1952, have this day acknowledged the same before me in my State aforesaid.

GIVEN under my hand this 30th day of April, 1952.

David G. Blalock

Notary Public

State of Virginia

City of Williamsburg and County of James City, to-wit:

In the office of the Clerk of the Court for the City and County aforesaid, on the 30th day of April, 1952 this dedication of Plat was presented and with the certificate annexed, admitted to record at 4:40 P. M.

Waste:

P. B. 13, p. 12

Virginia Blalock Clerk

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, BENEL CORPORATION, a corporation organized and existing under the laws of the State of Virginia, is the owner and proprietor of that certain parcel or tract of land divided into building lots and known as JAMES TERRACE, SECTION NO. 5 as shown on plat of said property entitled, " JAMES TERRACE, SECTION NO. 5", duly recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City in Plat Book 13, page 13; and,

WHEREAS, BENEL CORPORATION, in order to provide, and in order to insure all lot purchasers, a uniform mode of development of the property shown on said plat desires that all of the said lots embraced on said plat be sold subject to certain restrictive covenants, conditions and easements.

NOW, THEREFORE, BENEL CORPORATION hereby declares, covenants and agrees

EX.
Orig. mailed
to Marshall
B. Blalock
Newport News
Va. 5-1-52
Va B. Clk
No tax

each and all of said lots as shown on said plat shall be sold and held by the purchasers thereof, their heirs and assigns, subject to the following restrictions, covenants, conditions, limitations and reservations, to-wit:

1. No lot in the tract shall be used except for residential purposes, and no building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling, not to exceed two and one-half stories in height and a private garage for not more than two cars.

2. No dwelling shall be permitted on any lot in the subdivision at a cost of less than Seven Thousand (\$7,000.00) Dollars. The ground floor area of the main structure, exclusive of one story open porches and garages, shall be not less than seven hundred (700) square feet for either a one story dwelling, or a dwelling of more than one story.

3. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any lot nearer than thirty (30) feet to the front lot line, or nearer than fifteen (15) feet to any side street line. No building shall be located nearer than five (5) feet to an interior lot line, except that no side yard shall be required for a garage or other permitted accessory building located thirty (30) feet or more from the minimum building setback line. No dwelling shall be located on any interior lot nearer than fifteen (15) feet to a rear lot line. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

4. No dwelling shall be erected or placed on any lot having a width of less than fifty (50) feet at ^{the} / minimum setback line, nor shall any dwelling be erected and placed on any lot having an area of less than eleven thousand (11,000) square feet.

5. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

7. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

8. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

9. No lot shall be used or maintained as a dumping ground for rubbish. ^{not} Fresh, garbage or other waste shall ^{not} be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary conditions.

10. No individual sewage-disposal system shall be permitted on any lot

more than one detached single family dwelling, not to exceed two and one-half stories in height and a private garage for not more than two cars.

2. No dwelling shall be permitted on any lot in the subdivision at a cost of less than Seven Thousand (\$7,000.00) Dollars. The ground floor area of the main structure, exclusive of one story open porches and garages, shall be not less than seven hundred (700) square feet for either a one story dwelling, or a dwelling of more than one story.

3. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any lot nearer than thirty (30) feet to the front lot line, or nearer than fifteen (15) feet to any side street line. No building shall be located nearer than five (5) feet to an interior lot line, except that no side yard shall be required for a garage or other permitted accessory building located thirty (30) feet or more from the minimum building setback line. No dwelling shall be located on any interior lot nearer than fifteen (15) feet to a rear lot line. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

4. No dwelling shall be erected or placed on any lot having a width of less than forty (50) feet at ^{the} minimum setback line, nor shall any dwelling be erected and placed on any lot having an area of less than eleven thousand (11,000) square feet.

5. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

7. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

8. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

9. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall ^{not} be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary conditions. *(Handwritten: 12/2/41)*

10. No individual sewage-disposal system shall be permitted on any lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the State of Virginia and the County of James City.

Approval of such system as installed shall be obtained from such authority.

11. No individual water supply system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State of Virginia and the County of James City.

12. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten (10) feet of each lot.

13. These covenants are to run with the land and shall be binding on all parties or persons claiming under them for a period of fifty (50) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

14. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation.

15. Invalidity of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the said BENEL CORPORATION has caused these presents to be signed by its President and its corporate seal hereunto affixed, duly attested by its Secretary, this 30th day of APRIL, 1952.

BENEL CORPORATION

Seal affixed.

By G. Ben Levinson, President.

WITNESSES:

Sidney B. Frank
Secretary

STATE OF VIRGINIA

AT LARGE, to-wit:

I, DAVID G. BLALOCK, a Notary Public in and for the State aforesaid, at large, whose commission expires on the 23rd day of August, 1954, do hereby certify that G. BEN LEVINSON and SIDNEY B. FRANK, President and Secretary, respectively, of BENEL CORPORATION, whose names are signed to the foregoing writing or instrument, hereto annexed, bearing date on the 30 day of APRIL, 1952, have acknowledged the same before me in my State aforesaid.

GIVEN under my hand this 30 day of April, 1952.

David G. Blalock

Notary Public