

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 8TH DAY OF APRIL 2008, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

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

Sanford B. Wanner, County Administrator  
Leo P. Rogers, County Attorney

**C. PLEDGE OF ALLEGIANCE** – Kaleigh M. Milligan, a twelfth-grade student at Lafayette High School, led the Board and citizens in the Pledge of Allegiance.

**D. PUBLIC COMMENT**

1. Mr. John Rhein, 3505 Hunter's Ridge, on behalf of the National Federation of the Blind (NFB), invited citizens to attend a NFB meeting on April 19, 2008, at the James City-Williamsburg Community Center. He commented on fees for Cox cable services and requested JCC TV-48 audible programming announcements for the blind and visually impaired.

2. Mr. Kelly Place, Waller Mill Road, commented on the increased water rates and the James City Service Authority (JCSA)/Newport News Water Works Project Development Agreement (PDA).

3. Mr. Dick Ashe, Yorktown, commented on affordable housing and the rising cost of construction.

4. Ms. Sarah Kadee, 3504 Hunter's Ridge, on behalf of the James City County Concerned Citizens (J4C), gave a presentation of the J4C flood control report.

5. Mr. Ed Oyer, 139 Indian Circle, commented on buying property for public use; citizen opposition to the Hampton Roads Transportation Authority (HRTA); student presentations; special tax districts within the County in relation to drainage; and policies being passed in haste.

6. Ms. Mary Delaney Smallwood, 1102 London Company Way, commented on a request for proposal from JCSA wherein Jamestown 1607 property was used to access a lift station without community approval.

7. Ms. Julie Leverenz, 1131 Running Cedar Way, stated her support for the J4C flood control report recommendations.

**E. CONSENT CALENDAR**

Mr. Goodson explained that the public hearings would be reordered for the consideration of the public.

Mr. McGlennon highlighted the resolution in recognition of Child Abuse Prevention Month. He commented on a program on April 15, 2008 at 7 p.m. at Legacy Hall to address child abuse and memorialize the children who have lost their lives due to abuse.

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

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

1. Minutes - March 25, 2008, Regular Meeting
2. Child Abuse Prevention Month

**RESOLUTION**

**CHILD ABUSE PREVENTION MONTH**

WHEREAS, preventing child abuse and neglect is a community problem that depends on involvement among people throughout the community; and

WHEREAS, child maltreatment occurs when people find themselves in stressful situations and without community resources; and

WHEREAS, the majority of child abuse cases stem from situations and conditions that are preventable in an engaged and supportive community; and

WHEREAS, all citizens should become involved in supporting families in raising their children in a safe, nurturing environment; and

WHEREAS, effective child abuse prevention programs succeed because of partnerships created among social service agencies, schools, faith communities, civic organizations, law enforcement agencies, and the business community.

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby proclaims April as Child Abuse Prevention Month and calls this observance to the attention of all citizens.

BE IT FURTHER RESOLVED that the Board calls upon all citizens, community agencies, faith groups, medical facilities, and businesses to increase their participation in efforts to support families, thereby preventing child abuse and strengthening the communities in which we live.

## **F. PUBLIC HEARINGS**

Mr. Goodson recognized Planning Commissioner Chris Henderson in the audience.

### **1. Kennels in the B-1, General Business, Zoning District**

Ms. Ellen Cook, Planner, stated Mr. and Mrs. Matthew DiBiasco have requested that the Zoning Ordinance for the B-1, General Business, zoning district be amended to permit kennels. Currently the B-1 district does not permit kennels as a by-right or specially permitted use. A kennel is defined as a place prepared to house, board, breed, handle, or otherwise keep or care for either dogs or cats or both for sale or in return for compensation. Kennels are currently a by-right use in the M-1, Limited Business/Industrial, zoning district and are a specially permitted use in the A-1, General Agriculture, and R-8, Rural Residential, zoning districts. The Deputy Zoning Administrator determined that similar uses to a kennel are animal hospitals or veterinary hospitals which may include open-air kennels as part of the development plan without additional approvals as an accessory use. Veterinary hospitals are a by-right use in the B-1, General Business, and MU, Mixed Use, zoning districts. Animal hospitals and veterinary offices are specially permitted uses in the A-1, General Agriculture, and R-8, Rural Residential, zoning districts and also in the LB, Limited Business, zoning district with all activities limited to a fully enclosed building in that district.

