

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 28TH DAY OF FEBRUARY 2012, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

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

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

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Benjamin Helbert, a 4th grade student at Matoaka Elementary School, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATIONS – None

F. PUBLIC COMMENTS

1. Ms. Sue Sadler, 9929 Mountain Berry Court, Toano, addressed the Board and questioned the local newspaper attacks on certain officials and their families. She expressed gratitude to her local representative for taking a stand against unnecessary regulations. She also expressed appreciation to the Supervisors who were willing to vote against initiatives that drained the Federal budget of grant monies. Ms. Sadler views against United Nations Agenda 21.

2. Mr. Paul Cieurzo, 200 Cruden Bay, representing the Directors of the Ford's Colony Homeowners Association (HOA), addressed the Board regarding the Westport Development. Mr. Cieurzo stated that the HOA Board recognizes this as a viable neighborhood which will add desirability to the community as a whole. Mr. Cieurzo informed the Board that nine property owners, who purchased lots several years ago, are unable to build. Mr. Cieurzo expressed concerns over the lack of a plan. He stated the plan, which was originally submitted to the County, did not foresee a need for a second access point to Centerville Road. He also expressed concerns that when the lots were purchased, certain amenities such as the marina on Gordon Creek and an activities building were promised. The HOA Board would like to make sure those amenities were included in the plans. He requested the Board of Supervisors to encourage Meridian Construction Capital (Meridian) and the County to include the HOA Board in the development of a new plan.

3. Mr. John Pottle, 4233 Teakwood Drive, Williamsburg, gave an invocation to the Board.

4. Mr. Keith Sadler, 9929 Mountain Berry Court, Toano, addressed the Board regarding the Historic Triangle Comprehensive Plan. He made the comment that this plan will add to the list of regulations that affect property rights. He stated that policies come from the American Planning Association (APA). He expressed concern that James City County belongs to the APA and expressed his opposition to Agenda 21. Mr. Sadler expressed thanks to Ms. Jones and Mr. Kennedy for their actions at the last meeting for supporting the best candidate for the vacant Board of Supervisors' seat that they believed was most qualified. Mr. Sadler expressed disappointment that Ms. Bledsoe felt she had to withdraw from the race.

5. Mr. Tom Hitchens, 350 Thompson Lane, Williamsburg, addressed the Board regarding the Westport matter. Mr. Hitchens advised the Board that his property is 35 acres on Gordon's Creek, adjacent to the failed subdivision. He stated that Meridian has asked for the Board's help and the taxpayers of James City County to save the failed subdivision. He stated that his tax dollars should not be used to help correct bad financial choices of individuals. He challenged the Board to think on how deeply its actions will allow Meridian to increase its profits and recoup its losses and, in doing so, will further burden infrastructure.

6. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, spoke to the Board regarding schools adding to their class size. He also talked about vacant commercial space being used for educational purposes.

G. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour extended his thanks to Mr. Carroll, Virginia Department of Transportation (VDOT), for his quick response with the shoulder stabilization project on Jolly Pond Road.

Ms. Jones passed on her condolences and prayers to a former Board member, Ms. Denise Koch, and her family for their recent loss.

H. CONSENT CALENDAR

1. Minutes –
 - a. February 6, 2012 – Special Meeting
 - b. February 14, 2012 – Regular Meeting

Mr. Icenhour made a motion to approve the Consent Calendar with a correction of a 4 p.m. meeting time, instead of 7 p.m., on the February 6, 2012, minutes.

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

I. PUBLIC HEARING

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

Mr. Leo Rogers, County Attorney, addressed the Board regarding this matter. Mr. Rogers informed the Board that the Powhatan Secondary HOA requested that the County vacate this existing right-of-way. The abandonment would abandon it as a public road and the vacation would turn it over to the HOA to be used as a park and recreational amenity.

Mr. McGlennon made a motion to approve the appropriation.

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

J. BOARD CONSIDERATION

1. Approval of A Memorandum of Agreement for the Westport Subdivision

Mr. Rogers, County Attorney, addressed the Board regarding this matter. Mr. Rogers stated that while the County is not engaged in the business of development, it does serve as a consumer protection agent when it comes to the subdivision of lots. Mr. Rogers stated that it is required by local and State code that certain amenities get put into place and that the County requires surety to see that the amenities are provided. He stated that in the Westport case, a property owner has not completed the subdivision improvements. The County is holding a bond for \$2,245,000, which is not taxpayer money. Mr. Rogers stated that the equity holder, Meridian Land, has requested that they enter into a partnership arrangement with the County to provide the subdivision improvements. Meridian, or the property owner, would get the well system and the specifications for the subdivision prepared. The County would then proceed with calling the bond and holding the funds in escrow. Mr. Rogers stated that this would be a by-right subdivision. There would be no rezoning, or proffers. It would be done according to ordinance. The lot owners would have whatever claim as to what type of development is to be built and the County could certainly keep Ford's Colony HOA informed. Once that is done, the County would enter into a cooperative procurement with Meridian, or one of its equity holders, and the County would begin the development of the subdivision improvements using all of the bond proceeds. The County's full extent of the liability is the amount of proceeds received under the bond. Once that is completed, the remaining subdivision improvements would become the responsibility of the developer of the by-right subdivision.

