

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

A. CALL TO ORDER

B. ROLL CALL

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

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

C. MOMENT OF SILENCE

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

E. PUBLIC COMMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

F. BOARD REQUESTS AND DIRECTIVES

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

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

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

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

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

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

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

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

G. CONSENT CALENDAR

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

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

RESOLUTION

ADOPTION OF AMENDMENTS TO THE PENINSULA HAZARD MITIGATION PLAN

2011 UPDATE

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

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

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

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

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

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

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

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

RESOLUTION

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

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

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

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

Revenue:

From Commonwealth - Commonwealth Attorney \$5,000

Expenditure:

Operating Contingency \$5,000

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

H. PUBLIC HEARINGS

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

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

Ms. Jones opened the Public Hearing.

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

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

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

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

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

The Board reconvened at 8:30 p.m.

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

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

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

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

Mr. Middaugh responded that is correct.

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

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

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

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

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

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

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

Ms. Jones opened the Public Hearing.

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

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

After discussion the Board agreed to consider each amendment separately.

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

Mr. Kennedy made a motion to approve the ordinance.

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

The motion failed.

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

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

Mr. Kennedy made a motion to approve the ordinance.

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

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

Mr. Kennedy made a motion to approve the ordinance.

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

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

Mr. Kennedy made a motion to approve the ordinance.

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

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

Mr. Kennedy made a motion to approve the ordinance.

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

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

Mr. Kennedy made a motion to approve the ordinance.

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

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

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

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

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

Ms. Jones opened the Public Hearing.

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

Ms. Jones closed the Public Hearing.

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

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

RESOLUTION

PERFORMANCE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES

THAT REQUIRE A SPECIAL USE PERMIT

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

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

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

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

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

4. Creation of a James City County Tourism Zone

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

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

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

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

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

Mr. McGlennon asked if all retail would qualify.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Jones opened the Public Hearing.

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

Ms. Jones closed the Public Hearing.

Mr. Kennedy made a motion to approve the resolution.

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

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

Mr. Kennedy rescinded his motion.

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

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

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

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

Ms. Jones opened the Public Hearing.

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

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

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

RESOLUTION

ADOPTING THE AMENDED JAMES CITY COUNTY REDISTRICTING MAP

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

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

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

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

I. BOARD CONSIDERATIONS

1. Discussion of Jamestown District Supervisor Appointment

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

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

J. PUBLIC COMMENT

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

K. COUNTY ADMINISTRATOR'S COMMENTS

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

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

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

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

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

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

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

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

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

L. BOARD REQUESTS AND DIRECTIVES

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

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

Mr. Icenhour asked about the Board and Commission assignments.

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

M. CLOSED SESSION

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

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

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

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

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

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

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

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


Robert C. Middaugh
Clerk to the Board

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