At the Policy Committee meeting on February 19, 2008, Planning staff recommended that the B-1 ordinance be amended to permit kennels as a by-right use. The Policy Committee determined that kennels should not be a by-right use in the B-1 district due to the noise associated with this use, but instead should be considered as a specially permitted use in this district.

At its meeting on February 19, 2008, the Policy Committee recommended approval by a vote of 5-0, and at its March 5, 2008, meeting the Planning Commission recommended approval by a vote of 6-0.

Staff recommended approval of the ordinance amendment.

Mr. Goodson opened the Public Hearing.

As no one wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Kennedy made a motion to adopt the ordinance amendment.

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

### **2. Agricultural and Forestal District 5-86-4-2007. Barnes Swamp AFD**

Mr. Luke Vinciguerra, Planner, stated that Ms. Pamela Moore, on behalf of Pamaka, LLC, has applied to add 1.34 acres to the Barnes Swamp AFD. The property is located at 9238 Barnes Road and is further identified as James City County Real Estate Tax Map/Parcel No. 0430100014a. The parcel is zoned A-1, General Agricultural, and is designated by the Comprehensive Plan as Rural Lands.

At its meeting on January 23, 2008, the AFD Advisory Committee recommended approval unanimously. At its meeting on March 5, 2008, the Planning Commission recommended approval by a vote of 6-0.

Staff recommended approval of the application.

Mr. Goodson opened the Public Hearing.

As no one wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Kennedy made a motion to approve the ordinance.

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

3. Case No. Z-0012-2007/MP-0010-2007/SUP-0033-2007. Williamsburg Auto Group-Honda Expansion (continued from March 25, 2008)

Ms. Ellen Cook, Planner, stated that the application wished to defer this case until May 13, 2008, and staff concurred with this request.

Mr. Goodson stated that he believed there were significant changes. He asked if staff would recommend sending the application back to the Planning Commission.

Mr. McGlennon stated the case was recommended by the Planning Commission unanimously. He stated that he believed these items were normally sent back to gain better approval of the Planning Commission.

Mr. Icenhour stated that the public hearing should be opened before the decision of deferral or sending the item back to the Planning Commission should be considered.

Mr. Goodson opened the Public Hearing.

1. Ms. Amy Doyle, 207 Haradd Lane, stated opposition to the rezoning of the parcel due to lighting, signage, traffic, scale, building materials, and other characteristics of the Honda dealership.

2. Mr. Scott Coursen, 160 Nina Lane, stated opposition to the rezoning application as a property owner in Kristiansand.

3. Mr. Paul Sharp, 102 Charles Bath, commented on the support of the neighborhood.

4. Ms. Virginia Cory, 145 Roger Smith, stated concern about the Board's attitude toward residential areas.

5. Mr. Chris May, 103 Nina Lane, commented on the opposition of the neighborhood to the Honda expansion.

As no one else wished to speak to this matter, Mr. Goodson continued the Public Hearing to May 13, 2008.

Mr. Icenhour stated that he would respect the applicant's request for deferral, but he would hope the application would come for consideration the next time.

Mr. Goodson stated that he echoed Mr. Icenhour's comments.

Mr. Goodson stated the item was deferred and the public hearing would be continued to May 13, 2008.

4. Ordinance to Amend James City County Code Section 23-9, Performance Standards, Resource Management Area Buffers

Mr. Mike Woolson, Senior Watershed Planner, gave an overview of the history of the Chesapeake Bay Preservation Ordinance and the proposed changes to the Resource Management Area buffers.

