

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 8TH DAY OF JULY 2014, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

**ADOPTED**

B. ROLL CALL

JUL 22 2014

Mary K. Jones, Chairman, Berkeley District  
Michael J. Hipple, Vice Chairman, Powhatan District  
James G. Kennedy, Stonehouse District  
Kevin D. Onizuk, Jamestown District  
John J. McGlennon, Roberts District

**Board of Supervisors  
James City County, VA**

Adam R. Kinsman, Assistant County Administrator  
Leo P. Rogers, County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Korsché Derr, a rising 1st-grade student at J. Blaine Blayton Elementary School and a resident of the Stonehouse district, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATIONS

1. Courthouse Roof

Mr. John Horne, Director of General Services, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Mr. Kennedy questioned why the original installer cannot be made to fix the roof due to the defect in the workmanship and voiced his concern over the lack of warranties on buildings and construction projects.

Mr. Rogers stated that the statute of limitations had expired on the 2-year warranty and that having warranties on buildings and construction projects requires a third party inspection and a third party that is willing to assume the liability for a fee.

Mr. Hipple asked where the original slate tiles came from. He said that Richmond is experiencing the same type of issue from slate that came from China.

Mr. Horne stated that these slate tiles were quarried in Vermont and purchased from a manufacturer in upstate New York.

Mr. Hipple stated that in the future, the County needs to stay with the original installer when it comes to making repairs. He stated that by having a second and third company come out and try to repair the roof, the County gave the installer an opportunity to be off the hook. Once another company stepped on the roof, the original installer could say that it is no longer their problem because they have no way of knowing what the other company did.

Mr. Horne stated that the first two instances of repairs were done by the original installer.

Mr. Hipple recommended a third party inspector be added the bidding process for projects of this size and scope. He also requested a price quote for an aluminum or metal roof. He stated that he is disappointed with the way this project was handled years ago and hates to see the taxpayers have to pay the price.

Mr. McGlennon stated that there is a Courthouse Maintenance Fund that replenishes itself on a regular basis from the collection of fines and fees by the Courthouse. He stated that while there may not be enough in that fund to cover the cost of the new roof, he would like to see that fund pay back the local government over time.

Ms. Jones stated that she agrees with comments made by both Mr. Hipple and Mr. Kennedy. She stated that the lack of oversight on these projects is concerning.

## 2. Recycling Update

Mr. Horne addressed the Board giving an overview of the new recycling program that is now in its second week. He stated that the Virginia Peninsulas Public Service Authority (VPPSA) will begin taking orders for exchanges on the size of the rolling cart in August.

Mr. Kennedy asked that the truck drivers be mindful of their speed when driving through neighborhoods and to obey stop signs. There are many children out and about and those large trucks have a lot of blind spots.

Mr. McGlennon asked for clarification on the process of requesting a different size rolling cart.

Mr. Horne stated that citizens can call VPPSA, who is collecting requests now, and then the new size carts will be delivered in the beginning of August.

Mr. McGlennon stated that he thought elderly or handicapped citizens were going to be eligible to receive "porch or backyard service" if they are incapable of moving a rolling cart to the curb.

Mr. Horne stated that is correct. Those citizens need to call VPPSA and request that assistance.

Mr. Onizuk stated that he has been very pleased with the new program and the new cart. He stated that he appreciated the responsiveness of Mr. Horne and VPPSA when he has called with a citizen concern.

## 3. Davenport, LLC

Mr. David Rose, from Davenport and Company, LLC, addressed the Board giving a presentation on the refunding of outstanding County bonds in an effort to take advantage of the current interest rates that are at a historic low percentage. He clarified that this action would only exchange higher interest rates for lower interest rates. He stated that this action, to be voted on later this evening, would not increase the bond debt but would save the County money over the remaining length of these current bonds.

Mr. Onizuk asked if there was a reason why this had not been looked at before now, considering that interest rates have been low for a while. He also asked if there was other debt that could be refunded or refinanced to maximize the savings on interest.

Mr. Rose stated that Davenport monitors the County's debt on a monthly basis. He stated that there is a provision that states when the bonds are closer to the call date that they can be refunded to a lower interest rate. He stated that earlier in the life of the bond that there is negative arbitrage that eats in to the amount of savings that could be seen with refunding to a lower interest rate. He stated that there are other pieces of debt that could be refunded once they are closer to their call period and would maximize their savings.

## **F. PUBLIC COMMENTS**

1. Ms. Katherine Preston, 137 Pintail Trace, addressed the Board regarding continued bicycle infrastructure in the County.

2. Mr. Gabriel More, 110 Sadler Center, addressed the Board regarding bicycle infrastructure and the initiative by the College of William and Mary for cyclist.

3. Mr. Rich Thompson, 502 London Company Way, addressed the Board in support of bicycle infrastructure in the County.

4. Mr. Stephen Mooreland, 116 Hunter Cove, addressed the Board in support of bicycle infrastructure in the County, especially in the Grove area.

5. Mr. Randy O'Neil, 109 Sheffield Road, addressed the Board regarding the Courthouse roof and the health of children in the County.

6. Mr. John Niland, 503 River Bluff, addressed the Board regarding Common Interest Communities as a new form of localized government.

7. Mr. Lenny Berl, 105 William Richmond, addressed the Board regarding master declarations and covenants of planned communities.

8. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board regarding the current Department of Justice (DOJ) investigation regarding the Peninsula Pentecostal Church.

9. Ms. Petra Nadel, 106 Indian Circle, addressed the Board regarding Environmental Protection Agency (EPA) regulations.

10. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board regarding Purchase of Development Rights (PDR) programs.

11. Ms. Rosanne Reddin, 4700 President's Court, addressed the Board regarding an article in the local newspaper and ethics of journalists.

12. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board regarding PDR programs and the DOJ investigation.

## **G. BOARD REQUESTS AND DIRECTIVES**

Mr. Hipple asked Mr. John McDonald, Director of Financial and Management Services, to address the Board on the use of the remaining balance of the PDR Fund to be used for repairs to the Williamsburg-James City County Courthouse.

Mr. McDonald addressed the Board about a resolution that was presented to the Board at the request of Mr. Hipple to divert the balance of the PDR Fund to be used to repair the roof of the Courthouse.

Mr. Hipple stated that it was time to stop putting things off that needed to be done and to take steps to ensure that the needs of the County are taken care of.

Ms. Jones stated that she was in support of the transfer of the balance of the PDR funds to cover the cost of a new roof for the Courthouse. The use of the recently discussed grant award from the State for \$150,000 however has to be used for a future purchase only.

Mr. Kennedy stated that during the recently completed budget process there was support from citizens for the PDR program and the Board had decided not to dismantle the PDR program. There were discussions about the Courthouse roof at that time and a decision on that had been put off to a later date. It would appear that the Board is attempting to handle all of its financial responsibilities on a strictly \$.77 tax rate and that may not be feasible. If there is going to be a dismantling of the PDR program there should be a public hearing and let the public voice its concerns or support of this issue before a decision is made by the Board.

Mr. Hipple stated that projects have been continuously put off and the time has come to stop and start taking care of the community. He supports the PDR program, but it is time to fix and conduct repairs of current facilities of the community.

Mr. Kennedy suggested putting property taxes to a referendum for the citizens to decide if there should be a raise in taxes. There will come a time when it will not be possible to maintain the current tax rate and continue with all of the County's projects. Let the citizens decide if there should be a raise in property taxes to fund PDR and Schools. There was discussion during the last budget cycle to divert funds from PDR to other areas and there was no decision made.

Ms. Jones stated that a reduction in revenue of the County is a direct reflection on the reduction of the funds in the wallets of the citizens. The recent Citizen Survey conducted by Virginia Tech showed that citizens were in support of the PDR project, however citizens did not want a raise in taxes in order to pay for it.

Mr. Kennedy stated that there had been a reduction in home values of citizens. Stormwater taxes have been removed and property taxes have been reduced as well. His objection, however, is that this matter of using PDR funds for other uses had been discussed and no answer was received from the Board about using the funds in other places; so let the citizens decide.

Mr. Jones stated that the PDR program actually reduces the value of the property which then reduces the amount of property taxes and affects the budget.

Mr. McGlennon stated that the PDR program was designed to pay a property owner the development value of that particular parcel of land. With that land no longer having a possibility of development, there would of course be a reduction in the value of the land. In reference to the PDR grant that was mentioned earlier, Mr. McGlennon articulated that if the grant had been approved by the Board in February then the funds could have been applied to a previous PDR purchase. Since the grant was not accepted until June, those funds would have to go toward a future PDR purchase, if there is one at a later date. He stated that in response to the

matter at hand, he believes that before making the decision about the Courthouse roof the City of Williamsburg needs to be contacted about what portion they are willing to pay and a cost estimate needs to be determined. He stated that the Courthouse Maintenance Fund would be a more appropriate source of funding for the repair of the roof.

