

AT A RECESSED MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE SIXTEENTH DAY OF NOVEMBER, NINETEEN HUNDRED EIGHTY-THREE AT 7:30 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

Perry M. DePue, Chairman, Powhatan District  
 Abram Frink, Jr., Vice-Chairman, Roberts District  
 Jack D. Edwards, Berkeley District  
 Thomas D. Mahone, Jamestown District  
 Stewart U. Taylor, Stonehouse District

James B. Oliver, Jr., County Administrator  
 Darlene L. Burcham, Assistant County Administrator  
 Frank M. Morton, III, County Attorney

**B. MINUTES**

1. October 21, 1983
2. October 31, 1983

Mr. Frink moved for the approval of the two sets of Minutes.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

**C. PUBLIC HEARINGS**

Mr. DePue requested that the Board move Item C-12 as the first public hearing.

12. Proposed Amendment - Discharging Weapons In or Near Recorded Subdivisions

Mr. Morton presented this matter to the Board stating that the definition of a recorded subdivision is any subdivision, a plat of which has been recorded in the Clerk's office of the Circuit Court of the County. He stated that this ordinance does not apply to a large parcel of property, the boundaries of which are shown recorded in a plat, in which incremental subdivision of the parcel has taken place. He concluded by saying that he has proposed that the prohibited distance for discharging a weapon from a recorded subdivision be extended from 300 to 600 feet if the Board is inclined to change the distance.

Mr. DePue stated that Mr. Eggleston, Game Warden, was present to answer any questions the Board might have.

Mr. DePue opened the public hearing.

1. Mr. Rodgers Huff, 103 W. Kingswood Drive, spoke in opposition to the amendment, stating that he felt the incident which precipitated this amendment was an isolated problem and should have been dealt with as a problem and not as an amendment. He stated that hunters are very concerned about safety and that this amendment is an additional law which would be hard to enforce.

2. Rev. J. B. Tabb, Sr., 1218 Ironbound Road, represented the Longwood Hunt Club. He stated that its members were in opposition to amendment in that it places an undue restriction on the hunters. He stated that the Board should find out if there is a need for the amendment, and suggested a committee be established to review the matter.

3. Mr. Samuel J. Doyle, Rt. 8, Box 208-A, Sandhill, stated that he is a hunter and that he is in favor of the amendment. He felt that the amendment is lenient and should be extended even further.

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4. Mr. Sasha Digges, 1540 Ironbound Road, stated that he supports the other hunters in opposition to the amendment.

5. Mr. Tommy Marvin, Rt. 1, Box 221, Stonehouse District, asked what amounts of property damage and bodily injury were a result of hunting in the County. He stated that this amendment is an example of County Government overreacting to a complaint of a few people. He was opposed to the amendment.

6. Ms. Brigid Edmonds, 146 Nina Lane, President of the Kristiansand Homeowner's Association stated that the main concern is the safety of their children. She was in favor of the amendment.

7. Mr. Harry Marchant, 154 Nina Lane, stated that he is a hunter and that the change in the ordinance supports hunting within the County. He stated that the Police Department's hands are tied with the current restriction of 300 feet, in that if a firearm is discharged outside the 300 feet restriction the Police Department cannot take any action if the firearm is directed towards a home unless they can show bodily injury or property damage. He was in favor of the amendment.

Mr. DePue closed the public hearing.

Mr. DePue requested that this item be tabled so that he can reflect on it and find out the extent of support there is for the amendment throughout the County.

Mr. Taylor stated that he voted against the public hearing being set and felt that it was a waste of time to pursue the matter because the 300 foot requirement is sufficient.

Mr. Mahone requested comments from the Chief of Police, Robert Key, and specifically wanted to know the number of firearm related calls he receives.

Chief Key stated that he did not have the exact number of calls received. He stated that the range of a shotgun is usually less than the 300 feet requirement and that the use of a shotgun with the current ordinance does not scare him, but that the use of high powered rifles does.

Mr. Edwards stated that he would like to find out what areas would not be available for hunting because of the change from 300 to 600 feet.

Mr. Frink stated that he could support the motion to table this item.

Mr. DePue made the motion to table this item until the next meeting.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

1. Case Nos. Z-13-83/SUP-29-83. Dr. Donald W. Cherry

Mr. Orlando A. Riutort, Director of Planning, presented this matter to the Board stating that this item had been before the Board at an earlier meeting and that staff recommends denial of the request. The Planning Commission on October 25, 1983, recommended approval of the application with proffered conditions.

Mr. DePue opened the public hearing.

1. Mr. Alvin Anderson, attorney for Dr. Cherry, spoke on behalf of his client.

2. Mr. William Mettler, City of Williamsburg Planning Department, spoke in opposition to the rezoning of the property.

Mr. DePue asked whether the City's Planning Commission had voted on this issue.

Mr. Mettler replied that some of the members viewed the site but that it was the consensus of the Commission that the rezoning was not appropriate for this property.