1. Mr. William Marshall 2526 Forge Road, stated his opposition to the proposed changes.
2. Ms. Sherry L. Matheny, 270 Peach Street, stated her opposition to the proposed changes and stated the 100-foot buffers should be sufficient.
3. Mr. Branch Lawson, Smithfield, stated he was an owner of Chickahominy-Summerplace, LLC and noted that he was opposed the additional buffers in Powhatan and Yarmouth Creek Watersheds. He stated that a buffer of 100 feet is adequate and acceptable. He stated that development in the watershed would have minimal impervious cover and wildlife would coexist with or without buffers. He commented on flood control and noted that Powhatan Creek and Yarmouth Creek watersheds were different in this respect due to topography.
4. Mr. Dean Vincent, Suffolk, an owner of Chickahominy-Summerplace, LLC stated opposition to the additional buffers. He noted the decrease in lots available with the increased buffer.
5. Mr. Aaron Millikin, Carrolton, on behalf of Liberty Ridge, LLC stated opposition to the ordinance amendment and stated concerns about the language of the ordinance.
6. Mr. Richard Swanenburg, 4059 South Riverside Drive, commented on the watershed studies and stated the recommendations were not backed up by data.
7. Mr. Joe Swanenburg, 3026 The Point Drive, stated residential land use created only a small portion of the pollutants in the Chesapeake Bay and that increased buffers would not improve the health of the bay. He commented on the increased cost of residential development.
8. Mr. Gene Farley, 4049 South Riverside Drive, stated his property would be severely impacted by the buffer requirements. He stated he had a by-right development project of roughly 20 lots, but the submittal for administrative approval was delayed. He stated the new ordinance language would adversely affect this project by a loss of roughly \$1 million in real estate. He stated he would not be opposed to Resource Management Areas (RMAs). He requested denial of the ordinance amendment.
9. Dr. Gregory Monnett, Richmond, stated he was a soil scientist and deals with wetland issues and buffers. He stated a vegetative buffer reduces pollutants to waterways and that according to his research, buffers are effective between 50 feet and 100 feet. He stated that sediments and nutrients could be removed by about 30 feet and that the 100-foot required buffer was excessive. He stated the slope requirement already addressed concerns about topography and indicated there was a diminishing marginal return in regard to buffer width. He stated he felt that an RMA was not consistent with State definitions.

10. Mr. Chuck Roadley, 9065 Marmont Lane, an employee of Williamsburg Environmental Group, on behalf of Chickahominy Summerplace, LLC commented on the definitions and ordinance language relating to a mainstem, guidance relating to breaks, and slope ranges.

11. Mr. Dick Ashe, Yorktown, stated that he was a property owner in the Yarmouth Creek Watershed. He commented that a 100-foot buffer was sufficient according to the Chesapeake Bay Act. He stated the impervious surface was minimal for many of the lots in question. He commented on the potential for buffers to be applied to every property in the County and the preservation of density. Mr. Ashe commented on the decreased value of the lots in the buffer areas.

12. Ms. Deborah Kratter, 113 Long Point, on behalf of the J4C, stated that the organization was opposed to changes that would refute any portions of the adopted watershed management plans. She encouraged protection of the streams and waterways.

13. Mr. Terence Elkins, 105 Lothian, commented that a small group of people and developers were abusing the property of others downstream and requiring the County as a whole to pay for restoration of the damage to the watersheds. He requested approval of the ordinance amendment.

14. Mr. Wayne Nunn, 238 Loch Haven, founder of the James City County Land Owner Association, commented on the area of the watersheds in relation to flooding and ridges. He commented on pollution sources and the watershed studies. He requested protecting the interests of landowners.

15. Mr. George Hankins, Virginia Beach, commented on the impact of the buffers proposed on landowners. He commented on the acquisition of the buffers recommended by the watershed management plans. He requested denial of the ordinance amendment.

16. Mr. John Haldeman, 1597 Founder's Hill North, stated that Maryland has defined critical areas to 1,000 feet within shoreline with a 100-foot buffer and that they passed a law to double the critical area and extend the buffer in ocean bays. He stated that every stream and creek in the County has been rated sub standard.

Mr. Goodson recessed the Board for a brief break at 9:13 p.m.

At 9:18 p.m. Mr. Goodson reconvened the Board.

17. Mr. Payten Harcum, 3183 Chickahominy Road, showed pictures of the effects of pesticides that affect water quality and cause sediment erosion.

18. Mr. Robert Duckett, Peninsula Housing and Builders Association Public Affairs Director, commented that according to Chesapeake Bay Local Assistance Department (CBLAD) 100 feet of buffer is sufficient. He stated additional buffer is excessive and reduces homeowner property values. He recommended options in lieu of additional buffers. He requested clarifying ordinance language and a separate cluster by-right ordinance.