Mr. Hipple stated that the purpose of discussion was not to debate the PDR program, but to look at funds that are available to address this issue and other maintenance issues that are being put on the back burner.

Mr. Onizuk requested clarification from Mr. McDonald about what allowances were made in the budget and Capital Improvement Projects (CIP) plan for the Courthouse roof.

Mr. McDonald stated that there is an allowance in the budget for asphalt shingles to repair the roof based on the cost estimates that staff has.

Mr. Onizuk asked how the funds in the PDR program had been accumulated.

Mr. McDonald stated that past Boards had contributed a \$0.01 to Greenspace and \$0.01 to PDR funds over time. He said that the County had been reimbursed for some of the funds spent, for example, Jamestown Settlement and the Virginia Department of Transportation (VDOT) reimbursements. He stated that none of the funds currently in the accounts are from bond proceeds.

Mr. Onizuk clarified then that the net impact of this resolution would be to take those funds out of the PDR program and move them into the General Fund, which would release the funds already earmarked for the Courthouse roof repair that could be used for other Capital Improvements.

Mr. McDonald stated correct if that is the Board's desire.

Mr. Onizuk stated that he would like some public input on this and is not sure if he is prepared to vote on this tonight.

Mr. Kennedy requested clarification on the Agricultural and Forestal District (AFD) program, which has been around longer than the PDR program. He stated that the County does not give any money to those joining the AFD program, but there are tax breaks received by the property owner.

Mr. McDonald stated correct. He stated that an assessment of a potential AFD property is not based on the market value of the property, rather a formula for per acreage yield developed by Virginia Tech. He stated that in the case of agricultural land, the owner does not have to be in an AFD to qualify for land use taxation breaks.

Mr. Kennedy stated that his point is AFDs receive tax breaks similar to PDRs. He stated that if the County wants to receive more tax revenue, then it could eliminate the AFDs similar to York County.

Mr. McDonald stated correct, unless the property owner was willing to use some form of conservation easement on the property. Those conservation easements do not have to be sold to the County, they could be sold to the Williamsburg Land Conservancy or the Virginia Land Trust. The net effective is that an owner sells their right to develop their land in exchange for some benefit.

Mr. Kennedy indicated that the difference between the two is the length of time; PDRs are in perpetuity and AFDs are renewable after a definitive number of years.

Mr. McDonald stated correct.

Mr. McGlennon asked if a property that has a conservation easement is purchased at a higher price than was assessed at the time of the granting of the easement, does that not reflect a higher tax assessed value.

Mr. McDonald stated that he would have to get back with the Board on that. He stated that the State Code gives a definitive method for determining tax assessed value for properties with conservation easements. He does not believe that it would necessarily mean the County would see more tax dollars coming in if a property was sold at premium because of a conservation easement.

Mr. McGlennon requested more information on properties that have been sold once a conservation easement was granted and the effect on the tax revenue.

Mr. Onizuk stated he believes the Board needs to decide what it wants to do with the PDR program both long- and short-term. He would appreciate more time to have public input and a work session as it seems the direction of the Board might have changed regarding the PDR program. He stated that there is not a ticking clock on the Courthouse repair as it has not even been put out to bid.

Mr. Kennedy agreed that the Board did direct staff during a Closed Session to engage potential parties for PDR purchases. So, if the Board has changed its mind or is looking in a different direction, then that needs to be decided before staff moves forward.

Mr. Hipple stated that decisions need to be made and then move on to the next topic at hand.

Mr. Hipple made a motion to move the balance of the PDR program account to cover the cost of the Courthouse roof.

Mr. Onizuk asked Mr. Rogers if he could make a motion to defer.

Mr. Rogers stated that a motion to defer takes precedence over the current motion on the floor.

Mr. Onizuk made a motion to defer this resolution to a later date.

On a roll call vote, the vote was: AYE: Mr. Kennedy, Mr. McGlennon, Mr. Onizuk (3). NAY: Mr. Hipple, Ms. Jones (2).

At 9:15 p.m., Mr. Kennedy requested the Board take a five minute recess.

At 9:15 p.m., Ms. Jones recessed the Board.

At 9:20 p.m., Ms. Jones reconvened the Board.

## **H. CONSENT CALENDAR**

Mr. McGlennon made a motion to approve the items on the Consent Calendar.

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

1. Minutes –
  - a. June 24, 2014, Regular Meeting
2. Refunding of Outstanding County Bonds

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE  
COUNTY OF JAMES CITY, VIRGINIA REQUESTING  
THE ECONOMIC DEVELOPMENT AUTHORITY OF THE  
COUNTY OF JAMES CITY, VIRGINIA TO ISSUE ITS LEASE REVENUE  
REFUNDING BONDS TO REFUND THE AUTHORITY'S  
LEASE REVENUE BONDS (COUNTY GOVERNMENT PROJECTS), SERIES 2005

- WHEREAS, on August 24, 2005, the Economic Development Authority of James City County, Virginia (the "Authority") issued its \$22,570,000 Lease Revenue Bonds (County Government Projects), Series 2005 (the "Prior Bonds") under an Indenture of Trust dated as of August 1, 2005 (the "2005 Indenture") between the Authority and SunTrust Bank, as trustee, to assist the County of James City, Virginia (the "County") with financing of the costs of (i) the construction and development of roads, utilities, stormwater drainage and other infrastructure to serve the needs of the new Thomas Nelson Community College Campus and Warhill High School (the "Utility Project") and (ii) the construction and development of a new sports stadium (the "Stadium Project"); and
- WHEREAS, pursuant to a Ground Lease dated as of August 1, 2005 (the "2005 Ground Lease") between the Board of Supervisors of the County (the "Board") and the Authority, the County leased to the Authority certain real estate specified in the Ground Lease and upon which the Stadium Project is located ("Real Estate") and pursuant to a Lease Agreement dated as of August 1, 2005 (the "2005 Financing Lease") between the Authority and the Board, the Authority leased back the Real Estate and the Stadium Project to the County. The principal of, premium, if any, and interest on the Prior Bonds are payable solely from the revenues derived from the 2005 Financing Lease, and pursuant to the 2005 Financing Lease, the County's rental payments thereunder are in an amount sufficient to pay the principal of, premium, if any and interest on the Prior Bonds; and
- WHEREAS, the Board has determined that it is advisable to refinance all or a portion of its obligations under the 2005 Financing Lease and to refund the corresponding Prior Bonds through the issuance of lease revenue refunding bonds by the Authority (the "Bonds"); and
- WHEREAS, the Bonds will be secured in part by a leasehold interest in all or a portion of (i) the Real Estate and the Stadium Project and (ii) such other facilities as the County Administrator or the Director of Financial and Management Services (the "Authorized Representatives"), may designate (collectively, the "Leased Projects"); and
- WHEREAS, the County will lease the Leased Projects to the Authority pursuant to one or more leases or amendments to the 2005 Ground Lease (collectively, the "Prime Lease") and will lease the Leased Projects back from the Authority pursuant to a one or more financing leases between the

Authority and the County or amendments to the 2005 Financing Lease (collectively, the "Financing Lease"). The principal of, premium, if any, and interest on the Bonds will be payable solely from the revenues derived from the Financing Lease, and pursuant to the Financing Lease the County will agree to make rental payments, subject to annual appropriation, sufficient to pay the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, the Bonds will be issued pursuant to the following documents: (i) one or more indentures of trust or amendments to the 2005 Indenture (collectively, the "Indenture") between the Authority and a corporate trustee to be selected by the County Administrator (the "Trustee"), with the form of the Bonds attached thereto; (ii) the Prime Lease; (iii) the Financing Lease; (iv) one or more leasehold deeds of trust or amendments to the existing leasehold deed of trust encumbering the Real Estate (collectively, the "Leasehold Deed of Trust") from the Authority to the individual trustees named therein and (v) one or more assignments of rents and leases or amendments to the existing assignment of rents and leases encumbering the Real Estate (collectively, the "Assignment of Rents and Leases") between the Authority and the Trustee; and

WHEREAS, the Bonds will be offered for sale pursuant to an official statement in preliminary form (the "Preliminary Official Statement"); and

WHEREAS, all the documents listed in F above are referred to in this Resolution as the "Basic Documents."

