

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 26TH DAY OF MARCH 2013, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

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

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

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Amaya Irby, a 6th grade student at Berkeley Middle School led the Board and citizens in the Pledge of Alliance.

E. PRESENTATIONS - None

F. PUBLIC COMMENT

1. Mr. Philip Van Cleave, 5509 West Bay Court, Chesterfield, Virginia, a representative of the Virginia Citizens Defense League, addressed the Board in opposition to Sheriff Deeds' statement being removed from the County website.

2. Mr. Kenneth Gustafson, 4119 Winthrop Circle, addressed the Board in regard to the Virginia Dominion Power Transmission Line. He stated that natural gas could replace the coal burners in the power plants for considerably less cost than running new transmission lines.

3. Ms. Betty Walker, 101 Locust Place, addressed the Board in regard to citizens' 2nd Amendment rights and in opposition to Sheriff Deeds' statement being removed from the County website.

4. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board in opposition to Sheriff Deeds' statement being removed from the County website.

21. Mr. Les Skelly, 6572 Wiltshire Road, addressed the Board in regard to the new State mandated stormwater management program and in opposition to the civil charge against Mr. John Otey.

G. BOARD REQUESTS AND DIRECTIVES

Ms. Jones read a statement on behalf of Sheriff Deeds, since he was out of town and unable to attend the meeting and address the Board in regard to the issue of his statement being removed from the County website. She stated that she supports his statement and supports it being returned to the County website. She asked if the Board is going to have a discussion in regard to this issue, or is it going to address her request that the statement be put back on the County website. She stated that if it is not the will of this Board, then she requests that the Board make that clear.

Mr. Bradshaw stated he believes that the reason nothing was done by the Board when she made her request, is because no motion was made. He stated that if Ms. Jones wants to make a motion or bring a resolution before the Board, then by all means to do so. Mr. Bradshaw stated that he supports the Constitution and has no issue with the Oath of Office that the elected officials take when entering office. He stated that all of the public comments prove that the issue is controversial and the reason it is controversial is because there have been very few Supreme Court decisions spelling out the bounds of the 2nd Amendment right. He stated that people disagree on the bounds of that right; however, it is not a decision that is determined by the Board of Supervisors or by the Sheriff of the County. He stated that this is simply not the forum for those decisions. Mr. Bradshaw stated that he felt the decision made by the staff was correct, because the statement made by the Sheriff was more than just an affirmation of his oath or stating his support of the Constitution and the 2nd Amendment. He stated that the second half of the statement includes charged political language. He stated that this is not the forum to decide the issue and the County website was not the forum for the Sheriff to post his statement.

Ms. Jones made a motion to direct staff to repost Sheriff Deeds' statement on the County website.

Mr. Kennedy stated that he could take the popular route and say that he supports everything the Sheriff said. He stated that he supports the 2nd Amendment, that he has been a member of the National Rifle Association (NRA) since he was ten years old. He stated that he would like to have a Work Session with the Sheriff to clarify what he implies in his statement. He stated that he can see both sides of this issue and Mr. Bradshaw brings up some very valid points. He stated that he has concerns about politicians using the County website. He stated that if he wanted to make a political statement on his own website; he would be free to do so. If the Sheriff wanted to make a political statement on his own website, free of the County's link; then he would be free to do so as well. He stated that the divide in the country and our community is broad. By putting the statement back on the website, his concern is that the door is being opened to other political issues. He stated that whether he is pro-life or pro-choice is irrelevant, but it is a decisive issue. He stated again that he is supportive of having a Work Session with the Sheriff, who is the one person that has been absent from these discussions. He stated that there needs to be a policy in regard to what should and should not be posted on the website instead of just reacting to situations as they come. He stated that he would like to be fair to this issue; he wants to hear what the Sheriff has to say in regards to what he is implying. He stated that he would support Ms. Jones' motion, with reluctance, if she continues with her motion, because he knows what the consequences would be since there is no policy in place.