3. Mr. Fred Belden, Chairman of the County's Planning Commission, stated that the Planning Commission changed its vote mainly because of the proffers offered by the applicant and that a small office was an appropriate use of the land in question.

4. Mr. Lewis Pilant, resident of Kingspoint, stated his opposition to the rezoning request.

5. Mr. Jack Scruggs, member of the Planning Commission, stated that the proffers placed more restrictions on this development and that the matter was viewed as an individual site.

Mr. DePue closed the public hearing.

Mr. DePue made the motion to approve the Resolution.

Mr. Mahone stated his concern about the water issues involving this case indicating that there is not sufficient water supply to the Kingspoint area now, and if this project is connected it would present additional water problems.

Mr. Edwards stated that he would vote against the rezoning request because it is inconsistent with the Comprehensive Plan and because annexation is only six weeks away from being finalized.

Mr. Frink stated that he would change his vote to no because the developer would not have enough time to obtain a building permit from the County due to annexation becoming effective January 1, 1984.

On a roll call, the vote was AYE: DePue, Taylor (2). NAY: Frink, Edwards, Mahone (3). The motion failed by a 3-2 vote.

2. Case Nos. Z-8-83/SUP-20-83. Leonard & Beatrice Legum

Mr. Riutort presented this matter to the Board stating that staff recommends denial of this rezoning request for the following reasons:

1. This proposal conflicts with the intended uses and activities designated for this area by the Land Use Element of the Comprehensive Plan.
2. A moderate density proposal would conflict with the nature of existing development in the surrounding area.
3. This area is planned for and was developed as Low Density Residential.

He then stated that the Planning Commission voted 7-2 to deny the application.

Mr. DePue opened the public hearing.

1. Mr. Alvin Anderson, attorney for the Legums, spoke on behalf of his clients, he stated that the County cannot ignore that the Social Services building is on the front of this property and that one must traverse past that facility in order to get to the rear of the property. He stated that it was a question of whether or not this has any influence on the balance of the property. Mr. Anderson felt that the Legum property was being assessed improperly as contrasted with adjoining property owned by Mr. Joe Terrell. He submitted that the County was assessing the property recognizing commercial activity on the front of the property but extending that value throughout the parcel. He requested favorable consideration of their request.

Mr. Edwards wanted to make it clear that a promise was not made to the Legums to permit building on that property as a result of the construction of the Social Services Building. Mr. Anderson concurred that no promises had been made.

Mr. DePue opened the public hearing.

1. Mr. Wilford Taylor, Jr., 114 Brookhaven Drive, representing the Brookhaven Subdivision and other citizens in that area, spoke in opposition to the rezoning request stating that the proposal was inconsistent with the Comprehensive Plan and that the area was developed as low-density residential.

Mr. DePue closed the public hearing.

Mr. Frink made the motion to deny the rezoning and special use permit applications.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

Mr. DePue suggested that the Board take a brief recess after which the Board will hear item C-15.

15. Grove Area Streets and Drainage Project, Phase II and Phase III

Mr. Morton presented this matter to the Board stating that the purpose of the public hearing is to determine whether there is a public necessity and need to condemn certain properties related to the road extension and/or the drainage installation.

Mr. DePue opened the public hearing.

1. Mr. Reuben S. Hill, 115 Grove Heights Avenue, stated that he was mostly concerned about the price that has been offered to him for condemnation of his property.

2. Mrs. Laverne Hill, 115 Grove Heights Avenue, stated that they support the construction of a new road but felt that the amount offered was not sufficient.

Mr. Morton stated that individuals named in the resolution will have an opportunity to present their position as to value of the takes with the Commissioners in Chancery who will hear the cases and make a decision as to the fair market value of the property.

3. Mrs. James Wagner, 200 Railroad Street, stated that the route used to come across her property will leave her with land that cannot be used.

4. Mr. Josh Palmer, felt that there was not a need for a road and that the County should use the funds provided to widen the existing roads. He stated that he wanted the fair market price for his land.

5. Mr. Ernest Wallace wanted to know what the .10 ac. + or - meant.

Mr. Morton stated that it was difficult to determine the exact amount of acreage needed to make the improvements but that the exact acreage would be determined at the time of condemnation.

Mr. DePue closed the public hearing.

Mr. DePue stated that he wanted to know what last year's assessments were versus this year's value.

Mr. Frink stated that he wanted the opportunity to hear from the community again to determine if the community wants the new roads. He suggested the item be tabled until the next meeting.

The matter was tabled by consensus.

3. Case No. SUP-18-83. James City County Sanitary Landfill

Mr. Riutort presented this matter to the Board stating that the Planning Commission unanimously recommended approval of the special use permit with conditions and that staff concurs with that recommendation.

Mr. DePue opened, then closed the public hearing as there was no one wishing to speak.