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

1. Issuance of Bonds. The Authority is hereby requested to issue its Bonds in the maximum aggregate principal amount of \$16,000,000 in one or more series at one time or from time to time as may be requested by either Authorized Representative for the purpose of refunding all or a portion of the Prior Bonds and financing costs of issuing the Bonds. The principal of, premium, if any, and interest on the Bonds shall be paid from revenues derived from payments made by the County pursuant to the Financing Lease and any amendments, supplements or modifications to the Financing Lease. The Board hereby determines that it is advisable and will benefit the inhabitants of the County through the promotion of their safety, health, welfare and prosperity to request the Authority issue the Bonds as described herein.
2. Authorization of Basic Documents. The Bonds and the Basic Documents are hereby approved in substantially the forms on file with the County Administrator, with such changes, insertions or omissions (including, without limitation, changes of the dates thereof) as may be approved by the Authorized Representatives, whose approval shall be evidenced conclusively by the execution and delivery of the Basic Documents to which the County is a party. The execution and delivery of and the performance by the County of its obligations under the Bonds and the Basic Documents to which it is a party are hereby authorized.
3. Execution of Basic Documents. The Authorized Representatives are hereby authorized and directed to execute on behalf of the County the Basic Documents to which the County is a party. The Clerk of the Board of Supervisors is hereby authorized and directed to affix or to cause to be affixed the seal of the County to the Basic Documents and to attest such seal. The Authorized Representatives and such other officers and agents either Authorized Representative may designate are hereby authorized and directed to execute and deliver on behalf of the County such instruments, documents or certificates, and to do and perform such things and acts and to take such further action, as they shall deem necessary or

appropriate to carry out the transactions authorized by this Resolution or contemplated by the Bonds or the Basic Documents, or both.

4. Sale of Bonds. (a) The Authorized Representatives are hereby authorized and directed to determine the manner of sale of each series of Bonds, and each such series of Bonds shall be offered for sale in such manner as the Authorized Representatives determine to be in the best interest of the County. If the manner of sale is competitive, the Board hereby authorizes and directs the Authorized Representatives to accept a bid or proposal for the purchase of the Bonds provided such bid results in the lowest true interest cost to the County. The Authorized Representatives are hereby authorized to reject any or all of the bids. If manner of sale is negotiated, the Board hereby authorizes and directs the Authorized Representatives to execute and deliver a bond purchase agreement with an underwriter or group of underwriters selected by the Authorized Representatives providing for the sale and delivery of the Bonds.
  - (b) The Authorized Representatives are hereby authorized and directed to determine and approve the final details of each series of Bonds, including, without limitation, the aggregate principal amount of the Bonds, the optional and mandatory redemption provisions and the sale price of the Bonds, provided that (i) the aggregate principal amount of the Bonds shall not exceed the amount set forth in paragraph 1, (ii) the sale price of the Bonds shall not be less than 98% of the aggregate principal amount thereof (not taking into account any original issue discount), (iii) the refunding achieves an aggregate net present value debt service savings of not less than 3% of the refunded principal amount and (iv) the final maturity of the Bonds shall not be later than the final fiscal year in which the Refunded Bonds, as hereinafter defined, mature. The approval of the Authorized Representatives shall be evidenced conclusively by the execution and delivery of such documentation evidencing the sale of the Bonds.
  - (c) The Bonds may be subject to optional redemption, make-whole, or noncallable on such terms as the Authorized Representatives may approve. The Bonds may also be subject to mandatory sinking fund redemption on such terms as the Authorized Representatives may approve.
5. Refunding and Escrow Agreement. (a) The Authorized Representatives are hereby authorized and directed to select the Prior Bonds to be refunded (the "Refunded Bonds") and to cause the refunding of the Refunded Bonds pursuant to the terms of the Prior Bonds and the documents securing them, including the 2005 Indenture.
  - (b) The Authorized Representatives are hereby authorized to cause to be prepared and directed to execute and deliver one or more escrow agreements, between the County, the Authority (if necessary) and an escrow agent to be selected by the Authorized Representatives, providing for the deposit and investment of a portion of the proceeds of the Refunding Bonds to be applied to the redemption or payment of the Refunded Bonds on the earliest practicable date.

6. Disclosure Documents. (a) The Authorized Representatives and such other officers and agents either Authorized Representative may designate are hereby authorized and directed to prepare, execute, if required, and deliver an appropriate notice of sale, Preliminary Official Statement and final official statement (the "Official Statement") or such other offering or disclosure documents as may be necessary to expedite the sale of the Bonds, including such documentation as may be necessary to provide for the submission of electronic bids for the Bonds if electronic bidding is determined by such officer or officers to be advantageous. Any such notice of sale, Preliminary Official Statement, Official Statement or other documents shall be published in such publications and distributed in such manner, including by electronic distribution, and at such times as the Authorized Representatives shall determine. The Authorized Representatives and such other officer or agent either Authorized Representative may designate, are hereby authorized to deem the Preliminary Official Statement "final" for purposes of Securities Exchange Commission Rule 15c2-12.

(b) The Official Statement and its use and distribution is authorized and approved. The Official Statement shall be in substantially the form of the Preliminary Official Statement on file with the County Administrator, which is hereby approved, with such completions, omissions, insertions and changes as may be approved by the Authorized Officers, whose execution thereof shall constitute conclusive evidence of their approval of such form, terms and conditions.
7. Costs and Expenses. All costs and expenses in connection with the undertaking of the refinancing of the County's obligations under the 2005 Financing Lease, the refunding of the Refunded Bonds and the issuance of the Bonds, including the Authority's fees and expenses and the fees and expenses of bond counsel and counsel for the Authority, shall be paid from the proceeds of the Bonds, or other legally available funds of the County. If for any reason the Bonds are not issued, it is understood that all such expenses shall be paid by the County from its legally available funds and that the Authority shall have no responsibility therefor.
8. Nature of Obligations. Nothing in this Resolution, the Bonds, or the Basic Documents shall constitute a debt of the County, and the Authority shall not be obligated to make any payments under the Bonds or the Basic Documents except from payments made by or on behalf of the County under the Financing Lease. The County Administrator is hereby directed to submit for each fiscal year a request to the Board for an appropriation to the Authority for an amount equal to the rental payments coming due under the Financing Lease for the next fiscal year. The County's obligations to make payments to the Authority pursuant to this Resolution shall be subject to and dependent upon annual appropriations being made from time to time by the Board for such purpose. Nothing in this Resolution, the Bonds or the Financing Lease shall constitute a pledge of the full faith and credit of the County.
9. Tax Covenants. The Authorized Representatives are hereby authorized and directed to execute and deliver simultaneously with the issuance of any series of Bonds the interest on which is intended to be excludable from gross income for federal income tax purposes a tax certificate or agreement, or both (collectively, the "Tax Agreement") setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"), including the provisions of Section 148 of the Tax Code and applicable regulations relating to "arbitrage bonds." The proceeds from the

issuance and sale of any such series of the Bonds will be invested and expended as set forth in the Tax Agreement and that the County will comply with the other covenants and representations contained in it.

10. Further Actions. (a) The Authorized Representatives and such other officers and agents either Authorized Representative may designate are hereby authorized and directed to take further action as each deems necessary or appropriate regarding the issuance, credit enhancement and sale of the Bonds and the refunding of the Refunded Bonds, including, without limitation, (i) purchasing of one or more credit enhancements for any series of Bonds if market or other conditions so warrant, (ii) entering into supply arrangements relating to the investment of the proceeds of any series of Bonds, (iii) applying for CUSIP identification numbers and the execution and delivery of replacement bonds in connection with any partial refunding of the Prior Bonds, (iv) selecting a verification agent and escrow agent in connection with any series of Bonds and (v) determining which property owned by the County shall constitute the Leased Projects.  
  
(b) All actions taken by officers and agents of the County in connection with the issuance and sale of the Bonds are hereby ratified and confirmed. The officers and agents of the County are hereby authorized and directed to take such further actions as each deems necessary regarding the issuance and sale of any series of Bonds and all actions taken by such officers and agents in connection with the issuance and sale of any series of Bonds are hereby ratified and confirmed.
11. SNAP Investment Authorization. The County has heretofore received and reviewed the Information Statement describing the State Non-Arbitrage Program of the Commonwealth of Virginia ("SNAP") and the Contract Creating the State Non-Arbitrage Program Pool I (the "SNAP Contract"), and the County has determined to authorize the Authorized Representatives to utilize SNAP in connection with the investment of the proceeds of the Bonds, if the Authorized Representatives determine that the utilization of SNAP is in the best interest of the County. The County acknowledges the Treasury Board of the Commonwealth of Virginia is not, and shall not be, in any way liable to the County in connection with SNAP, except as otherwise provided in the SNAP Contract.
12. Exercise of Discretion and Authorizations. Any authorization of an officer of the County under this Resolution entitles such officer to exercise his or her discretion in taking action on behalf of the County, unless expressly provided otherwise. For any authorization of the Authorized Representatives, it shall be sufficient that either Authorized Representative act in order to bind the County. The authorizations granted in this Resolution to the County Administrator, the Director of Financial and Management Services or the Clerk of the Board of Supervisors, or any combination of the foregoing, may be carried out by any Acting or Assistant County Administrator (with respect to authorizations granted to the County Administrator), Acting or Assistant Director of Financial Management Services (with respect to authorizations granted to the Director of Financial Management Services) and any Deputy or Assistant Clerk (with respect to authorizations granted to the Clerk of the Board of Supervisors), in the absence of the primary officer.
13. Effective Date. This Resolution shall take effect immediately.

