

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

July 13, 2010

7:00 P.M.

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE - Mother Goose Mania Champions at Rawls Byrd Elementary School

E. PUBLIC COMMENT

F. CONSENT CALENDAR

1. Minutes –
 - a. June 22, 2010, Work Session
 - b. June 22, 2010, Regular Meeting
 - c. June 29, 2010, Continued Meeting
 - d. June 3, 2010, Special Meeting
 - e. June 13, 2010, Special Meeting
2. Chesapeake Bay Preservation Ordinance Violation – Civil Charge – Omega Construction, 206 and 210 Sandy Bay Road
Supports County's Strategic Pathway 4.c - ensure private development and government operations are environmentally sensitive
3. Contract Award – Asphalt Overlay – Various Routes - \$535,421
Supports County's Strategic Pathway 3.d - invest in the capital project needs of the community
4. Budget Transfer – Capital Contingency to Facility Improvements - \$200,000
Supports County's Strategic Pathway 3.d - invest in the capital project needs of the community
5. Grant Appropriation - Homeless Intervention Program - \$149,231
Supports County's Strategic Pathway 2.a - address the needs of the underserved and protect the vulnerable and 2.c - increase the variety of safe, sanitary and affordable housing
6. Williamsburg Area Transit Authority Board of Directors Appointments

G. PUBLIC HEARINGS

1. Case No. SUP-0024-2009. Hospice House WCF (deferral requested)
2. Case No. SUP-0007-2009/Z-0001-2010/MP-0001-2009. Colonial Heritage, Deer Lake Cluster
3. Ordinance to Vacate a Private Right-of-Way of Quarterpath Trail in Kingsmill
4. Transfer of Route 5 Transportation Improvement District (TID) Assets
5. Dissolution of the Route 5 Transportation Improvement District (TID)

- CONTINUED -

H. BOARD CONSIDERATION

1. Referendum Question – November 9, 2010
Supports County's Strategic Pathway 3.d - invest in the capital project needs of the community

I. PUBLIC COMMENT

J. REPORTS OF THE COUNTY ADMINISTRATOR

K. BOARD REQUESTS AND DIRECTIVES

L. CLOSED SESSION

1. Consideration of a personnel matter, the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
 - a. Parks and Recreation Advisory Committee
 - b. Planning Commission
2. Consideration of the purchase of parcel(s) of property for public use pursuant to Section 2.2-3711(A)(3) of the Code of Virginia

M. ADJOURNMENT to 4 p.m. on July 27, 2010

071310bos_age

AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF JUNE 2010, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

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

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

C. BOARD DISCUSSIONS

1. Proposed Spending Plan for Stormwater Capital Projects Fiscal Years 2011-2021

Mr. John Horne, Manager of General Services, presented a proposed spending plan for Stormwater Capital Projects Fiscal Years 2011-2021 and noted the proposed plan was grouped by the voting district and by the fiscal year. Mr. Horne commented that permit and easement acquisitions usually take the most time to complete and are the most difficult to predict; and, as a result, staff had made some assumptions about certain projects to allow staff to focus on easement acquisitions for a large number of projects. He commented on the project list which consisted of a mix of approaches including traditional design and construction, design-build alternatives, accelerated easement acquisition, and project management.

Ms. Fran Geissler, Stormwater Management Director, gave a presentation on the 10-year summary of projects which are based on criteria. There will be phases on the projects and some projects may be built within five years.

Mr. Kennedy asked if the project estimates are in current dollars.

Ms. Geissler responded that the proposed spending plan is in today's dollars.

Mr. Kennedy asked if these figures include inflation.

Ms. Geissler responded no costs of inflation are included in the figures. She explained about drainage improvements, flood mitigation, as well as repairs to Jamestown 1607. She discussed stream restoration and how it can help regulate flood plain and lessen clogged channels. She presented several possible projects to the Board.

Mr. Icenhour commented on the project at Raintree and asked about its flexibility within this list.

Mr. Horne responded that the specific project in the Raintree area would need to simply keep water from entering homes and commented on a neighborhood rainwater treatment. He indicated that there may be no savings and discussed further options.

Mr. Kennedy asked if it is possible to do these projects in five years.

Mr. Horne responded that this would not be cost-efficient based on the projects to do in a five-year period.

Mr. Kennedy commented on cost efficiency. He stated that he does not want to look for more money and asked if the County should look for more funds based on inflation.

Ms. Geissler commented that \$22 million is projected for the first five years, but it is unknown how inflation will affect these projects in the next five years. She asked what number would be used for inflation.

Mr. McGlennon commented on new projects that were not previously identified and asked if some projects may not be needed.

Ms. Geissler responded that is correct.