19. Ms. Shereen Hughes, 103 Holly Road, stated that she considered this ordinance from an environmental perspective and a property rights perspective. She stated that agricultural and forestal uses are exempt from the Chesapeake Bay Act and that she worked to have by-right uses not be affected. Ms. Hughes

showed that Virginia Code indicated a minimum buffer that should be imposed and gives a right to go beyond that level. She noted that consultants and local experts developed the watershed management plans which were adopted and incorporated into the Comprehensive Plan. She stated the ordinance amendments were addressing land-use changes. She requested approval of the ordinance amendment.

20. Mr. James Bennett, 108 Blenheim, on behalf of The Settlement at Powhatan Creek, commented on the impact the buffers would have on affected property owners.

21. Mr. Ware Warburton, Providence Forge, commented on his family's farming practices that protect the watershed and on the impact of buffers on property owners.

22. Mr. Kelly Place, Yorktown, on behalf of the Virginia Watermen's Association, stated his support for the buffer ordinance amendments and increasing water quality. He stated there were property rights issues at hand and that he felt that people should be compensated for the loss of property. He noted that the 100-foot buffer was a minimum and stated that they needed to be increased. He stated that improvement benchmarks needed to be met.

23. Mr. Mack Mitier, 105 Gilley Drive, stated there were too many exceptions in the ordinance language and that the damage to the land could not be undone.

24. Mr. Tim Cleary, 103 Lands End Drive, stated that he did not feel that this was an instance in which the public's best interest could be applied to justify the effect on landowners' property values.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. McGlennon asked about properties that he did not believe would be affected, such as the Settlement at Powhatan Creek.

Mr. Woolson stated that The Settlement at Powhatan Creek's Phases 3 and 4 of the approved master plan have not been built; he noted Item 5, where approved master plans have to comply to the greatest degree possible with the same density. He stated that it did impact some land in Phases 3 and 4 and staff has not made any determination on the grandfathering or application thereof to the project.

Ms. Jones asked if it would fall under grandfathering, but still apply to furthest extent possible.

Mr. Woolson stated it would be applied while maintaining the approved density, similar to New Town Sections 7 and 8 rezoning.

Mr. Goodson stated there would be additional costs for a developer to comply with this.

Mr. Woolson stated there may be additional costs.

Mr. McGlennon stated the density would be preserved unless the density could not be preserved wherein it would not be implemented in that property.

Mr. Woolson stated that this was correct.

Mr. McGlennon asked about developed properties and the utilization of that property.

Mr. Woolson stated if there is something already constructed on a property, it would be exempt.

Mr. McGlennon stated that conservation easements have been purchased and there is a Purchase of Development Rights (PDR) Program. He noted that the voters approved \$25 million in bonds for greenspace acquisition.

Mr. Woolson stated that this was correct.

Mr. McGlennon stated taxpayers are paying for the repair of eroded stream beds for the mitigation of eroded stream beds due to runoff.

Mr. Woolson stated that was correct.

Mr. Goodson indicated that proffers were also paying for this.

Mr. McGlennon asked when the extended buffers would come into effect.

Mr. Woolson stated that it does not affect the majority of the properties discussed.

Mr. McGlennon asked about the application of the buffers in the instance of a ridgeline that takes water away from creek or other topographical feature that mitigates erosion and runoff.

Mr. Woolson stated that is taken into account when determining the buffer.

Mr. McGlennon asked if the 50-foot buffer for intermittent streams would apply only in watershed areas.

Mr. Woolson stated that requirement would apply County-wide.

Mr. McGlennon asked about the science relating to benefit of at least 50 feet of buffer. He asked if it would have an impact on water quality that is positive since this requirement does not yet exist for intermittent streams.

Mr. Woolson stated it would have a positive impact.

Ms. Jones asked if the buffer would be on either side.

Mr. Woolson stated this was correct and it would be similar to a Resource Protection Area (RPA).

Mr. McGlennon stated it would be needed on both sides to capture runoff.

Ms. Jones stated one of the recommendations from the Planning Commission was to have some language to assure current ownership by-right density.

Mr. Woolson indicated where this language was in the ordinance.

Ms. Jones stated she did not understand that there was any by-right assurance specifically mentioned.

Mr. Woolson stated that the subsection does not make a distinction.