A RESOLUTION OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF JAMES CITY, VIRGINIA AUTHORIZING THE  
ISSUANCE AND SALE OF GENERAL OBLIGATION SCHOOL REFUNDING BONDS

WHEREAS, on June 8, 2005, the County of James City, Virginia (the "County") issued its \$39,820,000 General Obligation School Bonds, Series 2005 (the "Prior Bonds") to finance the costs of the construction and equipping of Warhill High School; and

WHEREAS, the Board of Supervisors of the County of James City, Virginia (the "Board") has determined that it is advisable to authorize the issuance of general obligation school refunding bonds (the "Bonds") to refund all or a portion of the Prior Bonds (the "Project").

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

1. Issuance of Bonds. The Board hereby determines that it is advisable and will benefit the inhabitants of the County through the promotion of their safety, health, welfare and prosperity to contract a debt and to issue and sell the Bonds in the maximum aggregate principal amount of \$25,500,000 in one or more series at one time or from time to time as may be requested by either County Administrator or the Director of Financial and Management Services (the "Authorized Representatives"). The proceeds from the issuance and sale of the Bonds shall be used (i) to refund the Refunded Bonds, as hereinafter defined, and (i) to pay all or portion of the costs of issuing the Bonds.
2. Pledge of Full Faith and Credit. The full faith and credit of the County are hereby irrevocably pledged for the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable. The Board is hereby authorized to and shall levy and collect annually, at the same time and in the same manner as other taxes of the County are assessed, levied and collected, an ad valorem tax upon all taxable property within the County, over and above all other taxes authorized or limited by law, and without limitation as to rate or amount, sufficient to pay when due the principal of, premium, if any, and interest on the Bonds to the extent other funds of the County are not lawfully available and appropriated for such purpose.
3. Details and Sale of the Bonds. The Authorized Representatives are hereby authorized and directed to determine and approve the final details of each series of Bonds, including, without limitation, the aggregate principal amount of the Bonds, the optional and mandatory redemption provisions and the sale price of the Bonds, provided that (i) the aggregate principal amount of the Bonds shall not exceed the amount set forth in paragraph 1, (ii) the sale price of the Bonds shall not be less than 98% of the aggregate principal amount thereof (not taking into account any original issue discount), (iii) the refunding achieves an aggregate net present value debt service savings of not less than 3% of the refunded principal amount and (iv) the final maturity of the Bonds shall not be later than the final fiscal year in which any Refunded Bond, as hereinafter defined, matures. The approval of the Authorized Representatives shall be evidenced conclusively by the execution and delivery of such documentation evidencing the sale of the Bonds. The approval of the Authorized Representatives shall be evidenced conclusively by the execution and delivery of such documentation evidencing the sale of the Bonds.

The Bonds shall be issued, in one or more series, upon the terms established pursuant to this Resolution and upon such other terms as may be determined in the manner set forth in this Resolution. The Bonds shall be issued in fully registered form, shall be dated such date as the Authorized Representatives may approve, shall be in the denominations of \$5,000 each or whole multiples thereof, may be issued at one time or from time to time in one or more series (with appropriate series designations), and the Bonds of any series shall be numbered from R-1 upwards consecutively.

The Authorized Representatives are hereby authorized and directed to determine the manner of sale of each series of Bonds, and each such series of Bonds shall be offered for sale in such manner as the Authorized Representatives determine to be in the best interest of the County. If the manner of sale is competitive, the Board hereby authorizes and directs the Authorized Representatives to accept a bid or proposal for the purchase of the Bonds provided such bid results in the lowest true interest cost to the County. The Authorized Representatives are hereby authorized to reject any or all of the bids. If manner of sale is negotiated, the Board hereby authorizes and directs the Authorized Representatives to execute and deliver a bond purchase agreement with an underwriter or group of underwriters selected by the Authorized Representatives providing for the sale and delivery of the Bonds.

4. Redemption of Bonds. The Bonds may be subject to optional redemption, make-whole, or noncallable on such terms as the Authorized Representatives may approve. The Bonds may also be subject to mandatory sinking fund redemption on such terms as the Authorized Representatives may approve.
5. Form of Bonds. The Bonds shall be in substantially the form attached to this Resolution as Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution or subsequent resolution of the Board. There may be endorsed on the Bonds such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.
6. Book-Entry-Only Form. (a) The Bonds shall be issued in book-entry-only form. The Bonds shall be issued in fully-registered form and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC") as registered owner of the Bonds, and immobilized in the custody of DTC. One fully registered Bond in typewritten or printed form for the principal amount of each maturity of the Bonds shall be registered to Cede & Co. Beneficial owners of the Bonds shall not receive physical delivery of the Bonds. Principal, premium, if any, and interest payments on the Bonds shall be made to DTC or its nominee as registered owner of the Bonds on the applicable payment date.
  - (b) Transfer of ownership interest in the Bonds shall be made by DTC and its participants (the "Participants"), acting as nominees of the beneficial owners of the Bonds in accordance with rules specified by DTC and its Participants. The County shall notify DTC of any notice required to be given pursuant to this Resolution or the Bonds not less than 15 calendar days prior to the date upon which such notice is required to be given. The County shall also comply with the agreements set forth in the County's Letter of Representations to DTC.
  - (c) Replacement Bonds (the "Replacement Bonds") shall be issued directly to beneficial owners of the Bonds rather than to DTC or its nominee but only in the event that:

- (i) DTC determines not to continue to act as securities depository for the Bonds;
- (ii) the County has advised DTC of its determination not to use DTC as a securities depository; or
- (iii) the County has determined that it is in the best interest of the beneficial owners of the Bonds or the County not to continue the book-entry system of transfer.

Upon occurrence of the events described in (i) or (ii) above, the County shall attempt to locate another qualified securities depository. If the County fails to locate another qualified securities depository to replace DTC, the appropriate officers and agents of the County shall execute and deliver Replacement Bonds substantially in the form set forth in Exhibit A. In the event the Board, in its discretion, makes the determination noted in (iii) above and has made provisions to notify the beneficial owners of the Bonds by mailing an appropriate notice to DTC, the appropriate officers and agents of the County shall execute and deliver Replacement Bonds substantially in the form in the form set forth in Exhibit A to any Participants requesting such Replacement Bonds. Principal of, premium, if any, and interest on the Replacement Bonds shall be payable as provided in this Resolution and in the Bonds and such Replacement Bonds will be transferable in accordance with the provisions of this Resolution and the Bonds.

7. Appointment of Bond Registrar and Paying Agent. (a) The Director of Financial and Management Services and such officer or agent the Director of Financial and Management Services designates is hereby authorized and directed to appoint a Bond Registrar and Paying Agent for the Bonds.  
  
(b) The Director of Financial and Management Services and such officer or agent the Director of Financial and Management Services designates may appoint a subsequent bond registrar and/or one or more paying agents for the Bonds upon giving written notice to the owners of the Bonds specifying the name and location of the principal office of any such bond registrar or paying agent.
8. Execution of Bonds. The County Administrator is hereby authorized and directed to execute on behalf of the County the Bonds. The Clerk of the Board of Supervisors is hereby authorized and directed to affix or to cause to be affixed the seal of the County to the Bonds and to attest such seal. The County Administrator is hereby authorized and directed to deliver the Bonds to the purchaser or purchasers thereof upon payment of the applicable purchase price. The manner of execution and affixation of the seal may be by facsimile, provided, however, that if the signatures of the County Administrator and the Clerk of the Board of Supervisors are both by facsimile, the Bonds shall not be valid until signed at the foot thereof by the manual signature of the Bond Registrar.
9. CUSIP Numbers. The Bonds shall have CUSIP identification numbers printed thereon. No such number shall constitute a part of the contract evidenced by the Bond on which it is imprinted and no liability shall attach to the County, or any of its officers or agents by reason of such numbers or any use made of such numbers, including any use by the County and any officer or agent of the County, by reason of any inaccuracy, error or omission with respect to such numbers.