Mr. McGlennon stated that some of these projects may involve the participation of homeowners and there may be opportunities from other sources for funding. He commented that we may want to consider how these projects will benefit the communities.

Mr. Horne stated that some of the orange-coded projects are in VDOT's ROW. He commented on the six-year plan and that these projects would not be in the spreadsheet if not beneficial for the County.

Mr. Wanner stated that the Board would be stepping in to take over State responsibilities in the County.

Mr. McGlennon asked if we could defer the projects and provide incentives to the State to share the cost.

Mr. Icenhour inquired about the \$30 million that the projects need to catch up.

Ms. Geissler responded that is correct and commented that besides this program there should be another program to deal with stormwater issues. She stated that we need to think about how to maintain our stormwater projects on a regular basis.

Mr. Horne stated that other localities have programs to handle stormwater issues in neighborhoods whose infrastructures have a need. He stated that this spreadsheet does reflect all the neighborhoods in the County and that as time goes by, neighborhood needs will change. He stated that this is a capital portion to handle the various conditions of need.

Mr. Icenhour asked about ROW or acquisition.

Ms. Geissler commented on trying to get easements donated to the County. She stated that a lot of conservation has to be done with the public.

Mr. Icenhour asked if they can be resolved in three to five years.

Ms. Geissler discussed the Raintree Best Management Practice (BMP) which has some issues about stormwater.

Mr. McGlennon asked if there have been some measurable projects in handling water quality issues.

Ms. Geissler discussed a water treatment model to reduce the sediment and to measure what issues are being dealt with.

Mr. McGlennon stated that it is very important to address neighborhood problems.

Mr. Horne stated that this is addressing the water quality issues in the County. He discussed the measurement of results which refers to the measurement of the pollutants in our waterways and streams.

2. Stormwater Referendum

Mr. Courtney Rogers, Investment Consultant, Davenport and Company, LLC, presented the necessary bond funding potential for the proposed referendum to fund stormwater management capital improvements in the County. He commented that the \$30 million bonds would be feasible in the County's financial structure and reviewed debt capacity and timing strategies for spending the bond proceeds. He noted that the \$30 million bond issue would imply an impact of \$0.0225 toward debt service, assuming \$1.1 million per penny with a very conservative interest rate. Mr. Rogers noted that the bond ratings were exceptional and a referendum process would make the bond market more accessible. He commented that interim funding might make the timeline more feasible. He noted that the referendum was viable for eight years and could be extended for two additional years, allowing for a ten-year window in which to borrow the funds. He reviewed the impacts of the bond issue on debt capacity and debt affordability for the County. He recommended putting cash funding aside to account for inflation prior to issuing the bonds. He reviewed payout ratios and strategies to pay off the debt. Mr. Rogers reviewed concerns with debt service versus revenues, which would be above the targeted 3-percent as the stormwater management capital projects are developed in future years if the \$0.0225 increase is not implemented.

Discussion was held about the flexibility of a pay-go strategy. Mr. Rogers reviewed different bond types, including tax exempt rates and subsidies of Build America bonds. The Board and staff discussed the various projected bond-financed projects to determine how the stormwater management project financing would fit with other projects over time.

Discussion was held on strategies for borrowing ahead and interim financing for the projects.

The Board and staff discussed the Referendum Question, which would be discussed as an agenda item during the regular meeting. Discussion was held on the inclusion of the \$0.0225 tax rate increase as part of the language in the referendum question and on the ballot for the benefit of the public. Discussion was held on the potential for dedicating the \$0.0225 increased tax revenue to capital projects.

Mr. McGlennon stated that he is willing to support the \$0.0225 tax rate increase to address stormwater. He stated it was a political question for the Board about whether the \$0.0225 increase should be tied to the referendum.

Mr. Rogers stated that if the additional funding is not collected up front, the projects must then compete with other projects.

Ms. Sue Mellen, Assistant Manager of Financial Management Services, noted that the County may

not need to borrow the entire amount if funds were raised up front.

Discussion was held on how the language of the referendum question would present the implications of the increased tax rate. The Board directed staff to pull previous referendum questions in order to review the wording. The Board members expressed a desire to defer the Referendum Question until the meeting on July 13, 2010.

3. Watershed Management Planning Update

Mr. John Horne, General Services Manager, and Ms. Fran Geissler, Stormwater Manager, presented an update on the County's Watershed Management Plan. Ms. Geissler provided the Board with an overview of the Watershed Management Plans which identified and addressed potential sources of water quality impairment and identify the sensitive areas, streams, and stormwater infrastructure which are in need of restoration and retrofit. She noted that several watershed baseline assessments have been completed, including the Powhatan, Yarmouth, and Skiffes Creek watersheds. She noted that the Gordon Creek and Mill Creek watershed assessments were in progress.