Ms. Jones stated that she thought it applied only to the added variable-width buffer. She thanked staff for the definition of a mainstem and its application. She noted a question about the RMA buffer applied to the

end of the RPA buffer at the mainstem. She stated concern about the application of the mainstem definition.

Mr. Woolson stated that only the main channel was recognized. He stated there was language for the mainstem being braided also. He stated this was not applicable in the Powhatan Creek watershed, but it could be applied to a future watershed.

Mr. Goodson asked if it was true in Yarmouth Creek.

Mr. Woolson stated that Yarmouth Creek was braided.

Mr. Goodson stated this was a question that was not previously addressed.

Mr. Woolson stated that the definition was generous, but in tidal situations in Yarmouth Creek, there were 18 inches between high and low tide. He stated the pictures at the work session were at low tide, which showed navigable channel. He stated that is what defines the mainstem in the high tide situation.

Ms. Jones asked about ordinance language about area reductions to maintain by-right density and asked about the language of lot or site.

Mr. Woolson stated it might not be practical on the lot, but if it is applicable on the site this could be entertained.

Mr. Icenhour stated there were nine watersheds in the County, two with watershed management plans. He stated these two had the most immediate and direct impact of development.

Mr. Woolson stated this was correct.

Mr. Icenhour stated the Gordon Creek watershed plan was underway and there were watersheds in built-out areas that have no baseline study. He stated there was no way to see the impact on the current water quality.

Mr. Icenhour commented on the need to build closer to shore and stated his concern about impact on the floodplain.

Mr. Woolson stated that regarding the flooding concerns, the proposal would help alleviate flooding but would not solve existing flooding problems.

Mr. McGlennon asked to understand the impact of flooding on water quality. He stated that heavy rains can flood yards adjacent to waterways and withdraw pollutants into the waterways. He asked if this was increasing frequency.

Mr. Woolson stated there was no hard data on this, but there was more flooding from smaller storms.

Mr. McGlennon stated that the J4C flood report showed photographs of this occurrence.

Mr. Woolson stated that this was correct.

Mr. Goodson stated that new developments do not drain across buffer, but rather Best Management Practices (BMPs) which discharged gradually. He asked how the buffers help flooding in a new development.

Mr. Woolson stated the BMPs are not needed for the majority of the subdivisions. He indicated that the buffer would intercept runoff from housing in developments that would not necessarily go to a BMP.

Mr. Kennedy asked about the by-right cluster ordinance and increased density in this area.

Mr. Woolson stated the environmental staff does not have a stance on this. He stated it would be supported, but it would not be tied to this ordinance process as it would need to be handled through Planning staff and the Planning Commission.

Mr. Kennedy asked if it was modeled as a BMP.

Mr. Woolson stated it was not.

Ms. Jones stated it would create a better design and could maintain density.

Mr. Woolson stated that he agreed.

Mr. Kinsman stated Subsection C directly speaks to the bay zone and outer zone but does not explicitly mention Subsection A. He stated that Mr. Farley commented on an email conversation wherein Mr. Farley has a proposed development in a conceptual plan phase. He stated this would not fall under the grandfathering resolution. Mr. Kinsman stated they discussed changing the preliminary plan date deadline from April 8, 2008, to some date in the future.

Mr. Goodson asked if Subsection A should be revised at the dais or at a later time.

Mr. Kinsman stated that Subsection C did not apply to Subsection A, and the Board may not be comfortable making this revision at the dais.

Mr. Goodson stated this would affect the entire ordinance.

Mr. Allen Murphy stated if this was the desire of the Board, Subsection C should be amended.

Mr. McGlennon asked if this was for the intermittent stream section.

Ms. Jones stated that was correct.

Mr. McGlennon stated that he did not remember the discussion in relation to intermittent streams to be an point of agreement.

Ms. Jones stated the recommendations from the Planning Commission would have a significant impact. She indicated that she would like to see by-right development maintain its current by-right density for the sake of the property owner.

Mr. Goodson stated there was issue with this particular part of the ordinance as he did not believe any part was to apply to by-right density.

Ms. Jones stated there were two different issues at hand in this case.

Mr. Goodson stated that in his district it would have a huge impact on Skiffe's Creek.

Mr. McGlennon asked where density was compromised by a 50-foot buffer for intermittent stream.

Mr. Goodson stated that the streams were difficult to determine.