Mr. Edwards made the motion to approve the Resolution.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

RESOLUTIONSPECIAL USE PERMIT - JAMES CITY COUNTY SANITARY LANDFILL

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance certain specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the Planning Commission of James City County has unanimously recommended approval of Case No. SUP-18-83, a special use permit for the Sanitary Landfill Expansion with certain conditions,

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County does hereby approve the issuance of Special Use Permit No. SUP-18-83 for the James City County Sanitary Landfill Expansion with the following conditions:

- 1) Compliance with all State and Federal regulations involved in the use and operation of the Landfill.
- 2) A valid State Health Department Permit must be maintained while the Landfill is being operated on this site.
- 3) Compliance with all State Erosion Control and Sedimentation regulations involved in the construction, use, and operation of a landfill, as specified in the Virginia Erosion and Sediment Control Handbook.
- 4) Maintenance of a 50' wide, wooded strip along the Rt. 611 frontage of the Landfill and construction of the 3' high berm with landscaping. Any disturbed areas within the buffer strip must be restored with natural vegetation at least two years prior to landfilling on this site.

4. Case No. SUP-19-83. Frederick D. Hirsh

Mr. Riutort presented this matter to the Board recommending approval of the special use permit with conditions.

Mr. DePue opened the public hearing.

Mr. Frederick D. Hirsh asked for clarification on the requirement for a private road to be constructed and maintained as one entrance serving two parcels. He asked if individual entrances could be used. Mr. Riutort replied in the affirmative.

Mr. DePue closed the public hearing, then made the motion to approve the Resolution.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

RESOLUTIONSPECIAL USE PERMITCASE NO. SUP-19-83

WHEREAS, it is understood that all conditions for the consideration of an application for a Special Use Permit have been met;

THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County that a Special Use Permit be granted for the placement of a mobile home on property owned and developed by the applicant as described below and on the attached site location map.

Applicant: Mr. Frederick D. Hirsh

Real Estate Tax Map ID: (12-1)

Parcel No. (1-6F)

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District: Stonehouse

Zoning: A-1, General Agricultural

Permit Term: This permit is limit to a five year period and is valid only for the mobile homes applied for. If either of the mobile homes is removed, then this permit shall become void for that mobile home. Any replacement shall require a new permit from the Board of Supervisors. If the permit is not exercised for either of the mobile homes then it shall become void one year from the date of approval for that mobile home.

Further Conditions:

1. The mobile homes shall be set back at least 300 feet from Route 60 to conform with the alignment of other mobile homes in this area.
2. The mobile homes shall be skirted.
3. Natural vegetation shall be maintained across the front of the property except for the proposed driveway.
4. The mobile homes shall meet the requirements of the Virginia Industrialized Building Unit and Mobile Homes Safety Regulations.
5. If one entrance will serve two parcels then that road shall be constructed to minimum standards as set forth in Section 20-22.6 of the Zoning Ordinance for mobile home parks; or separate residential entrances shall be installed for each parcel.

5. Case No. SUP-28-83. Frederick D. Hirsh

Mr. Riutort stated that staff recommends approval of the special use permit with conditions.

Mr. DePue opened then closed the public hearing as there was no one wishing to speak. He then moved for the approval of the Resolution.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

RESOLUTION

SPECIAL USE PERMIT

CASE NO. SUP-28-83

WHEREAS, it is understood that all conditions for the consideration of an application for a Special Use Permit have been met;

THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County that a Special Use Permit be granted for the placement of two mobile homes on property owned and developed by the applicant as described below and on the attached site location map.

Applicant: Mr. Frederick D. Hirsh  
 Real Estate Tax Map ID: (12-1)  
 Parcel No. (1-6E)  
 District: Stonehouse  
 Zoning: A-1, General Agricultural  
 Permit Term: This permit is limit to a five year period and is valid only for the mobile homes applied for. If either of the mobile homes is removed, then this permit shall become void for that mobile home. Any replacement shall require a new permit from the Board of Supervisors. If the permit is not exercised for either of the mobile homes then it shall become void one year from the date of approval for that mobile home.

Further Conditions:

1. The mobile homes shall be set back at least 300 feet from Route 60 to conform with the alignment of other mobile homes in this area.
2. The mobile homes shall be skirted.
3. Natural vegetation shall be maintained across the front of the property except for the proposed driveway.
4. The mobile homes shall meet the requirements of the Virginia Industrialized Building Unit and Mobile Homes Safety Regulations.
5. If one entrance will serve two parcels then that road shall be constructed to minimum standards as set forth in Section 20-22.6 of the Zoning Ordinance for mobile home parks; or separate residential entrances shall be installed for each parcel.

6. Case No. SUP-27-83. Curtis L. Wallace, Jr.

Mr. Riutort presented this matter to the Board recommending approval of the application with conditions.

Mr. DePue opened the public hearing.

Mr. William R. Jones requested approval of his great-nephew's special use permit application.