10. Registration, Transfer and Exchange. (a) Upon surrender for transfer or exchange of any Bond at the principal office of the Bond Registrar, the County shall execute and deliver and the Bond Registrar shall authenticate in the name of the transferee or transferees a new Bond or Bonds of any authorized denomination in an aggregate principal amount equal to the Bond surrendered and of the same form and maturity and bearing interest at the same rate as the Bond surrendered, subject in each case to such reasonable regulations as the County and the Bond Registrar may prescribe. All Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the County and the Bond Registrar, duly executed by the registered owner or by his or her duly authorized attorney-in-fact or legal representative. No Bond shall be registered to bearer.
  - (b) New Bonds delivered upon any transfer or exchange shall be valid obligations of the County, evidencing the same debt as the Bonds surrendered, shall be secured by this Resolution and entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.
11. Charges for Exchange or Transfer. No charge shall be made for any exchange or transfer of Bonds, but the County may require payment by the registered owner of any Bond of a sum sufficient to cover any tax or other governmental charge which may be imposed with respect to the transfer or exchange of such Bond.
12. Tax Covenants. The Authorized Representatives are hereby authorized and directed to execute and deliver simultaneously with the issuance of any series of Bonds the interest on which is intended to be excludable from gross income for federal income tax purposes a tax certificate or agreement, or both (collectively, the "Tax Agreement") setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"), including the provisions of Section 148 of the Tax Code and applicable regulations relating to "arbitrage bonds." The proceeds from the issuance and sale of any such series of the Bonds will be invested and expended as set forth in the Tax Agreement and that the County will comply with the other covenants and representations contained in it.
13. Refunding and Escrow Agreement. (a) The Authorized Representatives are hereby authorized and directed to select the Prior Bonds to be refunded (the "Refunded Bonds") and to cause the refunding of the Refunded Bonds pursuant to the terms of the Prior Bonds.
  - (b) The Authorized Representatives are hereby authorized to cause to be prepared and directed to execute and deliver one or more escrow agreements, between the County and an escrow agent to be selected by the Authorized Representatives, providing for the deposit and investment of a portion of the proceeds of the Refunding Bonds to be applied to the redemption or payment of the Refunded Bonds on the earliest practicable date.
14. Disclosure Documents. The Authorized Representatives and such other officers and agents either Authorized Representative may designate are hereby authorized and directed to prepare, execute, if required, and deliver one or more appropriate notices of sale, preliminary official statements, official statements and such other offering or disclosure documents as may be necessary to expedite the sale of the Bonds, including such documentation as may be necessary to provide for the submission of electronic bids for the

Bonds if electronic bidding is determined by such officer or officers to be advantageous. Any such notice of sale, preliminary official statement, official statement or other documents shall be published in such publications and distributed in such manner, including by electronic distribution, and at such times as the Authorized Representatives shall determine. The Authorized Representatives and such other officer or agent either Authorized Representative may designate, are hereby authorized to deem the Preliminary Official Statement "final" for purposes of Securities Exchange Commission Rule 15c2-12.

15. Continuing Disclosure. The Authorized Representatives are hereby authorized and directed to enter into a continuing disclosure agreement for the benefit of the owners of the Bonds to assist the underwriter for the Bonds in complying with the provisions of Section (b)(5) of Securities and Exchange Commission Rule 15c2-12.
16. Further Actions. (a) The Authorized Representatives and such other officers and agents either Authorized Representative may designate are hereby authorized and directed to take further action as each deems necessary or appropriate regarding the issuance, credit enhancement and sale of the Bonds and the refunding of the Refunded Bonds, including, without limitation, (i) purchasing of one or more credit enhancements for any series of Bonds if market or other conditions so warrant, (ii) entering into supply arrangements relating to the investment of the proceeds of any series of Bonds, (iii) applying for CUSIP identification numbers and the execution and delivery of replacement bonds in connection with any partial refunding of Prior Bonds and (iv) selecting a verification agent and escrow agent in connection with any series of Bonds.
  - (b) The Authorized Representatives and such other officers and agents either Authorized Representative may designate are also authorized and directed to execute and deliver on behalf of the County such instruments, documents or certificates, and to do and perform such things and acts and to take such further action, as they shall deem necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Bonds.
  - (c) All actions taken by officers and agents of the County in connection with the issuance and sale of the Bonds are hereby ratified and confirmed. The officers and agents of the County are hereby authorized and directed to take such further actions as each deems necessary regarding the issuance and sale of any series of Bonds and all actions taken by such officers and agents in connection with the issuance and sale of any series of Bonds are hereby ratified and confirmed.
17. SNAP Investment Authorization. The County has heretofore received and reviewed the Information Statement describing the State Non-Arbitrage Program of the Commonwealth of Virginia ("SNAP") and the Contract Creating the State Non-Arbitrage Program Pool I (the "SNAP Contract"), and the County has determined to authorize the Authorized Representatives to utilize SNAP in connection with the investment of the proceeds of the Bonds, if the Authorized Representatives determine that the utilization of SNAP is in the best interest of the County. The County acknowledges the Treasury Board of the Commonwealth of Virginia is not, and shall not be, in any way liable to the County in connection with SNAP, except as otherwise provided in the SNAP Contract.
18. Exercise of Discretion and Authorizations. Any authorization of an officer of the County under this Resolution entitles such officer to exercise his or her discretion in taking action on behalf of the County, unless expressly provided otherwise. For any authorization of the

Authorized Representatives, it shall be sufficient that either Authorized Representative act in order to bind the County. The authorizations granted in this Resolution to the County Administrator, the Director of Financial and Management Services or the Clerk of the Board of Supervisors, or any combination of the foregoing, may be carried out by any Acting or Assistant County Administrator (with respect to authorizations granted to the County Administrator), Acting or Assistant Director of Financial Management Services (with respect to authorizations granted to the Director of Financial Management Services) and any Deputy or Assistant Clerk (with respect to authorizations granted to the Clerk of the Board of Supervisors), in the absence of the primary officer.

19. Filing of Resolution. The County Attorney, or such party as the County Attorney designates, is hereby authorized and directed to file or cause to be filed a certified copy of this Resolution with the Circuit Court of the City of Williamsburg and the County of James City pursuant to Sections 15.2-2607 and 15.2-2641 of the Code of Virginia of 1950, as amended.

20. Effective Date. This Resolution shall take effect immediately

## **I. PUBLIC HEARINGS**

### **1. Ordinance to Amend and Reordain Chapter 3, Animal Laws**

Ms. Leah Dubuisson, Law Clerk, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Mr. McGlennon clarified that the ordinance change mirrors the changes made by the General Assembly.

Ms. Dubuisson stated correct. She stated that the majority of the changes involve definitions and minor language changes. She said that all changes to the County's ordinance will mirror the language changes in the State Code.

As there were no other questions for staff, Ms. Jones opened the Public Hearing.

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

Mr. McGlennon made a motion to approve the ordinance included in the Agenda Packet.

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

### **2. Case Nos. Z-0003-2013/MP-0001-2013. Kingsmill Rezoning Master Plan Amendment, Land Bay Area 8**

Mr. Jose Riberio, Planner III, addressed the Board giving a summary of the staff report included in the Agenda Packet.

As there were no questions for staff, at this time, Ms. Jones opened the Public Hearing.

1. Mr. Vernon Geddy, representative of the applicant, addressed the Board giving an update on the status of the application process and the openness of the applicant to meet with and discuss concerns with members of the Kingsmill community. He stated that the current rezoning application is to allow for permanent occupation of the properties. The amendment to the Master Plan is to allow the units in question to be rented on a short-term basis.

2. Mr. Michael McGurk, 117 Jeffersons Hundred, addressed the Board in opposition to the case.

3. Mr. Robert Zatola, addressed the Board in opposition to the case.

4. Mr. Lenny Berl, 105 William Richmond, addressed the Board in opposition to the case.

5. Mr. John Niland, 503 River Bluff, addressed the Board in opposition to the case.

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

Mr. Kennedy asked Mr. Rogers for clarification on issues regarding zoning laws and neighborhood covenants.

Mr. Rogers stated that at times there is overlap between the two; however, the vote of the Board of Supervisors does not violate specific covenants.

Ms. Jones asked Mr. Rogers if, with the approval of the Board, the applicant would still need to obtain approval from Kingsmill Community Services Association (KCSA).

Mr. Rogers stated that in order to add the proposed development to KCSA there would be approval required from the KCSA.