Mr. McGlennon stated that clarification was needed.

Mr. Goodson stated landowners may not know if they are there.

Ms. Jones stated she felt the language in Subsection C should be changed to allow for flexibility of land on some other portion of the property rather than on a particular lot.

Mr. McGlennon asked about Item 2, Outer Zone, wherein the 25-foot buffer was required to be forested or grass.

Mr. Woolson stated that was correct.

Mr. McGlennon asked if this could be disallowed rather than mandated.

Mr. Woolson stated the area could be landscaped.

Mr. McGlennon agreed, but indicated he felt it should be naturally vegetated.

Mr. Goodson asked if mulch would qualify.

Mr. Woolson stated that it would.

Mr. Goodson stated the 25-foot buffer was more of a setback.

Mr. Woolson stated it was not a setback or it would be County-wide. He stated this buffer was only applicable on the mainstems of Powhatan Creek and Yarmouth Creek.

Mr. Goodson stated it was treated as a setback. He asked about installation of a deck with open boards.

Mr. Woolson stated it would be allowable. He noted that the ordinance exempts the first 500 square feet of impervious cover on each lot.

Mr. Goodson asked if these buffers would apply if a citizen bought property in a neighborhood that had buffer requirements.

Mr. Woolson stated that they would.

Ms. Jones stated that she would like to see some language revisions.

Mr. McGlennon stated that he has not heard the feelings on the principle and that his reservation on adopting this revision was that he would like to see a stronger ordinance. He stated he was unsure of the support for this ordinance.

Ms. Jones stated these requirements have been adopted and applied to legislative cases.

Mr. Thomas clarified that the intermittent stream and wetland requirements for legislative cases applied to properties in the Powhatan Creek and Yarmouth Creek watersheds.

Ms. Jones stated that she supported the water quality issue and the importance of the issue as a community. She directed staff to look at infringement on property owner rights; she indicated she did not want room for misinterpretation.

Mr. Icenhour stated that when they passed the previous ordinance and rescinded it, Ms. Jones was in the affirmative and supported the buffers, but asked for changes. He stated he had reservations because he felt the proposed ordinance was not strong enough.

Ms. Jones stated there were necessary changes and the last ordinance that was adopted required changes.

Mr. Icenhour stated that staff should not work on it if there was not support for the ordinance.

Ms. Jones stated that staff should not work on it if compromises could not be made.

Mr. Icenhour stated he would not make that decision in advance of the revisions.

Ms. Jones stated that if he felt the revisions had no merit, then staff should not address them.

Mr. McGlennon asked Mr. Kennedy and Mr. Goodson about their feelings on the ordinance.

Mr. Goodson stated that he could not support the ordinance as written.

Mr. Kennedy stated that he could not support it either.

Mr. McGlennon stated he felt it was worthwhile to have staff examine changes that need to be changed.

Ms. Jones stated she would like to see it be made clearer.

Mr. Kennedy asked to discuss compensation for buffers and density and clustering. He stated he was willing to look at the entire package and this ordinance allows too much interpretation. He stated he felt it was not specific enough and allowed the opportunity for too much review. He indicated he saw issues of clarity and application.

Mr. McGlennon stated he did not object to clarification, but he would appreciate sharing with staff and the Board the specific areas need to be addressed.

Mr. Kennedy stated he had outlined specific issues.

Mr. McGlennon asked for specific issues related to this particular ordinance and asked what would affect the chances of support for the ordinance. He stated that if Mr. Kennedy did not plan to support it, there was no reason to waste time where it will not be effective. He stated there was a need to develop an ordinance that has majority support.

Mr. Kennedy stated the discussion focus was water quality, and at this point he would not support the ordinance amendments.

Mr. McGlennon stated that he appreciated this guidance to help determine the likelihood of an ordinance being adopted.

Mr. Goodson stated that he felt he was very clear during the work session that the ordinance did devalue properties, and that a by-right cluster ordinance would address this and help water quality.

Mr. McGlennon asked Mr. Kinsman if a by-right cluster ordinance could be done within an RPA.

Mr. Goodson stated it should be available to landowners. He stated there should be a cluster ordinance and then this ordinance.

Ms. Jones stated there was one already in place.

Mr. Goodson stated the proffer ordinance came before the cluster ordinance which resulted in by-right development in rural lands.