Ms. Geissler presented issues involving Gordon Creek as well as the baseline assessment of Mill Creek and the Mill Creek Watershed findings. She discussed the watershed goals such as baseline assessment, stakeholder input, and previous watershed studies. Ms. Geissler reviewed water quality priorities.

4. Stormwater Retention Pond Study Meeting

Steven Hicks, Development Manager, stated that Dr. Greg Hancock, Associate Professor in the Department of Geology at the College of William and Mary and his students performed a study on the performance of the County's existing stormwater retention ponds and staff would review the results and recommendations with the Board.

Dr. Hancock discussed stormwater quantity control in James City County, measurement of stormwater retention ponds, and recommendations to improve the performance of stormwater retention ponds, which he found were not performing well. He reviewed his field research and evaluation of the retention time of stormwater ponds in the County. Dr. Hancock commented that an alternative design for stormwater retention ponds is the Kerplunk method, but using the method has resulted in creating ponds that hold water half as long as required by the regulations for 24-hour retention. Dr. Hancock recommended that the Kerplunk method not be used based on the 24-hour retention period requirement and he discussed the various other design methods based on State and County requirements for BMPs. He also recommended requiring calculation and proof that a pond would achieve the 24-hour retention period.

Discussion was held on the State standards for stormwater retention and the more rigorous standards for County BMPs. Dr. Hancock stated that increasing the retention period would result in a 15-percent increase in size for the current 12-hour BMPs. Discussion was held about why the County guidelines for channel protection were more stringent than the State requirements.

Discussion was held on the performance of the existing BMPs. The Board and staff discussed alternative ways to address stormwater quantity and runoff reduction and whether or not the Kerplunk method for stormwater retention ponds would continue to be used in relation to new State regulations.

D. BREAK

At 5:43 p.m. the Board took a break.

Sanford B. Wanner
Clerk to the Board

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AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF JUNE 2010, 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

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

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

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Alicia Miecznikowski, a rising fourth-grade student at Norge Elementary School, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATION

Mr. McGlennon presented the recognition of Williamsburg Landing 25th Anniversary which has served as a Continuing Care Retirement Community (CCRC). Mr. Steven Montgomery, Executive Director of Williamsburg Landing accepted the recognition.

F. PUBLIC COMMENTS

1. Mr. Aaron Small, 108 Ewell Place, discussed the Stormwater Referendum. Mr. Small is on the Stormwater Program Advisory Committee (SPAC) and supports the Stormwater Referendum. He explained to the Board the ranking of the projects. Mr. Small also discussed the Route 199 Access request, which allowed only 10 trips to the site. He requested approval of the resolution.

2. Mr. Bob Spencer, 9123 Three Bushel Drive, discussed the Virginia Retirement System (VRS) Pension Consideration for County employees. Mr. Spencer asked the Board to adopt the employee's contribution and to support the stormwater referendum as well.

3. Mr. Ed Oyer, 123 Indian Circle, discussed an article in the Daily Press dated June 15, 2010, in reference to high schools listed. Mr. Oyer commented about the IB Program (International Baccalaureate) and that all the schools should have the IB Program. He discussed the Route 60 traffic backup and the limited access on Route 199. He discussed House Bill (HB) 1221, HB 1320, and Senate Bill 276 which offers loans for dams and spillways.

4. Mr. Robert Richardson, 2786 Lake Powell Road, discussed the Code of Ethics in relation to the Courthouse Commons case and the vacant seat on the Planning Commission, which is an At-Large position.

5. Mr. Drew Mulhare, 124 Henry Tyler Drive, Vice President for Realtec, Inc., requested approval of the NTelos Route 199 Limited Access.

G. CONSENT CALENDAR

Mr. Goodson requested to pull Items 8 and 9 for separate discussion.

Mr. Goodson made a motion to adopt the remaining items on the Consent Calendar.

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

1. Minutes –
 - a. May 23, 2010, Closed Session Meeting
 - b. May 24, 2010, Closed Session Meeting
 - c. June 8, 2010, Regular Meeting
 - d. June 17, 2010, Closed Session Meeting
2. Contract Awards – Annual Engineering Services

RESOLUTION

CONTRACT AWARDS-ANNUAL ENGINEERING SERVICES

WHEREAS, a Request for Proposals has been advertised and evaluated for annual engineering services; and

WHEREAS, the firms listed in Attachment A with this resolution were determined to be the best qualified to provide the required engineering services in their respective groups.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contracts for annual engineering services to the firms listed in Attachment A.