Mr. McGlennon made a motion to table Ms. Jones' motion and instead schedule a Work Session to consider the policy for posting on the County website and to invite Sheriff Deeds to attend and explain his statement and his implications.

Mr. Leo Rogers, County Attorney, stated that a motion to table takes precedence over the main motion.

different alternatives that came out and the technical committee supported alternative 1A. She stated that 1A involves expanding I-64 by completely avoiding the medians and only expanding outward. She stated that Mr. McGlennon and Mr. Bradshaw communicated their support of that alternative prior to the meeting. She stated that alternative 1B involves utilizing the land already owned, the medians. She stated that ultimately the HRTPO chose to defer the case, due to concerns over cost and getting a better understanding of the cost involved. She stated that the HRTPO will be having a Work Session in April or May, and then they will be taking action on this case. She stated that expanding I-64 outward has the most impact on private property owners and will be the most costly. She stated she has heard that preserving the medians is important due to possible, future light rail, but she is not sure and does not have the answer to that. She stated that she wanted citizens to be aware of the different alternatives.

Mr. Kennedy stated that he remembers this issue coming up in 2003 or 2004 and he believes that the General Assembly took a vote on it. He stated that it was voted that the Virginia Department of Transportation (VDOT) would not use the center medians.

Mr. McGlennon stated that he was correct. He stated that it was recognized as important to keep the scenic entryway into Williamsburg for tourism.

Mr. Kennedy questioned if that was passed in the Legislature, he is not sure how the HRTPO can be considering using the medians. He stated that is something that needs to be clarified.

Mr. McGlennon stated that the funding for this issue really only deals with the area from Jefferson Avenue to Fort Eustis Boulevard.

Ms. Jones stated that they did a full scope, but that it would be done in stages.

Mr. McGlennon stated that because there is not much hope of funding for this project from Williamsburg to Richmond, there is an alternative that has been expressed by the Director which utilizes existing pavement. He stated this would add one more lane in each direction by restriping the travel lanes. He stated that the cost of this alternative would be much less than the cost just to bring the road to Fort Eustis Boulevard.

Ms. Jones stated that if the shoulders are going to be used, the medians would still be needed to accommodate for safety, so that people have a way to pull off the road. She stated that citizens can find the report on the HRTPO website. She asked Mr. McGlennon if he knew of any proposal for utilizing the medians for Light Rail.

Mr. McGlennon stated that utilizing the medians was not what he has heard. He stated that the plan was to use the CSX tracks since they are existing tracks. He stated that the likelihood of funding for Light Rail makes it a moot point.

Mr. Bradshaw thanked Ms. Jones for representing this Board at the HRTPO meeting and for conveying this Board's sentiments.

Mr. McGlennon stated that he attended the Child Development Resources (CDR) auction and over \$40,000 was raised making the event very successful. He stated that CDR does wonderful work with children who have special needs or developmental delays and it was great to see so many citizens out supporting their efforts. He also stated that he attended the Grand Opening of Home Goods in New Town.

Mr. Bradshaw stated that Mr. Icenhour has been appointed Chairman of the 2013 Virginia Association of Counties (VACo) Finance Committee and member of the 2013 VACo Resolutions Committee. He also

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$3,000 civil charge from Mr. John Otey as full settlement of the Chesapeake Bay Preservation Ordinance violations at the Property.

3. Conveyance of Utility Easements to the James City Service Authority (JCSA) – Freedom Park Interpretive Center

RESOLUTION

CONVEYANCE OF UTILITY EASEMENTS TO THE

JAMES CITY SERVICE AUTHORITY (JCSA) – FREEDOM PARK INTERPRETIVE CENTER

WHEREAS, James City County owns certain real estate property at Freedom Park, commonly known as 5537 Centerville Road and designated as Parcel No. 3010100009 on the James City County Real Estate Tax Map; and

WHEREAS, the Board of Supervisors held a public hearing to include in the County's Capital Improvement Program (CIP) construction of an Interpretive Center at Freedom Park; and