Mr. McGlennon stated this was extraneous to the issue at hand. He stated that rural lands process was stopped, but he felt that he had the guidance to have a successful ordinance developed.

Ms. Jones stated she would like to see clearer language and definitions.

Mr. McGlennon stated there was enough reason to continue dialog and have staff evaluate it further.

Mr. Icenhour stated he would be happy to provide staff with his reactions to the other recommendations. He stated staff needed to have the opportunity to vet all questions against the others.

Ms. Jones stated this was a complex issue and the language needed to be refined.

Mr. Goodson stated if a member would like to present an ordinance, it would be advertised and considered by the Board.

Mr. McGlennon stated he would like to direct staff to work on this and ask that it be brought back within approximately six weeks.

Mr. Wanner stated that during the Comprehensive Plan process, zoning changes are enacted and this year's update would not be voted on until 2009. He noted that the County does have a cluster ordinance but it is rarely utilized. He indicated timing may be an issue to bring this matter forward again since the budget was about to be released with subsequent public hearings and work sessions.

Mr. McGlennon stated six to eight weeks would be good timing to address these issues.

Mr. Goodson stated he could not support it because of lack of a clustering option, but he did not want to stop debate or ordinance development.

Ms. Jones stated the Powhatan Creek watershed had wide community support, received specific reference in the Comprehensive Plan showing the goals and objectives of the plan, and that this ordinance was one of them. She indicated she would like to move forward.

Mr. McGlennon stated the point may come where it is not feasible.

Mr. Wanner stated that it would likely come forward on June 24, 2008.

Mr. McGlennon stated that he did not feel a work session was necessary.

Ms. Jones stated this could be communicated with staff.

Mr. Goodson directed that the Board should communicate its desires to staff.

Ms. Jones asked if the wording of the grandfathering and vesting resolution was similar to what was previously adopted.

Mr. Woolson said it was similar to what was adopted in 2004, and that he could procure a copy of this document for the Board.

## **G. BOARD CONSIDERATION**

### **1. Chesapeake Bay Preservation Ordinance Transition - Amendments and Grandfathering/Vesting Rules**

Mr. Goodson deferred this item until the Chesapeake Bay Preservation Ordinance revisions could be considered.

## **H. PUBLIC COMMENT**

1. Mr. Gene Farley, 4049 South Riverside Drive, stated if there was not a work session to be held, those interested should be included in email correspondence to be informed.

Ms. Jones stated the communication she mentioned was directed toward staff.

Mr. Kennedy stated that staff could always be contacted.

Mr. Goodson stated that it should be made available to the public. He asked that it be posted more than five days before the meeting and two or three weeks of posting of the actual language before the meeting. He encouraged citizens to contact the Board and perhaps set up a blog.

2. Mr. Kelly Place, Yorktown, stated his disapproval of the PDA between JCSA and Newport News Water Works.

3. Mr. Ed Oyer, 139 Indian Circle, commented on population loss in Hampton Roads in the last five years.

4. Mr. Jerry Moore, 2273 West Island Road, commented that this was a progressive issue into future watersheds.

Mr. Goodson stated that the Chesapeake Bay Preservation Ordinance would not eliminate the possibility of a structure, but may affect the positioning of the structure.

5. Mr. Mack Mitier, 105 Gilley Drive, stated that if it is delayed it will increase development before the ordinance is passed. He encouraged strict grandfathering only by Board approval.

**I. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated the County Administrator's budget would be released Friday, April 11, 2008, and the budget public hearing would take place at 7 p.m. on April 22, 2008. He stated the next Comprehensive Plan Community Conversation would be held at 11:30 a.m. at the James City-Williamsburg Community Center on Monday, April 14, 2008. He stated the Closed Session item dealt with the Cable Communications Committee, with one recommendation for reappointment and two new appointments. He stated that he has recommendations from staff, but he felt the Board should meet in a closed session to discuss these items. He stated that when the Board completed its business it should adjourn to 4 p.m. on April 22, 2008, for a work session relating to the Secondary Road Program and the Business Climate Task Force.

**J. BOARD REQUESTS AND DIRECTIVES**

Mr. Goodson asked to move the Closed Session to the next meeting.

Mr. McGlennon made a motion to reappoint Dr. Stephen Murphy to the Cable Communications Committee.