3. Resolution of Recognition – Williamsburg Landing’s 25th Anniversary

RESOLUTION OF RECOGNITION

WILLIAMSBURG LANDING’S 25TH ANNIVERSARY

WHEREAS, Williamsburg Landing is located in James City County and has provided an exemplary Continuing Care Retirement Community (CCRC) to its residents during the last 25 years; and

WHEREAS, it was conceived and founded by members of the James City County/Williamsburg community and is operated as a nonprofit corporation by a Board of Directors comprised of local citizens; and

WHEREAS, it has always adhered to the highest industry standards for service, governance, and quality of care, and has received the Commission on Accreditation of Rehabilitation Facilities (CARF)/CCRC accreditation in 2009 as a testament to excellence in-care; and

WHEREAS, the Board members, staff, and many residents contribute their time, energy, and talents to making James City County and the Greater Williamsburg area a quality community; and

WHEREAS Williamsburg Landing will officially celebrate its 25th Anniversary as a CCRC with ceremonies on July 15, 2010.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby calls upon all citizens of the County to join them in recognizing the 25th Anniversary of Williamsburg Landing.

4. Grant Award – Virginia Department of Health – Bicycle Safety – \$1,000

RESOLUTION

GRANT AWARD – VIRGINIA DEPARTMENT OF HEALTH – BICYCLE SAFETY - \$1,000

WHEREAS, the James City County Police Department has been awarded a Bicycle Helmet Safety grant from the Virginia Department of Health (VDH), Division of Injury and Violent Prevention in the amount of \$1,000; and

WHEREAS, the funds are to be used for the purchase of youth bicycle helmets for distribution at Bike Rodeos and other Community Service Unit events where bicycle safety education is delivered; and

WHEREAS, there are no matching funds required of this grant.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and the following budget appropriation amendment to the Special Projects/Grants fund:

Revenue:

VDH FY 11 – Bicycle Helmet Safety \$1,000

Expenditure:

VDH FY 11 – Bicycle Helmet Safety \$1,000

5. Grant Award – Virginia Department of Health – Boating Safety - \$924

RESOLUTION

GRANT AWARD – VIRGINIA DEPARTMENT OF HEALTH – BOATING SAFETY – \$924

WHEREAS, the James City County Police Department has been awarded a Boating Safety/Life Jacket grant from the Virginia Department of Health (VDH), Division of Injury and Violent Prevention in the amount of \$924; and

WHEREAS, the funds are to be used for the purchase of life jackets for distribution by the Marine Patrol when necessary and for the development of a Boating Safety brochure, which will include life jacket information; and

WHEREAS, there are no matching funds required of this grant.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and the following budget appropriation amendment to the Special Projects/Grants fund:

Revenue:

VDH FY 11 – Boating Safety \$924

Expenditure:

VDH FY 11 – Boating Safety \$924

7. Grant Award – Chesapeake Bay Restoration Fund – \$5,900

RESOLUTION

GRANT AWARD – CHESAPEAKE BAY RESTORATION FUND – \$5,900

WHEREAS, the Chesapeake Bay Restoration Fund, which is funded through the sale of Chesapeake Bay license plates, has made funds available for the restoration and education of the Bay; and

WHEREAS, funds are needed to provide an enriching environmental component to the Division’s REC Connect Camp Program.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the \$5,900 grant awarded by the Chesapeake Bay Restoration Fund to help with the additions to the summer camp program.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Projects/Grants fund:

Revenue:

From the Commonwealth \$5,900

Expenditure:

Chesapeake Bay Restoration Fund \$5,900

10. Revision to Chapter 7 of the Personnel Policies and Procedures Manual

RESOLUTION

REVISION TO CHAPTER 7 OF THE

PERSONNEL POLICIES AND PROCEDURES MANUAL

WHEREAS, the County is committed to treating employees equitably; and

WHEREAS, the revised policy would be more equitable to employees who work nonstandard shifts; and

WHEREAS, the revised policy would better reflect the severity of certain employee conduct.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached revisions to Chapter 7, Standards of Conduct, of the James City County Personnel Policies and Procedures Manual.

8. Code Violation Lien – Trash and Grass

9. Code Violation Lien – Trash and Grass

Ms. Melissa Brown, Zoning Administrator, presented to the Board the process for code violation liens. Ms. Brown explained that violations are processed through citizen complaints about properties and that General Services goes out and cleans the property.

Mr. Goodson asked about the amount of time the process takes.

Ms. Brown responded that the process takes 30 days.