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Mr. DePue closed the public hearing and then moved for the approval of the Resolution.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

R E S O L U T I O N

SPECIAL USE PERMIT

WHEREAS, it is understood that all conditions for the consideration of an application for a Special Use Permit have been met;

THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County that a Special Use Permit be granted for the placement of a mobile home on property owned and developed by the applicant as described below and on the attached site location map.

Applicant:	Mr. Curtis L. Wallace, Jr.
Real Estate Tax Map ID:	(31-1)
Parcel No.	(1-34)
District:	Powhatan
Zoning:	A-1, General Agricultural
Permit Term:	This permit is valid only for the mobile home applied for. If the mobile home is removed, then this permit becomes void. Any replacement will require a new permit from the Board of Supervisors. If the permit is not exercised it shall become void one year from the date of approval.
Further Conditions:	The mobile home must be skirted, and meet the requirements of the Virginia Industrialized Building Unit and Mobile Home Safety Regulations.

7. Case No. SUP-30-83. Woodrow C. & Patricia L. Hockaday

Mr. Riutort recommended approval of this application with conditions.

Mr. DePue opened, then closed the public hearing as there was no one wishing to speak. He then moved for the approval of the Resolution.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

R E S O L U T I O N

SPECIAL USE PERMIT

WHEREAS, it is understood that all conditions for the consideration of an application for a Special Use Permit have been met;

THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County that a Special Use Permit be granted for the placement of a mobile home on property owned and developed by the applicant as described below and on the attached site location map.

Applicant: Mr. & Mrs. Woodrow C. Hockaday  
 Real Estate Tax Map ID: (10-1)  
 Parcel No. (1-25)  
 District: Stonehouse  
 Zoning: A-1, General Agricultural  
 Permit Term: This permit is valid only for the mobile home applied for. If the mobile home is removed, then this permit becomes void. Any replacement will require a new permit from the Board of Supervisors. If the permit is not exercised it shall become void one year from the date of approval.  
 Further Conditions: The mobile home must be skirted, and meet the requirements of the Virginia Industrialized Building Unit and Mobile Home Safety Regulations.

8. Case No. Z-10-83. Old Town Farms, Incorporated

Mr. Riutort presented this matter to the Board stating that the Planning Commission unanimously recommended approval of this rezoning request and staff also recommends approval.

Mr. Edwards questioned whether the traffic study recommendations were included in the Resolution.

Mr. Riutort stated that the Resolution incorporates recommendations made in the staff report.

Mr. DePue opened the public hearing.

Mr. Samuel T. Powell spoke on behalf of his client in support of the rezoning request. He stated that they will comply with the recommendations made in the staff report relating to the traffic study.

Mr. DePue closed the public hearing.

Mr. Edwards made the motion to approve the Resolution.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

R E S O L U T I O N

RESOLUTION OF APPROVAL - ZONING CASE NO. Z-10-83  
OLD TOWN FARMS, INC.

WHEREAS, in accord with Section 15.1-431 of the Code of Virginia, and Section 20-14 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled and conducted on November 16, 1983, for Zoning Case No. Z-10-83 for rezoning 45 acres from R-3, General Residential to R-5, Multi-family Residential with proffered conditions, and

WHEREAS, in accord with the Planning Department's recommendation, the Planning Commission following its public hearing on August 23, 1983, on September 27, 1983 unanimously recommended approval of Zoning Case No. Z-10-83 with proffered conditions, and

WHEREAS, Zoning Case No. Z-10-83 with proffered conditions is in accord with the adopted Comprehensive Plan of James City County,

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County does hereby approve Zoning Case No. Z-10-83 as

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described herein and as detailed in the attached memorandum and accepts the voluntary proffer signed by the property owner, (Mr. John Horan).

9. Case No. Z-12-83. Amendment to Zoning Ordinance, Section 20-12(B)(6)

Mr. Riutort presented this matter to the Board recommending approval of the amendment to the ordinance to permit 20 foot aisles in large parking lots when parking is long-term and loading is controlled.

Mr. DePue opened, then closed the public hearing as there was no one wishing to speak.

Mr. Taylor made the motion to approve the amendment to the Ordinance.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

ORDINANCE NO. 31A-80

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, BY AMENDING ARTICLE I, IN GENERAL, SECTION 20-12, MINIMUM OFF-STREET PARKING, (B) (6) DESIGN, MINIMUM OFF-STREET PARKING .

BE IT ORDAINED by the Board of Supervisors of the County of James City, that Chapter 20, Article I, In General, Section 20-12, Minimum Off-Street Parking, (B) (6) Design, Minimum Off-Street Parking Area Dimensions, is hereby amended and reordained.

CHAPTER 20

ZONING

Article I. In General

Section 20-12. Minimum off-street parking.