Mr. McGlennon stated that his issue with the current proposal is there have been repeated modifications on this case. There are three other requests that will come before the Board in the future from the applicant and all of the cases should be looked at as a comprehensive request. The big picture should not be looked at on an individual case basis.

Mr. Onizuk asked how the proposed change would affect the master plan.

Mr. Riberio stated that the proposed plan does fit within the latest 1986 master plan.

Mr. McGlennon asked if the 1986 Master Plan was the most recent.

Mr. Riberio stated correct.

Mr. Onizuk asked Mr. Geddy why the applicant asked for a deferral from a previous meeting and would a deferral at this point have an impact on the applicant?

Mr. Geddy stated that it would have an impact, that there are now two prospective purchasers for two of the existing five cottages.

Mr. McGlennon asked if the applicant would seek approval from KCSA for the cottages to be added to the KCSA.

Mr. Geddy responded that it was an option.

Mr. Hipple asked if the question at this time was whether the cottages could be occupied as residential units versus rentals.

Mr. Geddy stated yes.

Mr. Hipple asked if the applicant had a long-term plan to occupy a majority of Board seats on the KCSA.

Mr. Geddy stated no, that once the applicant has finished with their development the applicant would withdraw from the Board of the KCSA.

Mr. Kennedy asked why approval was not sought from KCSA prior to the request for zoning changes.

Mr. Geddy stated that it was not appropriate in this circumstance.

Mr. Kennedy stated that there seems to be bad feelings on both sides of this issue. He is concerned that there will be new homeowners that you want accepted by the current owners, a relatively new developer who is new to the community and unknown to us, the neighborhood has been pitched as developed out and yet now this is a plan for development, all of which is a dilemma.

Mr. Onizuk asked if the residential units could, in theory, not be part of KCSA.

Mr. Geddy stated that it is possible. He stated that the cottages are condominium type units and as such will have a condominium association like other condominiums in Kingsmill.

Ms. Jones stated that there have been a lot of changes in Kingsmill recently and there is a trust issue. She stated that this case tonight is about whether or not the cottages can be rental properties and there are already five cottages that exist on the water. She stated that Xanterra is a corporate citizen that has invested a lot of money in developing the resort community of Kingsmill. She stated that perhaps they have not handled this well and understands the frustration of the residents of the neighborhood. She stated that this issue should be decided tonight because it is just the question of allowing the property to be rented, but going forward, she agrees that the rest of the proposals should be submitted together. She agrees with the idea put forward of having a work session to sit down and see the big picture of all the proposals.

Mr. McGlennon stated that Xanterra made a business decision to build resort property and that did not require legislative approval. The reason this is before the Board tonight is because apparently they made the wrong decision and now need legislative help and approval to get that changed to residential property. He stated that making this decision tonight will give up the opportunity to get clarity on the whole plan and on a range of issues.

Ms. Jones stated that the 18 cottage units are already approved and can be built, so the question tonight is the usage.

Mr. McGlennon stated that if Xanterra has to come to the Board for legislative approval to make the cottages successful, then the Board should take the opportunity to resolve some of the other issues as well.

Mr. Hipple stated that he understands that point, but does not see a reason to hold up this case tonight. The rest of the proposals could be seen as a whole and from a comprehensive prospective.

Mr. Hipple made a motion to approve the case.

Mr. Kennedy stated that things have changed as the Busch properties were split off and sold in pieces. He stated concern with the other pieces of this proposed development. He stated that these cottages are going to be built regardless; the decision is whether or not they should be deemed residential homes. Moving forward, he would like to see the proposals put to a vote to the homeowners association (HOA) and if it received 66 percent of the vote, then it would appear that the residents of Kingsmill are supportive. He stated that if that cannot be done, he worries that something is being hidden until after the fact. He could probably be supportive of this case tonight, but going forward he is not so supportive unless he sees some good faith on the part of the developer.

Mr. Onizuk stated that he agrees completely with the comments made by Mr. Kennedy. The citizen comments seem to focus more on the bigger picture issues, not specifically whether these cottages should be residential. He stated that he could support this case this evening, but going forward there needs to be more good faith on the developer's side toward the residents of Kingsmill.

Mr. McGlennon stated that there does not appear to be support for a deferral; however, he is going to make the motion for deferral anyways. He stated that there are unanswered questions regarding the affordable housing component of this proposal. Xanterra had the option of building some affordable housing with the cottages or making a cash payment to the County in lieu of. Instead, Xanterra is proposing to put affordable units among existing units in neighborhoods outside of the development of the cottages. He stated that action will have a direct impact on the residents of Kingsmill and outside of the proposed development and does not seem to be consistent with the County's policy.

Mr. Onizuk asked if staff addressed the affordable housing impact.

Mr. Riberio stated that the policy does not address this particular situation and staff had to be somewhat creative in finding a solution. The cottages have already been administratively approved to be built. What the developer is proposing is not described anywhere in the policy, yet seems to be in the spirit of the policy.

Mr. McGlennon stated that the developer will choose homes already constructed in neighborhood sections of Kingsmill and designate them as affordable units to meet the Housing Opportunities Policy. Those homes are outside the development area of the cottages and will directly impact the residents of those neighborhoods.

Mr. Paul Holt, Director of Planning, stated that the developer wanted to supply affordable priced units within Kingsmill, so this appeared to be the best approach. The policy does not say which option the developer has to subscribe to, just that they meet the policy guidelines.

Mr. Kennedy asked what consideration was given to the existing homeowners and their home values when this decision was made by staff. He questioned if this is setting a precedent for future development.

Mr. Rogers stated that this option is only being applied to "in-fill" development and would not apply to new residential development. He stated that the Housing Opportunities Policy was designed to address new development, so the Planning Department believes that they have applied the spirit and intent of the policy in the case of in-fill development.

Mr. Kennedy repeated his question regarding the consideration of current home values.

Mr. McGlennon stated that the policy does address the issue of in-fill development by offering the cash in lieu of.

Mr. Rogers stated that staff made its interpretation of the policy.

Ms. Jones stated that the developer proposed an option that seems to be in the spirit of the policy.

Mr. McGlennon stated that the cash in lieu of was designed to address the issue of in-fill development and to prevent this issue of changing the nature of established homes and neighborhoods.

Ms. Jones asked if the developer proposed this solution or if staff did.

Mr. Holt stated that the developer desired to provide different housing options within the community so that employees of the resort could live within the community.

Mr. McGlennon asked how are the HOA fees going to be addressed.

Mr. Geddy stated that within the Kingsmill community 840 units already fall within the definition of workforce housing so it will be very easy for these units to blend in.

Ms. Jones stated that there is a motion to defer still on the floor.

On a roll call vote, the vote was: AYE: Mr. Kennedy, Mr. McGlennon (2). NAY: Mr. Hipple, Mr. Onizuk, Ms. Jones (3).

Mr. Hipple made a motion to approve the resolution in the Agenda Packet.

On a roll call vote, the vote was: AYE: Mr. Hipple, Mr. Onizuk, Ms. Jones (3). NAY: Mr. Kennedy, Mr. McGlennon (2).

## **RESOLUTION**

### **CASE NOS. Z-0003-2013/MP-0001-2013. KINGSMILL REZONING/**

### **MASTER PLAN AMENDMENT, LAND BAY AREA 8**

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, 1950, as amended, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. Z-0003-2013/MP-0001-2013; and

WHEREAS, Mr. Vernon Geddy has applied to rezone a property located at 1010 Kingsmill Road and further identified as James City County Real Estate Tax Map No. 5040100010 from R-4, Residential Planned Community, to R-4, Residential Planned Community, with proffers, and a master plan land use designation change for 18 approved dwelling units from “resort” to “residential B” within the resort area; and

WHEREAS, the Property is designated Low Density Residential on the 2009 Comprehensive Plan Land Use Map; and

WHEREAS, on May 7, 2014, the Planning Commission recommended approval of the application by a vote of 5-0-1.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-003-2013/MP-0001-2013 described herein and accepts the voluntary proffers.

At 11:18 p.m., Mr. McGlennon requested the Board take a brief recess.

At 11:18 p.m., Ms. Jones recessed the Board.

At 11:25 p.m., Ms. Jones reconvened the Board.

3. Case No. SUP 0004-2014. WindsorMeade Marketplace Wendy's (New Town, Section 11)

Ms. Leanne Pollock, Planner III, addressed the Board giving a summary of the staff report included in the Agenda Packet.

Mr. McGlennon asked for clarification on parking in the proposal.

Ms. Pollock stated that the master plan is conceptual in design; the development plan will be generally in compliance with it. She stated that the number of parking spaces proposed will actually require two handicap spaces rather than the one that is shown on the illustrative plan. She stated that the proposal is providing more parking spaces than is required by the zoning ordinance.