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

8. Code Violation Lien – Trash and Grass Lien

RESOLUTION

CODE VIOLATION LIEN – TRASH AND GRASS

WHEREAS, the Zoning Administrator has certified to the Board of Supervisors of James City County, Virginia, that the property owners as described below have failed to pay a bill in the amount listed, for cutting of grass and weeds or removal of trash and debris, although the County has duly requested payment; and

WHEREAS, the unpaid and delinquent charges are chargeable to the owners and collectible by the County as taxes and levies and constitute a lien against the Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, James City County, Virginia, that in accordance with Sections 10-7 and 10-5 of the Code of the County of James City, Virginia, the Board of Supervisors directs that the following delinquent charges for services rendered, plus interest at the legal rate from the date of recordation until paid, shall constitute a lien against the Property to wit:

Cleaning of Trash/Debris and/or Cutting of Grass, Weeds, etc.:

ACCOUNT: Barbara A. Bullock & Janice Hillman
3232 Reade’s Way
Williamsburg, VA 23185-2421

DESCRIPTION: 3232 Reade’s Way

TAX MAP/PARCEL NOS.: (46-1)(07-0-0101)
James City County, Virginia

FILING FEE: \$10.00

TOTAL AMOUNT DUE: \$250.00

9. Code Violation Lien – Trash and Grass Lien

RESOLUTION

CODE VIOLATION LIEN – TRASH AND GRASS

WHEREAS, the Zoning Administrator has certified to the Board of Supervisors of James City County, Virginia, that the property owners as described below have failed to pay a bill in the amount listed, for cutting of grass and weeds or removal of trash and debris, although the County has duly requested payment; and

WHEREAS, the unpaid and delinquent charges are chargeable to the owners and collectible by the County as taxes and levies and constitute a lien against the Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, James City County, Virginia, that in accordance with Sections 10-7 and 10-5 of the Code of the County of James City, Virginia, the Board of Supervisors directs that the following delinquent charges for services rendered, plus interest at the legal rate from the date of recordation until paid, shall constitute a lien against the Property to wit:

Cleaning of Trash/Debris and/or Cutting of Grass, Weeds, etc.:

ACCOUNT:	Darl L. Mann, Jr. & Janet Mann 101 Oxford Road Williamsburg, VA 23185-3227
DESCRIPTION:	2809 Durfey's Mill Road
TAX MAP/PARCEL NOS.:	(47-4)(01-0-0003) James City County, Virginia
FILING FEE:	\$10.00
TOTAL AMOUNT DUE:	\$320.00

H. PUBLIC HEARINGS

1. Case No. Z-0001-2009/SUP-0007-2010/MP-0001-2009. Colonial Heritage Deer Lake

The applicant requested a deferral until July 13, 2010.

Mr. Kennedy opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, discussed rezoning and reasons for more density in the County.

As no one else wished to speak to this matter, Mr. Kennedy continued the public hearing until July 13, 2010.

Case No. SUP-0013-2010. Chickahominy Road Manufactured Home

Mr. Luke Vincignerra, Planner, stated that Ms. Sandra Kimrey has applied for a Special Use Permit (SUP) to allow for the placement of a manufactured home at 2818 Chickahominy Road. Manufactured homes not located within the Primary Service Area (PSA) in the R-8, Rural Residential, District require an SUP. The proposal is to demolish the existing residential structure and replace it with a manufactured home. The applicant has informed staff that the current structure is leaking and in poor condition. The proposed manufactured home would be a double-wide, roughly 60-foot by 28-foot 2010 Oxford model manufactured home. The Environmental Division has no comments on the SUP application at this time and finds that the proposal, with the attached conditions, meets the administrative criteria for placement of a manufactured home and is consistent with the Rural Lands Land Use designation.

Staff found the application consistent with the administrative criteria for the placement of a manufactured home and consistent with the Rural Lands Land Use designation.

At its meeting on June 2, 2010, the Planning Commission recommended approval of the application by a vote of 7-0.

Staff recommended approval of the resolution.

Mr. Kennedy opened the Public Hearing.

1. Ms. Sandra Kimrey, on behalf of Oakwood Homes, Newport News, Virginia, discussed the applicant's need for the home. She requested approval of the application.

2. Mr. Ed Oyer, 139 Indian Circle, noted the differences in appearance between a pre-manufactured home and a mobile home.