B. Design

6. The design of the parking lot shall meet the minimum geometric standards presented in the following table:

MINIMUM OFF-STREET PARKING AREA DIMENSIONS

Angle of Parking (degrees)	Direction of Traffic	Dimension of Stall (feet)	Width of Aisle (feet)*
Parallel	One-way	8 x 22	12
45	One-way	9 x 18	12
60	One-way	9 x 18	18
90	Two-way	9 x 18	24

\* Minimum width of traffic aisles in parking lots for two-way traffic shall be twenty-four (24) feet.

The minimum aisle dimension of any parking lot designed to accommodate at least 500 vehicles and intended for long-term parking may be reduced by four feet provided: the lot is designed and marked for one-way traffic; the parking spaces form an angle of eighty degrees to ninety degrees with the aisle; each vehicle is individually guided to a parking space by an attendant; and the safety and effective operation of the lot has been clearly demonstrated.

For the purpose of this section the phrase "long-term parking" shall mean parking the duration of which is on the average six hours or more.

10. Proposed Amendments to Chapter 15 - Riots, Unlawful Assemblies and Related Offenses

Mr. Morton recommended adoption of this amendment and stated that this was a house cleaning item.

Mr. DePue opened, then closed the public hearing as there was no one wishing to speak.

Mr. Taylor moved for the approval of the amendments to the Ordinance.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

ORDINANCE NO. 150A-1

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 15, RIOTS, UNLAWFUL ASSEMBLIES AND RELATED OFFENSES, OF THE CODE OF THE COUNTY OF JAMES CITY BY AMENDING THE FOLLOWING SECTIONS: SECTION 15-4, REMAINING AT PLACE OF RIOT OR UNLAWFUL ASSEMBLY AFTER WARNING TO DISPERSE; SECTION 15-7, REQUEST TO GOVERNOR FOR MILITARY OR POLICE ASSISTANCE; SECTION 15-8, DISPERSAL OF UNLAWFUL OR RIOTOUS ASSEMBLIES, SECTION 15-9, DUTY OF OFFICERS DISPERSING RIOTERS; KILLING OR INJURING RIOTERS; AND SECTION 15-10, COMMISSION OF CERTAIN OFFENSES IN COUNTY DECLARED BY GOVERNOR TO BE IN STATE OF RIOT OR INSURRECTION.

BE IT ORDAINED by the Board of Supervisors of the County of James City that Chapter 15, Riots, Unlawful Assemblies and Related Offenses, of the Code of the County of James City is hereby amended and reordained by amending the following sections: Section 15-4, Remaining at place of riot or unlawful assembly after warning to disperse; Section 15-7, Request to governor for military or police assistance; Section 15-8, Dispersal of unlawful or riotous assemblies; Section 15-9, Duty of officers dispersing rioters; killing or injuring rioters; and Section 15-10, Commission of certain offenses in county declared by governor to be in state of riot or insurrection.

Section 15-4. Remaining at place of riot or unlawful assembly after warning to disperse.

Every person, except the owner or lessee of the premises, his family and nonrioting guests, and public officers and persons assisting them, who remains at the place of any riot or unlawful assembly after having been lawfully ordered to disperse, shall be guilty of a misdemeanor.

Section 15-7. Request to governor for military or police assistance.

If it appears to the chairman of the board of supervisors, or if it appears to any member of the board of supervisors in the absence or disability of the chairman, that the power of the county is not sufficient to enable the sheriff to execute processes delivered to him or the police department to suppress riots and to preserve the peace, then such chairman or supervisor shall, promptly and by the most expeditious means, inform the governor of the situation, and request the dispatch to this county of such military or police forces of the commonwealth as may be necessary to execute such process and to preserve the peace, as provided in section 18.2-410 of the Code of Virginia.

Code of Virginia Section 18.2-410 authorizes the governor, when it appears that the county is unable to execute process, suppress riots and preserve the peace, to order law enforcement agencies, the national guard and other state agencies to the county.

Section 15-8. Dispersal of unlawful or riotous assemblies; duties of officers.

When any number of persons, whether armed or not are unlawfully or riotously assembled, the chief of police, his officers, and other law enforcement officers, or any of them shall go among the persons assembled or as near to them as safety will permit and command them in the name of the State to disperse immediately. If upon command the persons unlawfully assembled do not disperse immediately, the chief of police or other officer may use such force as is

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reasonably necessary to disperse them and to arrest those who fail or refuse to disperse. To accomplish this end, the chief of police or other officer may request and use the assistance and services of private citizens.

Every endeavor shall be used, both by the chief of police or other officers, or by the officer commanding any other force, which can be made consistently with the preservation of life, to induce or force those unlawfully assembled to disperse before an attack is made upon them by which their lives may be endangered.

Section 15-9. Immunity of officers and others in quelling a riot or unlawful assembly.

No liability, criminal or civil, shall be imposed upon any person authorized to disperse or assist in dispersing a riot or unlawful assembly for any action of such person which was taken after those rioting or unlawfully assembled had been commanded to disperse, and which action reasonably necessary under all the circumstances to disperse such riot or unlawful assembly or to arrest those who failed or refused to disperse.