WHEREAS, the Board of Supervisors approved the contract award authorizing construction of an Interpretive Center at Freedom Park; and

WHEREAS, the JCSA requires utility easements in order to continue to provide service to the Interpretive Center; and

WHEREAS, the utilities have been placed underground in accordance with Section 19-33 of the James City County Subdivision Ordinance; and

WHEREAS, a public hearing is not needed to convey a utility easement for projects consistent with a CIP pursuant to Virginia Code § 15.2-1800.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute any required documents necessary to convey to the JCSA the variable-width utility easements necessary to continue to provide water and sewer services at Freedom Park.

4. Grant Award – Comprehensive Community Corrections Act (CCCA)/Pretrial Services Act (PSA) Training Fund – \$2,700

RESOLUTION

GRANT AWARD - COMPREHENSIVE COMMUNITY CORRECTIONS ACT (CCCA)/

PRETRIAL SERVICES ACT (PSA) TRAINING FUND - \$2,700

Mr. Kennedy stated that he has concerns because the County has approached the amount that was originally decided that would be spent. He asked if the cap on legal services includes continuances. He stated that he does not want to get into a situation with Dominion Virginia Power on who has deeper pockets. He stated that in either case, the citizens are the ones that will be paying.

Mr. Rogers stated yes, the cap includes seeing this case through to its conclusion. He stated that he received the email from Ms. Carson just prior to the meeting.

Mr. Kennedy thanked those that have contributed. He stated that if the County is doing this because it is historic, then he questions some other partnerships. He asked if those groups that would be affected from a historical standpoint have been contacted including Jamestown-Yorktown Foundation, Colonial Williamsburg, and the City of Williamsburg. He stated that the Board has been supportive of efforts in neighboring communities and that he does not want James City County to be carrying the burden of this fight. He stated that he is concerned about the fact that the County has gone over the original amount decided. He questioned the policy of the County regarding which issues and fights the County is going to get involved in.

Mr. Bradshaw stated that for clarification, the cap would cover the proceeding through the SCC, it would not cover an appeal before the Supreme Court.

Mr. Rogers stated that is correct. He stated that if there was a Supreme Court appeal, staff would come back to the Board with that information. He stated that arguing a case before the Supreme Court is not alien ground for him.

Mr. Kennedy asked if there was an appeal, would Mr. Rogers then handle the case from inside or would outside counsel still be necessary.

Mr. Rogers stated that he would rather not answer that question right now, since he does not know what the issues would be the subject of an appeal. He stated that procedurally he could argue a case before the Supreme Court, but not knowing what the issues might be it is hard to say if outside counsel would be needed.

Mr. Kennedy asked if the decision to allocate these funds must be done right now. He stated that if not, he would first like to see staff work for more partnerships first.

Mr. Bradshaw stated that hearing is on April 9, it has to be done tonight or not at all.

Mr. Rogers stated that the County has reached the cap of what we are allowed to spend and might be exceeding it due to expert witnesses and photo simulations.

Mr. Kennedy asked if the County has exceeded the funds already allocated.

Mr. Rogers stated that the County has spent all that was originally allocated, plus what was received from the Save the James Alliance and what was contributed by BASF.

Ms. Jones asked if staff has exceeded the funds appropriated.

Mr. Rogers stated that staff has spent the \$50,000 that was appropriated, but the Board indicated that it would go as high as \$100,000, but that the full amount has not been allocated yet.

Mr. Kennedy asked if staff has exceeded what was allocated plus what was contributed by Save the James Alliance.

but it was important to the citizens and the community.

Mr. Kennedy stated again his concern over the partnerships and what the County has done in the community and surrounding areas. He stated that he is looking at a potential partnership with Zantara, who has released to the papers that they have a Master Plan that they would like to change and which would have the impact of several hundred more homes in James City County. He stated that this is an investment of theirs, and they should have been at the front of the line. He stated that he appreciates the individuals that live there coming forward, but where they live should have been there too.