Mr. McGlennon stated concern with the one ingress and egress onto a very small road.

Ms. Pollock stated that the site design allows for vehicles to circle the building for egress which should eliminate any issue with exiting the parking lot.

As there were no other questions for staff, Ms. Jones opened the Public Hearing.

1. Mr. Paul Gerhardt, 116 Alexander Place, Attorney with Kaufman and Canoles and representative of the applicant, addressed the Board giving an overview of the proposal before the Board.

Mr. McGlennon asked about the remaining potential for development in the WindsorMeade Marketplace.

Mr. Jim Gresock, S. L. Nusbaum Realty Co. and Property Management Company for WindsorMeade Marketplace, stated that there is approximately 14,000 square feet of potential development remaining. If this proposal is approved the number would drop to approximately 7,200 square feet due the development cap.

2. Mr. James Elliot, a resident of WindsorMeade, addressed the Board in support of the case.

3. Ms. Mary Bressler, 4405 Pleasant View Drive, addressed the Board in opposition to the case.

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

Mr. Onizuk stated that he appreciated the applicant taking the time to meet with the residents of WindsorMeade as their community will be the most directly affected. He stated that the residents seemed very supportive of the idea, but did voice concern over the traffic. He stated that traffic in that area is going to be a

concern, but VDOT and the owner of the shopping center are willing to work together to try and mitigate those. He stated that it will be a work in progress, but applauds the collaboration. He stated that he is supportive of the application and this will be a good fit for the retail corridor.

Ms. Jones stated that she appreciates the citizen comments, especially at this late hour and looks forward to another successful business in the County.

Ms. Jones made a motion to approve the resolution.

Mr. Kennedy stated that he would be abstaining from the vote as he is a restaurant owner himself and his business is located in the New Town area as well.

On a roll call vote, the vote was: AYE: Mr. Hipple, Mr. Onizuk, Ms. Jones (3). NAY: Mr. McGlennon (1). ABSTAIN: Mr. Kennedy (1).

## **RESOLUTION**

### **CASE NO. SUP-0004-2014. WINDSORMEADE MARKETPLACE WENDY'S**

#### **(NEW TOWN SECTION 11)**

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. Paul Gerhardt has applied for an SUP to allow construction of a fast food restaurant (the "Development") on property located at 4800 Monticello Avenue (the "Property"); and

WHEREAS, the proposed Development is depicted on the plan prepared by AES Consulting Engineers, dated November 14, 2013, and entitled "Conceptual Layout – Wendy's" (the "Master Plan"); and

WHEREAS, the proposed Development is located in its entirety on property zoned MU, Mixed Use, further identified as James City County Real Estate Tax Map Parcel No. 3831800003A; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-0004-2014; and

WHEREAS, the Planning Commission, following its public hearing on June 4, 2014, voted 6-1 to recommend approval of Application No. SUP-0004-2014; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, does hereby approve Special Use Permit Case No. SUP-0004-2014, as described herein, pursuant to the following conditions:

1. *Use:* This SUP shall be valid for an approximately 3,200-square-foot fast food restaurant (the "Development").
2. *Master Plan:* The site plan for the Development shall be generally consistent with the Master Plan as determined by the Director of Planning.

3. Applicability of New Town Section 11 Proffers and Design Guidelines: Development shall continue to be subject to the proffers and design guidelines as adopted by the Board of Supervisors as James City County (JCC) Case No. Z-0005-2003 and MP-0006-2003 on October 14, 2003.
4. Elevations: Final building elevations shall be generally consistent with the Entry Side, Drive-Thru, Rear and Front Conceptual Renderings prepared by Ionic Deziign Studios and dated February 4, 2014, as determined by the New Town Design Review Board and the Director of Planning.
5. Access: Access to the Development shall be limited to the one vehicular entrance (the "Entrance"). The Entrance shall be located on the South Access Road as shown on Exhibit 2 of the report prepared by DRW Consultants on March 26, 2014, and titled "Traffic Analysis for Proposed Wendy's New Town West" (the "Analysis") and shall be developed generally as depicted on the Master Plan.
6. Signage: In addition to building face signage as permitted by the JCC Zoning Ordinance (the "Ordinance"), the Development shall be limited to one freestanding brick monument-style sign on the Property. All signage, content, and materials shall be in accordance with the New Town Section 11 Design Guidelines and the Ordinance and approved by the New Town Design Review Board.
7. External Pedestrian Accommodations: Unless otherwise not permitted by the Virginia Department of Transportation, a non-signalized crosswalk across Old News Road and connecting the proposed sidewalk parallel to the South Access Road with existing sidewalk on the adjacent property located at JCC Real Estate Tax Map No. 3831200002B shall be installed prior to issuance of a final certificate of occupancy for the Development.
8. Internal Pedestrian Accommodations: Development shall provide internal pedestrian connections wherever sidewalk enters the parking area or crosses the Entrance or drive-thru lane. The connections shall be clearly delineated by use of a different color of pavement, brick pavers, or some other method determined to be acceptable by the Director of Planning.
9. Monticello Avenue Buffer: A landscaping plan shall be approved by the Director of Planning, or his designee, prior to final site plan approval for this Development. The landscaping plan shall include enhanced landscaping within the 50-foot Community Character Corridor buffer along Monticello Avenue so that the required sizes of plants and trees equal, at a minimum, 133 percent of the size requirements of the JCC Landscape Ordinance. A minimum of 50 percent of the plantings within the Community Character Corridor buffer shall be evergreen and plant material shall match those contained within the existing Monticello Avenue buffer in front of WindsorMeade Marketplace. The typical town fence shall be installed along the Monticello Avenue frontage of the Development.
10. Water Conservation Standards: The Applicant shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources. Standards shall be reviewed and approved by the JCSA prior to final site plan approval of the Development.

11. Commencement: Construction on the Development shall commence within 24 months from the date of approval of this SUP or this permit shall be void. Construction shall be defined as obtaining building permits and an approved footing inspection and/or foundation inspection.
12. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Case No. SUP 0005-2014. Creative Kids Child Development Center

Ms. Jennifer Van Dyke, Planner I, addressed the Board giving a summary of the staff report included in the Agenda Packet.

Mr. McGlennon clarified that when speaking of allowing 12 or 20 children that is the number of children present at any given time, but in no means references the number of children that can be had as clients.

Ms. Van Dyke stated correct.

Mr. Onizuk asked for clarification on the attached resolutions. The applicant is already approved for 12 children, which is outlined in the second resolution and the first resolution would allow up to 20 children.

Ms. Van Dyke stated correct, but the Special Use Permit (SUP) allowing 12 children must be renewed as it was only granted for 12 months.

Ms. Jones stated that the Board heard this case exactly one year ago. At that time, much of the discussion revolved around the restrictive covenants in her neighborhood which is why the SUP was only granted for one year. Her understanding is that the applicant was successful in having the covenants of her neighborhood amended.

As there were no other questions for staff, Ms. Jones opened the Public Hearing.

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

Ms. Jones stated that she supports this application and supports the raising the allowable number up to 20. She stated that obviously the neighborhood supports the applicant and her business. Her only concern is that SUPs follow the land and should the property be sold then an SUP would follow the property. She stated that she does not want the applicant to constantly be in the application process, but does believe there needs to be some form of timeframe.

Mr. Rogers stated that the resolution does include a stipulation that the SUP is valid for 36 months.

Mr. McGlennon stated that his concern is that the Board is allowing a commercial establishment and a large one at that, with hours of 6 a.m. to midnight, to be located in a residential neighborhood. He stated that he believes it is out of scale. He stated that allowing 20 children exceed what he believes should be allowed in a residential neighborhood.

Mr. Onizuk questioned what the building requirements would be if the number of allowable children was raised from 12 to 20.

Ms. Van Dyke stated that a handicap parking space would have to be installed and should the applicant begin caring for children under the age of 2-½ years old, then there would have to be an exterior door immediately off the area where the children were kept and it would have to be on the first floor. The Department of Social Services (DSS) would also have to come back and do an inspection of the space and living quarters to determine the exact number of children allowed in the space per DSS guidelines. Ms. Van Dyke also clarified that this SUP resolution would not permit 24-hour care.

Mr. Onizuk asked if there were any other child-care centers in residential neighborhoods in the County.

Mr. McGlennon stated that there is one in the Brookhaven neighborhood that allows up to 30 children, but the home structure is considerably larger.

Mr. Onizuk stated that there is a precedent for more than 12 children.

Ms. Van Dyke stated that child-care center is the exception and the Health Department has stated that it is an unusual case.