Section 15-10. Commission of certain offenses in county declared by governor to be in state of riot or insurrection.

Any person, who after the publication of a proclamation by the governor, or who after lawful notice to disperse and retire, resists or aids in resisting the execution of process in the county when it is declared to be in a state of riot or insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the governor, chief of police or other officer to quell or suppress an insurrection or riot, shall be punished by imprisonment in the penitentiary for not less than two years nor more than ten years; or, in the discretion of the jury, or judge trying the case without a jury, by confinement in jail not to exceed one year or by fine not to exceed one thousand dollars.

#### 11. Proposed Amendment to Chapter 18 - Taxation

Mr. Morton again stated that this was a house cleaning item for which he recommended adoption.

Mr. DePue opened, then closed the public hearing as there was no one wishing to speak.

Mr. Frink moved for the approval of the amendment to the Ordinance.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

#### ORDINANCE NO. 96A-1

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 18, TAXATION, OF THE CODE OF THE COUNTY OF JAMES CITY BY AMENDING SECTION 18-7.2, REFUND OF LEVIES ERRONEOUSLY PAID.

BE IT ORDAINED by the Board of Supervisors of James City County that Chapter 18, Taxation, of the Code of the County of James City be and the same is, hereby, amended and reordained by amending Section 18-7.2, Refund of levies erroneously paid.

#### Sec. 18-7.2. Refund of levies erroneously paid.

Pursuant to Section 58-1152.1 of the Code of Virginia, 1950, as amended, the board of supervisors hereby provides for the refund of any local levies erroneously assessed on tangible personal property, machinery and tools, or merchant's capital, or a local license tax or real estate.

If upon application, the commissioner of the revenue is satisfied that he or his predecessor in office has erroneously assessed such applicant with any local levies as provided herein, he shall certify to the tax-collecting officer the amount erroneously assessed. If the levies have not been paid, the applicant shall be exonerated from so much thereof as is erroneous, and if such levies have been paid, the tax collecting officer or his successor in office shall refund to the

applicant the amount erroneously paid, together with any penalties and interest paid thereon.

No refund shall be made in any case when application therefor was made more than three (3) years after the last day of the tax year for which such taxes were assessed; provided, that if any tax is declared to be unconstitutional by a court of competent jurisdiction, the board of supervisors shall grant a refund of such tax hereunder to all taxpayers, for those years to which the court proceeding was applicable.

13. Proposed Amendments to Chapter 11 - Police Department

Mr. Morton stated that the amendments to this Ordinance were requested by the Chief of Police as a result of the shift in law enforcement responsibility from the Sheriff's Department to the Police Department. He recommended adoption of the Ordinance.

Mr. DePue opened, then closed the public hearing as there was no one wishing to speak.

Mr. DePue made the motion to approve the amendments to the Ordinance.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

ORDINANCE NO. 66A-12

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 11, MOTOR VEHICLES AND TRAFFIC, OF THE CODE OF THE COUNTY OF JAMES CITY, ARTICLE III, STOPPING, STANDING AND PARKING, BY AMENDING SECTION 11-49.1, REMOVAL OR IMMOBILIZATION OF MOTOR VEHICLES AGAINST WHICH THERE ARE OUTSTANDING PARKING VIOLATIONS, AND BY OMITTING SECTION 11-49.2, TEMPORARY REMOVAL AND DISPOSITION OF VEHICLES INVOLVED IN ACCIDENTS.

BE IT ORDAINED by the Board of Supervisors of the County of James City that Chapter 11, Motor Vehicles and Traffic, of the Code of the County of James City, Article III, Stopping, Standing and Parking, is hereby amended and reordained by amending Section 11-49.1, Removal or immobilization of motor vehicles against which there are outstanding parking violations, and by omitting Section 11-49.2, Temporary removal and disposition of vehicles involved in accidents.

Section 11-49.1. Removal or immobilization of motor vehicles against which there are outstanding parking violations.

- (a) Any motor vehicle found parked upon the public streets or highways or public grounds against which there are three (3) or more outstanding unpaid or otherwise unsettled parking violation notices may be removed or conveyed to a place designated by the chief of police for the temporary storage of such vehicles, or such vehicles may be immobilized in such manner as to prevent its removal or operation except by authorized officers or members of the police department. Such a removal, conveyance or immobilization shall be by, or under, the direction of an officer or member of the police department.
- (b) It shall be the duty of the officer or member of the police department removing or immobilizing such motor vehicle or under whose direction such vehicle is removed or immobilized, to inform as soon as practicable, the owner of the removed or immobilized vehicle of the nature and circumstances of the prior unsettled parking violation notices, for which or on account of which, such vehicle was removed or immobilized. In any case involving immobilization of a vehicle pursuant to this section, there shall be placed in such vehicle, in a conspicuous manner, a notice warning that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage thereto.
- (c) The owner of an immobilized vehicle or any duly authorized person shall be allowed twenty-four (24) hours from the time of

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immobilization to repossess or secure the release of the vehicle. Failure to repossess or secure the release of the vehicle within this time period shall result in the removal of such vehicle to a storage area for safekeeping under the direction of a member or officer of the police department.