Mr. Bradshaw stated that reaching partnerships with other organizations is not just the role of the staff. He stated that Board members should be reaching out to individuals and organizations as well. He stated that if there is fault for not having more partnerships, then the Board shares that fault as well, not just the staff.

Mr. Kennedy stated he agrees with that and he was asked this morning to call Mr. Schreiber with the Alliance. He stated he did call him and it was the first time he had been contacted in regard to this issue. He stated that he is in support of the issue.

Ms. Jones stated that out of respect for citizens, she believes we should be a little more specific than saying we are at about \$200,000 in expenses and it may run up to a final cost of \$350,000.

Mr. Kennedy asked if the language in the resolution should be changed since Mr. Rogers has gotten this cap.

Mr. Middaugh stated no, because what he asked for was the lower number not the high number. He stated that Mr. Rogers has effectively stopped it from becoming the high number. He stated that the County has been paying as it needs to.

Ms. Jones asked that the Board be provided a detailed list of expenditures to date and make that available on the website for the citizens to follow as well.

Mr. Rogers stated that the County is in pending litigation with an entity that has very deep pockets. He stated that he has concerns over making the expenditures public where Dominion could view them. He stated that he would be happy to share it with the Board members, but it needs to be kept confidential until the case is over.

Mr. Kennedy stated that he understands not wanting to expose our hand.

Ms. Jones stated that the minute the expenses look like they are on the rise, the Board needs to know about it. She stated that we have to protect the pocketbooks of the citizens.

Mr. Icenhour stated that if additional monies come in, those would have to be appropriated later as well.

Mr. Middaugh stated that may or may not be the case. He stated that BASF is directly funding a portion of the expert witnesses so that money does not have to flow through the Board.

Mr. Icenhour stated that he believes that everyone is clear on where we are at and that a limit has been set. He stated that he has every confidence in staff to do the job within the limits that have been set. He stated that the County was given a situation with two alternatives, but they were not the only alternatives. He stated that the tactics of Dominion are pretty much those of a bully. He stated that Dominion's divide and conquer tactics have not worked very well for them and there is widespread support for other options that have not been

from the website and that he has been very clear in his rationale of that decision. He stated that the County received an A- from the Sunshine Review for its transparency on its website.

Mr. McGlennon stated that he understood that Mr. Swanenburg requested information about the amount of land that the County owns. He asked Mr. Middaugh if the County owns 40 percent of the land in the County.

Mr. Middaugh stated no, not even close. He stated that the amount of open space in the County is approaching 40 percent.

Mr. McGlennon stated that a large majority of that open space comes from areas designated as Resource Protection Areas not County owned land.

Mr. Middaugh stated that is correct.

M. BOARD REQUESTS AND DIRECTIVES

Mr. Kennedy stated that he received a call from a business owner in New Town and they would like an opportunity to make a presentation to the Board about the security issues they are having in New Town.

Mr. McGlennon expressed condolences to Ms. Reba Bolden on the death of her husband, to the family of Ms. Pat Richardson who passed away, and to the family of Mr. Ray Basley who recently passed away as well.

Mr. Icenhour made a motion to nominate Mr. William Geib to the Circuit Court Judge for appointment to the Board of Zoning Appeals.

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

Mr. McGlennon recommended that the appointments to the Social Services Advisory Board be deferred until the April 9, 2013, meeting.

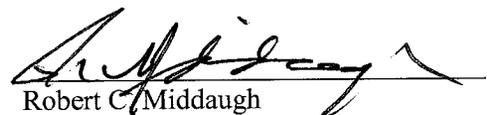
The Board voiced its agreement.

N. ADJOURNMENT – until 4 p.m. on April 9, 2013, for the Budget Work Session.

Ms. Jones made a motion to adjourn.

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

At 9:50 p.m., Mr. McGlennon adjourned the Board.


Robert C. Middaugh
Clerk to the Board