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

Mr. Goodson made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-0013-2010. CHICKAHOMINY ROAD MANUFACTURED HOME

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. Sandra Kimrey has applied for an SUP to allow for the placement of a manufactured home on a parcel of land zoned R-8, Rural Residential, located outside the Primary Service Area (PSA); and

WHEREAS, the property is located at 2818 Chickahominy Road and can be further identified as James City County Real Estate Tax Map Parcel No. 2230100002; 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, hereby approves the issuance of SUP-0013-2010 as described herein with the following conditions:

1. This permit shall be valid for the 2010 Oxford Model double-wide unit (“Double-wide”) applied for or newer/similar unit as determined by the Planning Director.
2. A Certificate of Occupancy (CO) must be obtained for the Double-wide within 24 months from the date of approval of this SUP or the permit shall become void.
3. The Double-wide shall be placed on a permanent concrete foundation and meet the requirements of the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards.
4. The Double-wide shall be placed so as to comply with all current setback and yard requirements in the R-8, Rural Residential, Zoning District.
5. The existing residential dwelling shall be demolished before the issuance of a CO for the Double-wide.
6. To ensure adequate screening, no existing trees shall be removed within 20 feet of the property lines unless prior permission is granted from the Planning Director.
7. A single connection is permitted to the adjacent water main on Chickahominy Road with no larger than a ¾-inch water meter. Any lots created by a subdivision of the parent parcel will not be permitted to connect unless the PSA is extended to incorporate the parent parcel.
8. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Case No. SUP-0026-2010. Constance Avenue Wireless Communications Facility

Mr. Luke Vincigerra, Planner, stated that Ms. Lisa Murphy of LeClair Ryan has applied for an SUP to allow for the construction of a 114-foot (110-foot tower with a four-foot lightning rod) “slick stick” Wireless Communication Facility (WCF) on the subject property. WCFs are specially permitted uses in the R-8, Rural Residential, zoning district. The tower will have a limited visual impact on both the Colonial Parkway and Constance Avenue. The tower will be located within an existing stand of trees, and the applicant has proposed a 100-foot tree preservation buffer on all sides of the facility. This tower will provide service to the Colonial Parkway and surrounding neighborhoods. The proposed tower has limited visibility along Constance Avenue from Neck-O-Land Road to just before Discovery Lane. The tower will not be visible from any other vantage point within the Powhatan Shores subdivision. The tower has limited visibility from several points along Neck-O-Land Road between Captain John Smith Road and 628 Neck-O-Land Road. Though there is limited visibility as described, it does not appear intrusive.

Staff found the application to be consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation.

At its meeting on March 3, 2010, the Planning Commission recommended approval by a vote of 7-0.

Staff recommended approval of the resolution.

Mr. Icenhour asked if there is an owner currently on the parcel.

Mr. Vincigerra responded that there will be a residence on the property.

Mr. Kennedy opened the Public Hearing.

1. Ms. Pam Faber, attorney for LeClair Ryan located at Discovery Park Boulevard, thanked staff for the balloon tests. The owner may eventually build a home and has access to the site. After her presentation she asked the Board to support the application.

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

Mr. Goodson asked about a letter of intent from other carriers.

Ms. Faber responded it will be limited to two carriers.

Mr. McGlennon made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-0026-2009. CONSTANCE AVENUE

WIRELESS COMMUNICATIONS FACILITY

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. Lisa Murphy has applied on behalf of LeClairRyan for an SUP to allow for the construction of a wireless communications facility on a parcel of land zoned R-8, Rural Residential; and

WHEREAS, the proposed development is shown on a plan prepared by GPD Associates, with a final revision date of June 10, 2010 (the "Master Plan"), listed as Site No. NF430C; and

WHEREAS, the property is located at 115 Constance Avenue and can be further identified as James City County Real Estate Tax Map Parcel No. 4732500002; and

WHEREAS, the Planning Commission, following its public hearing on March 3, 2010, voted 7-0, 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-0026-2009 as described herein with the following conditions:

1. **Terms of Validity:** This SUP shall be valid for a total of one wireless communications facility at a total height of 114 feet above existing grade, including all appurtenances, on the property as depicted on the plans entitled, "AT&T, Site Name: Back River Lane, Site No.: NF430C, Site Address: 115 Constance Avenue, Williamsburg, VA 23185," prepared by GPD Associates, and last revised on June 10, 2010
2. **Time Limit:** A final Certificate of Occupancy (CO) shall be obtained from the James City County Codes Compliance Division within two years of approval of this SUP, or the permit shall become void.
3. **Structural and Safety Requirements:** Within 30 days of the issuance of a final CO by the County Codes Compliance Division, certification by the manufacturer, or an engineering report by a structural engineer licensed to practice in the Commonwealth of Virginia, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the tower, including the total number and type of antennas which may be accommodated on the tower, demonstrating to the satisfaction of the County Building Official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
4. **Tower Color:** The tower shall be a gray galvanized finish unless approved otherwise by Director of Planning, or his designee, prior to final site plan approval.
5. **Advertisements:** No advertising material or signs shall be placed on the tower.
6. **Additional User Accommodations:** The tower shall be designed and constructed for at least two users and shall be certified to that effect by an engineering report prior to the site plan approval.
7. **Guy Wires:** The tower shall be freestanding and shall not use guy wires for support.
8. **Enclosure:** The fencing used to enclose the area shall be a board-on-board wood fence or shall be another fencing material of similar or superior aesthetic quality as approved by the Planning Director. Any fencing shall be reviewed and approved by the Director of Planning prior to final site plan approval.
9. **Tree Buffer:** A minimum buffer of 100 feet in width of existing mature trees shall be maintained on all sides of the tower facility as shown on Sheet C-1. This buffer shall remain undisturbed except for the access drive, required landscaping and necessary utilities for the tower as depicted on Sheet C-1 of the plans entitled, "AT&T, Site Name: Back River Lane, Site No.: NF430C, Site Address: 115 Constance Avenue, Williamsburg, VA 23185," prepared by GPD Associates, and last revised on June 10, 2010.
10. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Mr. Kennedy noted that Planning Commissioner Al Woods was in attendance.