- (d) The owner of such removal or immobilized motor vehicle, or any duly authorized person, shall be permitted to repossess or secure the release of the vehicle by payment of outstanding parking violation notices for which the vehicle was removed or immobilized and by payment of all reasonable costs incidental to the immobilization, removal and storage of the vehicle, and the efforts to locate the owner of the vehicle. Should such owner fail or refuse to pay such fines and costs, or should the identity or whereabouts of such owner be unknown or unascertainable, such vehicle may be disposed of in accordance with subsection (a) of section 11-47.

14. Proposed Vacation - James Square/Shellis Inc./Trust James 20-8 and 20-9

Mr. Morton recommended adoption of the Ordinances vacating three separate plats.

Mr. DePue opened the public hearing.

Mr. Samuel T. Powell spoke on behalf of his client requesting adoption of the two Ordinances in order that the title could be cleared on the above-referenced property.

Mr. DePue closed the public hearing. He stated that because of personal interest in the property in question he would abstain from voting.

Mr. Taylor made the motion to approve the Ordinances.

On a roll call, the vote was AYE: Frink, Edwards, Mahone, Taylor (4). NAY: (0). Mr. DePue abstained.

ORDINANCE NO. 151

AN ORDINANCE to vacate certain portions of a plat entitled "Birchwood Estates, Section C, Jamestown District," James City County, Virginia, dated June 5, 1962.

WHEREAS, application has been made by Samuel T. Powell, Esq. on behalf of Shellis, Inc. to vacate certain lines, numbers and symbols in the boundaries of the property shown on said plat and,

WHEREAS, notice that the Board of Supervisors of James City County would consider such application has been given pursuant to Section 15.1-482 and Section 15.1-431 of the Code of Virginia, 1950, as amended; and,

WHEREAS, the Board of Supervisors did consider such application on the 16 day of November, 1983 pursuant to such notice and were of the opinion that such vacation would not result in any inconvenience and is in the interest of the public welfare.

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

1. That certain lines, numbers and symbols on a plat entitled "Birchwood Estates, Section C, Jamestown District," James City County, Virginia, dated June 5, 1962 and recorded in plat book 20, page 34 be vacated so as to permit the recordation of a new plat as set forth herein:
2. That it is specifically provided that the 16 foot easement shown on said plat recorded in plat book 20, page 34 as the Colonial Pipeline easement shall not be vacated nor affected by the recordation of this ordinance and the plat referenced herein.
3. That a new plat entitled, "Plat to Accompany Request for Vacation of All Lines, Numbers and Symbols within the boundary of the property shown hereon being 9.670 acres  $\pm$  located in James City County, Virginia, Plat #1" dated September 20, 1983, prepared by Spearman and Associates, Inc., Land Surveying, Williamsburg, Virginia be put to record in the Clerk's

office of the Courthouse for the City of Williamsburg and the County of James City, Virginia.

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

ORDINANCE NO. 152

AN ORDINANCE to vacate certain plats entitled "Plat of Part of Property of Birchwood Estates Corporation, James City County, Virginia," dated June 12, 1963 and "Birchwood Park" recorded February 8, 1967.

WHEREAS, application has been made by Samuel T. Powell, Esq., on behalf of Shellis, Inc. to vacate certain lines, numbers and symbols within the boundary of the property shown on the plats referenced herein, and

WHEREAS, notice that the Board of Supervisors of James City County would consider such application has been given pursuant to Section 15.1-482 and Section 15.1-431 of the Code of Virginia, 1950, as amended, and

WHEREAS, the Board of Supervisors did consider such application on the 16<sup>th</sup> day of November, 1983 pursuant to such notice and were of the opinion that such vacation would not result in any inconvenience and is in the interest of the public welfare.

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

1. That certain lines, numbers and symbols on the plats entitled "Plat of Part of Property of Birchwood Estates Corporation James City County, Virginia," dated June 12, 1963 prepared by Baldwin and Greg Civil Engineers and Surveyors and that plat entitled "Birchwood Park" and recorded February 8, 1967 in Plat Book 24 at Page 29 be and the same are hereby vacated so as to permit the recordation of a new plat as set forth below.
2. That it is specifically provided that the sixteen foot easement shown on said plats as the Colonial Pipeline easement shall not be vacated nor affected by the recordation of the ordinance and the plats referenced herein.
3. That a new plat entitled "Plat to Accompany Request for Vacation of all lines, numbers and symbols within the boundary of the property shown hereon being 9.670 acres ± located in James City County, Virginia" and, Plat #2," dated September 20, 1983 prepared by Spearman and Associates, Inc., Land Surveying, Williamsburg, Virginia, be put to record in the Clerk's Office of the Courthouse for the City of Williamsburg and County of James City, Virginia.