Mr. Kennedy asked Mr. Rogers if it is typical that the bond requirement would not cover the necessary improvements.

Mr. Rogers responded that it is not. He explained that County staff generally overestimates the cost of the project and includes a 10 to 15 percent administrative cost along with the bond in the event that the County has to administer the project

Mr. Kennedy inquired as to what happened in this case.

Mr. Rogers responded that the County staff underestimated the amount of the surety that was required for this project.

Mr. Kennedy inquired if this land has been foreclosed on and, if they do foreclose and the County does call the bond, is Meridian is under no obligation to build to any of the specifications that the Board received from the HOA?

Mr. Rogers responded that the land was not foreclosed on and that Meridian has not come into title. Mr. Rogers explained the process of how Meridian would come into title. Mr. Rogers further advised that once Meridian has title, they are the developer and would not have an obligation to the County to build the subdivision in accordance with what was previously provided. The obligation may run to the lot owners who would then have civil action against Meridian.

Ms. Jones and Mr. Kennedy inquired if this matter went through the Development Review Committee (DRC).

Mr. Rogers spoke about water improvements and informed the Board that this is outside the Primary Service Area (PSA) and that there is a requirement for an independent water system, which would be conveyed to the James City Service Authority (JCSA). Mr. Rogers informed the Board that it is a by-right community that did get approval through the DRC per ordinance.

Mr. Kennedy asked Mr. Rogers as to what would happen if the Board would say no to calling the bond.

Mr. Rogers responded that the County has been threatened by the lot owners with a lawsuit to enforce the alleged obligations under County law to provide consumer protection to those who purchased the lots.

Mr. McGlennon questioned the possibility of the development connecting to public water and public sewer.

Mr. Rogers responded that under this proposal, the answer would be no. He stated that one of the conditions to calling the bond is the approval of an independent water system by JCSA and the State authority.

Mr. McGlennon asked if the agreement specifies what improvements would be made with the proceeds from the bond.

Mr. Rogers stated that the subdivision improvements are estimated at \$3.9 million and the amount of the bond does not cover the whole amount. He stated that it is anticipated that the bond proceeds would be used to build the well system.

Mr. McGlennon questioned that with the continuation of the development, what financial security does the County have if the County claims the bond.

Mr. Rogers indicated that once the bond is claimed, the County gets the proceeds and starts to build the subdivision improvements. When Meridian's equity company develops the property, they would also be required to post a bond, pursuant to the subdivision ordinance, to make sure that all the improvements that are proposed are completed.

Mr. Kennedy questioned if this subdivision would be part of Ford's Colony.

Mr. Rogers responded yes. He further mentioned that Meridian and Ford's Colony could come to a different arrangement.

Mr. Kennedy asked how do the lot owners in this situation become whole.

Mr. Rogers responded that they would become whole through this agreement. The subdivision improvements would be put in place that would allow them to develop their lots.

Mr. Kennedy inquired as to what measures the County has in place now to prevent anything from happening again with bonds.

Mr. Rogers responded that the former Environmental Division looks at these projects and estimates the cost of these projects. The County usually overestimates the cost of the surety and the County adds an administrative percentage on top of the estimated amount.

Mr. McGlennon inquired as to what happens if the developer is unable to get the necessary permits for the well.

Mr. Rogers stated that matter is a conditioned precedent of the agreement. He stated that if the developer is unable to obtain the approval, the agreement is null and void.

Mr. Icenhour stated that Section 35 is part of Ford's Colony as far as the HOA is concerned, even though it is not part of the master plan. Mr. Icenhour further stated that he believed the County has a legal obligation when it takes bonds, that if something goes wrong, the County tries to complete what the County has taken the bond on.

Mr. Rogers stated that the County is approving the plan and the purchasers under the plan have an expectation of what a subdivision is going to look like. Holding a surety is to meet those expectations.

Mr. Icenhour stated that it should be the County's goal to see that the landowners have buildable lots. He noted from the handout that he received that the activities building was originally planned to be sited on a piece of property inside the PSA that belongs to the Ford family. He noted that it is not part of the property. Mr. Icenhour also noted that the site where the well was going to go was lost in bankruptcy. He questioned how the County will be compensated for staff time. He inquired if taxpayer dollars for staff time will be used outside the bond money.

Mr. Rogers stated that in a normal failed subdivision, it would be the full responsibility of the County to complete the improvements, determine the specifications, call the surety, procure a contractor, and manage the contract. He stated that in this case the County would have less responsibility since the County is working with the bank on the specifications. The bank would be the project manager. The County has to call the bond and the County has to do the procurement. This part of the staff costs would not be paid out of the bond proceeds.