3. Case No. SUP-0028-2009. Ingram Road Pegasus Wireless Communications Facility

Mr. Luke Vinciguerra, Planner, stated the applicant has amended the SUP application proposing to move the 124-foot tower from the current location to a location on the north side of the property. The applicant has requested the Board remand the application to the August 4, 2010, Planning Commission meeting for the revisited proposal.

Mr. Kennedy opened the Public Hearing.

1. Mr. Steven Romine, on behalf of the applicant, commented on finding a better site on the property and asked the Planning Commission to consider a new location on the same parcel.

As no one else wished to speak to this matter, Mr. Kennedy closed the public hearing.

Mr. Goodson made a motion for the Board to accept the request to remand the application back to the Planning Commission.

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

4. FY 2011-2016 Six-Year Secondary Road Program

Mr. Steven Hicks, Manager of Development Management, introduced Mr. Todd Halacy, Virginia Department of Transportation (VDOT) Williamsburg Residency Administrator, who discussed the six-year secondary road plan. He stated that the County receives State and Federal allocations yearly to fund proposed secondary improvements. The FY 2011-2016 Secondary Six-Year Improvement Plan (SSYP) allocations totaled \$1,286,414. For FY 2011, the allocation is \$215,726 compared to FY 2009 allocations of \$1,254,782 and FY 2010 is \$443,762. Based on the significant reductions in secondary allocations, currently no additional projects can be added to the SSYP. He pointed out a brief summary of the current projects on the SSYP Budget Priority List. The County cannot rely on the State for funds for allocation of roads. Mr. Hicks stated that the Centerville Road project needs to be advertized by August 2010, and there are no current funds for Racefield Drive. He also requested that the Croaker Road project be removed from the Six-Year Secondary System Road Program.

Mr. McGlennon made a motion to adopt the resolution.

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

RESOLUTION

FY 2011-2016 VDOT SIX-YEAR SECONDARY SYSTEM ROAD PROGRAM

WHEREAS, Sections 33.1-23 and 33.1-23.4 of the 1950 Code of Virginia as amended, provides the opportunity for each county to work with the Virginia Department of Transportation (VDOT) in developing a Six-Year Secondary System Construction Program; and

WHEREAS, James City County has consulted with the VDOT Residency Administrator to set priorities for road improvements on the County's secondary roads; and

WHEREAS, a public hearing was advertised prior to the regularly scheduled Board of Supervisors' meeting on June 22th so that citizens of the County had the opportunity to participate in said hearing and to make comments and recommendations concerning the proposed Budget Priority List.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves of the Budget Priority List for the Secondary System as presented at the public hearing.

5. Case No. SUP-0004-2010. Courthouse Commons

Ms. Ellen Cook, Senior Planner II, stated that Greg Davis, on behalf of New Town Six, LLC, has applied for an SUP for a development of up to 67,000 square feet of commercial/office development at 5223 and 5227 Monticello Avenue, 4023 and 4025 Ironbound Road, and 113 New Quarter Drive, further identified as James City County Real Estate Tax Map Parcel Nos. 3840100003G, 3840100003E, 3840100003F, 3840100004, 3840100004B, and 3840100004A, consisting of 9.06 total acres. The property is zoned M-1, Limited Business/Industrial District and is designated by the Comprehensive Plan as MU, Mixed Use – New Town.