Ms. Jones made a motion to approve resolution-1 included in the Agenda Packet which would allow for up to 20 children at any given time.

On a roll call vote, the vote was: AYE: Mr. Kennedy, Mr. Hipple, Mr. Onizuk, Ms. Jones (4). NAY: Mr. McGlennon (1).

## **RESOLUTION**

### **CASE NO. SUP-0005-2014. CREATIVE KIDS CHILD DEVELOPMENT CENTER**

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Ms. Tracey Williams has applied for an SUP to operate a child day-care center for a maximum of 20 children on a parcel totaling 0.39 acres and zoned R-2, General Residential; and

WHEREAS, the subject parcel is located at 701 Mosby Drive and can be further identified as James City County Real Estate Tax Map Parcel No. 41403300103; and

WHEREAS, if approved, this SUP application will bring the use into conformance with the current Zoning Ordinance regulations; and

WHEREAS, the Planning Commission, following its public hearing on June 4, 2014, voted 4-3 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0005-2014, as described herein with the following conditions:

1. Occupancy: No more than 20 children shall be cared for at the child day-care center at any one time, subject to approval by the State Department of Social Services.
2. Hours of Operation: Hours of operation shall be limited from 5:30 a.m. to midnight, Monday through Friday, and from 7 a.m. to midnight, Saturday through Sunday. Except for transportation provided directly by the owner/operator of the day care, all pick-ups and drop-offs to the day care shall be limited to between 6 a.m. to 8 p.m.
3. Residency: The owner/operator of the child day-care center shall reside on the property for the duration of the validity of the SUP.
4. Validity of SUP: This SUP shall be valid for a period of 36 months from the date of approval during which the child day-care center owner shall maintain (and renew or obtain as necessary) all needed County and State permits and licensure to operate the child day-care center.
5. Signage: No signage shall be permitted which relates to the use of the property as a child day-care center.
6. Lighting: No additional exterior lighting shall be permitted on the property, other than lighting typically used at a single-family residence.
7. Water Conservation Agreement: The applicant shall be responsible for enforcing the water conservation standards established in the signed and approved Water Conservation Agreement dated August 1, 2013. The standards address water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources.
8. Food preparation: No commercial food preparation or laundry services shall be provided aside from the operation of the child day-care center. For purposes of this condition, "commercial food preparation or laundry services" shall be defined as meaning any food preparation or laundry services provided at the center that are not directly related to, and intended to serve the needs of, the children being cared for and/or the day-care center staff.
9. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentences, or paragraph shall invalidate the reminder.

5. Case No. SUP 0006-2014. 2604 John Tyler Highway Sewer Connection

Mr. Luke Vinciguerra, Planner I, addressed the Board giving a summary of the staff report included in the Agenda Packet.

Ms. Ellen Cook, Planner III, addressed the Board giving a summary of the Comprehensive Plan impacts of the case included in the Agenda Packet.

As there were no questions for staff at this time, Ms. Jones opened the Public Hearing.

1. Mr. Vernon Geddy, representative of the applicant, addressed the Board regarding the application. He stated that no new development will occur because of being allowed to connect to the line that is right

there. He stated that he understands the Primary Service Area (PSA) policy, but this is a preexisting lot and they do not feel that approving this case will do any damage to the PSA policy.

2. Ms. Judy Fuss, 3509 Hunters Ridge, a representative of the James City County Citizen Coalition (J4C), addressed the Board in opposition to the case.

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

Mr. Kennedy asked staff if a new water main was put in place for Governor's Land a few years ago.

Mr. Vinciguerra stated that he is not aware of that.

Mr. Kennedy asked what determined the cut-line for the PSA when the Board approved the development of Governor's Land.

Ms. Cook stated that the Board at the time determined that lots adjacent to the line could connect. She stated that because the water line went a little further down the road, this lot was adjacent to the water line and would be allowed to connect, but not adjacent to the sewer line.

Mr. Kennedy stated that a precedent was set when Governor's Land was brought into the PSA and yet there has not been a rise in growth out Route 5. He stated that he understands the dilemma, but this lot is adjacent to the water line.

Ms. Jones stated that this lot is across the street from Governor's Land. She does not believe that this will not be a precedent. It is one lot with one house on it. She stated that in her opinion, this is the right thing to do.

Mr. McGlennon stated that if the Board approves this case, then the decision will destroy the PSA. It will no longer be a growth tool. He stated that he is open to discussion and participating in developing some other form of controlling growth and to address these types of cases and then come back to this case. He declared that if this is approved, it will be the basis for arguments for everyone up and down the line of the PSA.

Ms. Jones stated that the line has been extended for the County's use. She stated that the SUP process is in place so that the Board can decide on a case-by-case basis.

Mr. Kennedy asked Mr. Rogers if this case would set a precedent.

Mr. Rogers stated that each case sets a precedent; it is an action of the Board that can be used as an example of what the Board is willing to do. He stated that in the 1980s when Governor's Land was approved, no connections were allowed outside of Governor's Land. That policy was amended in the 1990s to allow a preexisting lot adjacent to the line to have one single-family connection. The same was allowed when the line was extended for Matoaka Elementary School, but it was one single-family connection per lot that was adjacent to the line. This case is now further down the line and not adjacent.

Mr. Hipple stated that the PSA line was extended down Jolly Pond Road for the schools as well. He stated that other ways need to be developed to control growth other than the PSA. He stated that this is an environmental issue as well. The area out there runs a risk of failing on alternative systems.

Mr. Kennedy stated that he could be supportive of waiting until the Board and staff can come up with a better management tool, which needs to be addressed. He stated he is having a hard time understanding how this property is adjacent to the water line, but not the sewer line.

Mr. Onizuk stated that he concurs with Mr. Kennedy, but the Board does not have a better management tool. He stated that he is concerned about setting a precedent. He stated that he would be concerned with extending connections outside of the PSA on a case-by-case basis, eventually it will negate the PSA and the Board will not be able to defend it without some other policy.

Ms. Jones stated that she can be supportive of continuing this discussion and looking at the Board's best practices, but she would be supportive of this case. Ms. Jones made a motion to approve this case.

Mr. McGlennon stated that in the case of public facilities, extending the PSA to schools is the result of growth in the County, but those facilities do not themselves generate any growth.

Mr. Onizuk asked if an extension had ever been approved for one lot, for one homeowner.

Mr. Kennedy stated that he can remember one case that the Board disapproved just over a year ago. He requested a deferral on this case and asked staff to show how the cut-line was determined on Route 5 near Governor's Land and requested information on other cases for tie-ins to the line.

Mr. Onizuk stated that he could be supportive of a deferral.

Mr. McGlennon requested information regarding the distinction between applications and connections over time.

Mr. Kinsman recommended the deferral date until the August 12, 2014, meeting.

Ms. Jones stated that she supports the deferral, but wishes the case had been decided this evening.

On a roll call vote, the vote was: AYE: Mr. Kennedy, Mr. McGlennon, Mr. Onizuk, Ms. Jones (4). NAY: Mr. Hipple (1).

**J. BOARD CONSIDERATIONS – None**

**K. PUBLIC COMMENT**

1. Mr. Chris Henderson, 101 Keystone, addressed the Board regarding the actions of the Board this evening.

**L. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Kinsman stated that as the new Assistant County Administrator, the Board needs to appoint him, by motion, as the Deputy Clerk to the Board so that he may sign all the resolutions and minutes from the meeting tonight. He also stated that the Board needs to amend its calendar to add a Closed Meeting on July 15, 2014, at 3:30 p.m.

Mr. McGlennon made a motion to appoint Mr. Kinsman as the Deputy Clerk of the Board.

The motion passed by a unanimous voice vote.

Mr. McGlennon made a motion to amend the calendar to add a Closed Meeting on July 15, 2014, at 3:30 p.m.

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

**M. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon stated he has requested that at 7 p.m. on July 15, 2014, the County co-sponsor a community forum on transportation at Colonial Manor Senior Center in Grove.

Ms. Jones stated that on Wednesday, July 2, she attended a meeting for the Hampton Road Transportation Accountability Commission where By-Laws were adopted which officially formed the Commission. The Mayor of Chesapeake was appointed Chair of the Commission. She stated that meetings will be the third Thursday of every month following the Hampton Roads Planning District Commission (HRPDC)/Transportation Planning and Organization (TPO) meetings.

**N. CLOSED SESSION - None**

**O. ADJOURNMENT – until 3:30 p.m. on July 15, 2014, for a Closed Meeting.**

Mr. McGlennon made a motion to adjourn.

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

At 12:51 a.m., Ms. Jones adjourned the Board.



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M. Douglas Powell  
Clerk to the Board