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

Mr. McGlennon stated that he would be going to Washington, D.C. to participate in a meeting of Climate Communities, which is comprised of local government officials geared to encourage the Federal government to take into account incentives to local government for climate change legislation. He stated at a later time he may ask the Board to formally become members of that group and indicated he would bring back additional information.

Ms. Jones thanked J4C for presenting flood report and its efforts.

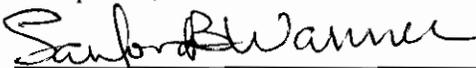
Mr. Kennedy encouraged citizens to participate in the Comprehensive Plan Community Conversations.

**K. ADJOURNMENT to 4 p.m. on April 22, 2008.**

Mr. McGlennon made a motion to adjourn.

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

At 11:13 p.m. Mr. Goodson adjourned the Board to 4 p.m. on April 22, 2008.

  
Sanford B. Wanner  
Clerk to the Board

ADOPTED

APR 8 2008

ORDINANCE NO. 31A-234

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V, DISTRICTS, DIVISION 10, GENERAL BUSINESS DISTRICT, B-1, SECTION 24-391, USES PERMITTED BY SPECIAL USE PERMIT ONLY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Section 24-391, Uses permitted by special use permit only.

Chapter 24. Zoning

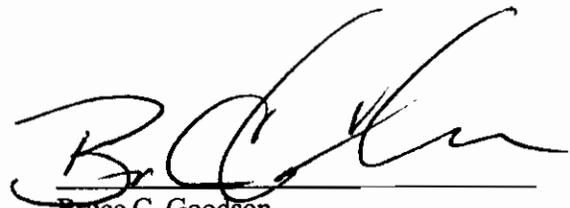
Article V. Districts

Division 10. General Business District, B-1

**Section 24-391. Uses permitted by special use permit only.**

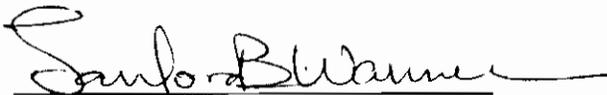
In the B-1, General Business District, buildings to be erected or the land to be used for one or more of the following or similar uses shall be permitted only after the issuance of a special use permit by the board of supervisors:

***Kennels.***



Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, on this 8th day of April, 2008.

Sec24-391upd\_ord

APR 8 2008

ORDINANCE NO. 167A-10BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIAAGRICULTURAL & FORESTAL DISTRICT - 5-86-4-2007.BARNES SWAMP AFD (9238 BARNES ROAD ADDITION)

WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia (the "Board of Supervisors") to add 1.34 acres of land owned by Pamela Moore located at 9238 Barnes Road and identified as James City County Real Estate Tax Map No. 0430100014a to AFD-5-86, which is generally known as the 1,602.96-acre "Barnes Swamp Agricultural and Forestal District" (the "Application"); and

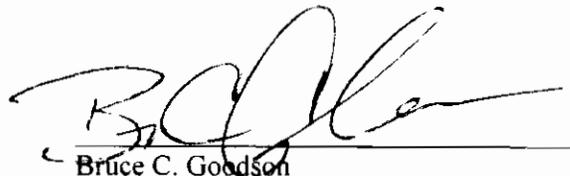
WHEREAS, at its January 23, 2008, meeting the Agricultural and Forestal District Advisory Committee voted 6-0 to recommend approval of the Application; and

WHEREAS, following public notice provided pursuant to Section 15.2-2204 and 15.2-4307 of the Virginia Code prior to its March 5, 2008, meeting, the Planning Commission voted 7-0 to recommend approval of the Application; and

WHEREAS, pursuant to Section 15.2- 2204 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 1.34 acres owned by Pamela Moore, as referenced herein, to the 1,602.96 acres of the Barnes Swamp Agricultural and Forestal District 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 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 inside the PSA and within the AFD may be withdrawn from the district in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Within the Primary Service Area, adopted September 24, 1996.
3. No special use permit shall be issued except for agricultural, forestal or other activities and uses consistent with the Virginia 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 special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.



Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
ICENHOUR	AYE
MCGLENNON	AYE
JONES	AYE
KENNEDY	AYE
GOODSON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of April,  
2008.

BarnesSwampAFD\_res