Mr. Icenhour made a motion to approve the resolution. Mr. Icenhour commented that the County has an obligation to make sure the taxpayers have buildable lots. He stressed that beyond that, it is the responsibility of the development.

Mr. McGlennon stated that he will support the request with the understanding that this subdivision will not be connected to the PSA. This action is being taken in order to allow the construction of an independent well that would permit them to move forward.

Mr. Kennedy stated that the lot that was supposed to house the central well is no longer available and questioned whether the County knows of another lot to be used for the central well.

Mr. Rogers explained that it is not that the lot is no longer available; the lot is no longer available under common ownership. He stated that it could be acquired, if that was the plan of the new developer. He stated that the test well for the project is in Section A, which is under the ownership of Realtec with Meridian owning the equity interest and will be used as the site for the well.

Mr. Kennedy indicated that he would support the resolution with reluctance. He indicated he is not supportive of it becoming part of the PSA. He stated that there was talk with East/West Partnerships for a dual well.

Mr. Rogers indicated that the well was not sized sufficiently with East/West Partnerships to handle the water needs of this development.

Mr. Kennedy questioned the cost of the well.

The question was referred to Mr. Larry Foster, General Manager of JCSA, who indicated that the best estimate, based on JCSA interactions with the developer on the Liberty Ridge project, was \$2 million for the well facility.

Mr. Kennedy inquired if the Liberty Ridge well would be the same size well needed for the Westport subdivision.

Mr. Foster stated water demand would be based on the lots in the development. He believed the well size may be comparable within a reasonable range, but would have to determine how many lots are in each subdivision.

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

RESOLUTION

APPROVAL OF A MEMORANDUM OF AGREEMENT FOR THE WESTPORT SUBDIVISION

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

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

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

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

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

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

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

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

K. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, spoke to the Board about a 1998 article about housing in James City County.

2. Mr. Tom Hitchens, 350 Thompson Lane, Williamsburg, expressed disappointment with the Board's approval of the Westport subdivision resolution. Mr. Hitchens stated that the County is overwhelmed with building and that he does not like the way the County is headed. Mr. Hitchens stated that the County is not following its mission statement for protecting resources.

L. REPORT OF THE COUNTY ADMINISTRATOR

Mr. Middaugh stated that the biennial real estate assessments have been completed by the County and the assessment notices will be mailed out on February 29. He noted that the assessments decreased 3.67 percent, from \$11.3 billion to \$10.9 billion. Mr. Middaugh also noted that residential values dropped on the average of 5.64 percent across the entire County.

Mr. Middaugh stated that there will be a joint meeting with the Williamsburg City Council, James City County Board of Supervisors, and Williamsburg-James City County School Board on March 7, 2012, at 8 a.m. at the Law Enforcement Center. The Board will be meeting about the annual school budget and the capital plan for the School.

Mr. Middaugh stated that the Board will be going into Closed Session to discuss the School Board contract and an appointment to the Planning Commission.

M. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour commended staff for the Black History Month program held at the Community Center. Mr. Icenhour also mentioned that he attended two new businesses openings at Premium Outlets: Longaberger Basket and Pepperidge Farms.

Ms. Jones mentioned that on February 21, 2012, she, along with York County Chairman Sheppard, Williamsburg Mayor Haulman, and James City County Assistant County Administrator Powell, attended the Chamber Community Class.

Ms. Jones also mentioned that on February 27, 2012, she attended the Historic Triangle Comprehensive Plan Forum held in the City of Williamsburg. She indicated that there were approximately 60-70 people in attendance. She stated that the final forum will be held on March 15, 2012, from 7 to 8:45 p.m. in York County.

Ms. Jones mentioned that on March 9, 2012, James City County will be hosting Arbor Day at Legacy Hall at 11 a.m.

At 7:59 p.m., Ms. Jones recessed the Board for a meeting of the JCSA Board of Directors.

At 8:01 p.m., Ms. Jones reconvened the Board.

N. CLOSED SESSION

Mr. McGlennon made a motion for the Board to go into Closed Session pursuant to Section 2.2-3711(A)(6) and Section 2.2-3711(A)(11) of the Code of Virginia to discuss:

- a. School Contract Negotiation
- b. Planning Commission Vacancy

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)(6) of the Code of Virginia, discussion of contract negotiations where financial interests of the County are involved.

RESOLUTION

CERTIFICATION OF CLOSED MEETING

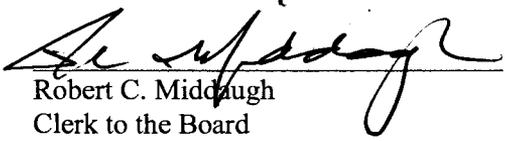
WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

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, the appointment of individuals to County boards and/or commissions.

O. ADJOURNMENT

At 8:24 p.m., Ms. Jones adjourned the Board until March 7, 2012, at 8 a.m.


Robert C. Middaugh
Clerk to the Board

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