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

D. CONSENT CALENDAR

Mr. DePue ask the Board members if they wished to have any items removed from the Consent Calendar. He then moved approval of the Consent Calendar.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

1. Set Public Hearing Date of December 5, 1983 for:
  - a. Proposed Vacation of Easement/Kristiansand
  - b. Public Hearing Setting Water Rates in Sanitary District Number One
  - c. Pre-budget Public Hearing and Revenue Sharing Public Hearing
  - d. Case No. SUP-31-83. Ruby V. Jones
  - e. Proposed Quitclaim Deeds/Norman Davis Drive

E. BOARD CONSIDERATIONS

1. Dr. Donald W. Cherry - Williamsburg Water Connection

This request was withdrawn as a result of the denial of Case Nos. Z-13-83/SUP-29-83. Dr. Donald W. Cherry.

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2. Request for Recreational Area Access Funds from the State Highway Commission

Mrs. Burcham presented this matter to the Board requesting approval of the Resolution requesting the State Division of Parks and Recreation to designate the Upper County District Park as public recreation area; and to recommend to the State Highway Commission that recreational access funds be allocated for an access road to serve the park.

Mr. DePue asked whether camp sites are prohibited under the Highway Commission's allocation of funds.

Mr. Morton replied no.

Mr. Mahone stated that he would vote against this item. He stated that public funds would be used to make the improvements to the road and that this park will be very competitive with other County campgrounds.

Mr. Edwards moved for the approval of the Resolution.

On a roll call, the vote was AYE: Frink, Edwards, Taylor (3). NAY: DePue, Mahone (2). The motion carried by a 3-2 vote.

R E S O L U T I O N

REQUEST FOR RECREATIONAL AREA ACCESS ROAD FUNDS  
UPPER COUNTY DISTRICT PARK

WHEREAS, James City County has a Recreation Facilities Plan designed to meet the park and recreational needs of its citizens; and

WHEREAS, the Upper County District Park is owned and is to be developed by James City County as a recreational facility serving the residents of James City County; and

WHEREAS, the facility is in need of adequate access; and

WHEREAS, the procedure governing the allocation of recreational access funds as set forth in Section 33-136.3, Code of Virginia, 1950, as amended, requires joint action by the Virginia Division of Parks and Recreation and the Highway Commission; and

WHEREAS, a statement of policy agreed upon between the said bodies approves the use of such funds for the construction of access roads to publicly-owned recreational areas or historical sites; and

WHEREAS, the Board of Supervisors of James City County has duly adopted a zoning ordinance pursuant to Article 8 (Section 15.1-486 et. seq.), Chapter 11, Title 15.1 of the Code of Virginia, 1950, as amended; and

WHEREAS, it appears to the Board that all requirements of the law have been met to permit the Virginia Division of Parks and Recreation to designate the Upper County District Park as a recreational facility and further permit the Virginia Highway Commission to provide funds for access to this public recreation area in accordance with Section 33-136.3, Code of Virginia, 1950, as amended:

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County hereby requests the Virginia Division of Parks and Recreation to designate the Upper County District Park as a public recreational area; and to recommend to the State Highway Commission that recreational access funds be allocated for an access road to serve said park; and

BE IT FURTHER RESOLVED that the Virginia Highway Commission is hereby requested to allocate the necessary recreational access funds to provide a suitable access road as hereinbefore described.

**F. MATTERS OF SPECIAL PRIVILEGE**

None.

**G. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Oliver suggested the Board set December 5, 1983 at 6:45 P.M. as the date to see a short film by the Thomas Nelson Community College Local Board. He then suggested the Board convene into Executive Session to discuss appointments.

**H. BOARD REQUESTS AND DIRECTIVES**

Mr. Mahone requested a report from the Chief of Police as to the reasons officers were not allowed to testify during the School Board's hearing on the Lafayette students' alcohol charges. He then thanked Mrs. Burcham for the report on the Summer Food Program.

Mr. DePue made the motion to convene into Executive Session to discuss appointments and a potential legal matter pursuant to Section 2.1-344(a)(1) and (6) of the Code of Virginia, 1950 as amended.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

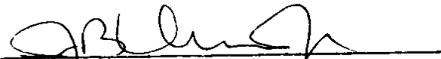
The Board convened into Executive Session at 10:30 P.M. and returned to Public Session at 11:04 P.M. at which time Mr. Taylor made a motion to appoint Ms. Ethel Hazelwood to fill the unexpired three-year term of Mr. Joel Whitley on the Parks & Recreation Commission.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

Mr. DePue made the motion to adjourn.

On a roll call, the vote was AYE: DePue, Frink, Edwards, Mahone, Taylor (5). NAY: (0).

The Board of Supervisors meeting **ADJOURNED** at 11:06 P.M.

  
James B. Oliver, Jr.  
Clerk to the Board

RS/dfc  
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