Ms. Cook commented that since the inception of this project, staff has recommended to the applicant that a rezoning application would allow the applicant maximum flexibility to address the impacts of the proposal. However, the decision was made by the applicant to pursue the proposal as an SUP. She noted that since the Planning Commission meeting, the applicant had made a number of changes to the proposal, including a revised Master Plan that indicates that the maximum square footage on the site will not exceed 67,000 square feet as opposed to the 83,000 square feet previously proposed and to increase the total number of parking spaces shown on Sheet 3 of the Master Plan from 310 to 342 spaces, achieved by changing the layout of the parking lot in Area 1 to eliminate a central east-west drive aisle and its double row of landscape islands. She stated the Master Plan was also revised to show a smaller building footprint for the building in Area 4, which would mean that a setback reduction request would no longer be sought. She stated there was also a revision to eliminate a pedestrian circulation route line that had been located along the west side of the parking lot in Area 1 and had connected the internal drive to the sidewalk along Monticello and to add a pedestrian circulation route line to the Busch Office parcel in Area 3.

In connection with the reduction in maximum square footage on the Master Plan to 67,000 square feet, the applicant has provided updated information about the expected trip generation figures that revise downward the amount of trips expected for this site. This information has been reflected in revised SUP Condition No. 11, which sets an overall development limit on AM and PM peak hour trips, and Condition No. 13, which describes the improvements associated with the West Monticello Plan and the applicant's proposed monetary contribution toward those improvements. The applicant did not submit a revised Traffic Impact Analysis (TIA) based on the new trip generation figures.

Ms. Cook noted that several other changes were made in relation to SUP conditions. She stated that SUP Condition No. 17 has been included which is a list of uses that the applicant would be willing to limit on the property. She noted that manufacturing uses would already be restricted by the Zoning Ordinance use codes shown on the Master Plan. Ms. Cook commented that the Attorney's Office has advised staff that other possible M-1 uses to be limited would need to be agreed to by the applicant, due to the nature of the condition, this type of use limitation is more commonly seen through a proffer mechanism. She stated that SUP Condition No. 13 has also been revised to reflect the revised trip generation figures, and it has also been revised to reflect the applicant's offer to base the contribution on the current Virginia Department of Transportation (VDOT) cost estimate rather than the previous estimate calculated in 2006. She stated that SUP Condition No. 16 has been revised to add the following statement: "At the request of the Owner, decisions of the Design Review Board (DRB) pursuant to the declaration may be appealed to the Development Review Committee of the Planning Commission (the "DRC") and modified and/or overturned at its discretion." She noted that this DRC appeal process was added at the request of counsel for the applicant and advice of the County Attorney's office.

At its meeting on June 2, 2010, the Planning Commission recommended denial by a vote of 4-2.

Staff recommended denial of the application.

Mr. Goodson noted the traffic impacts on Monticello Avenue and asked about the trip generation for by-right usage.

Ms. Cook responded that the by-right information was prepared by staff since it was discussed at the Planning Commission meeting. She displayed a report developed by Kimley-Horn which showed traffic generation and hypothetical scenarios for various square footage levels of development on the site.

Mr. McGlennon asked if the 5,191 trips represented the maximum trip generation from by-right development.

Ms. Cook responded that the 5,191 trips were an estimate from Courthouse Commons and the applicant's traffic consultant. She stated the other scenarios on the report would apply to the hypothetical by-right uses of the site.

Mr. McGlennon clarified that the range for by-right usage was 300 trips up to 2,400 trips versus 5,191 trips daily.

Ms. Cook stated that was correct.

Ms. Jones asked staff to give the definition of a trip generation. She asked if a trip generation was a count of a car making a trip into and out of a site.

Ms. Cook stated she believed that was correct, but would defer to the traffic consultant for confirmation.

Mr. Goodson commented that some road improvements could be done through the proffer agreement that would not otherwise be done with a by-right development.

Ms. Cook stated that there was a partial cash proffer contribution as part of this project which would not be required if a by-right use was developed which did not require an SUP.

Mr. Goodson stated that he would like to clarify for the public if this development would be considered a strip center.

Ms. Cook stated that the proposal is for five separate buildings to be constructed on the parcel with parking in various locations throughout the site.

Mr. Goodson stated he did not consider that type of layout a strip center. He stated there must be a misconception in the community about the layout of the development.

Mr. Icenhour asked for confirmation that if any by-right development triggered the trip generation or traffic requirements for an SUP, the case would need to come back before the Board.

Ms. Cook stated that was correct. She stated that two ways that a case would require an SUP would be if the property had a specially permitted use in the particular zoning district or if there was a particular impact that triggered an SUP.

Mr. Icenhour stated that he felt more comfortable that if a by-right use generated that type of traffic would have to come back before the Board. He commented on traffic improvements at Monticello West and the estimated cost of those improvements.

Ms. Cook stated that staff received a letter from VDOT with an updated estimate of about \$2.4 million.

Mr. Icenhour stated that a percentage of the cost was contributed based on the original estimate.

Ms. Cook stated that was correct.

Mr. Icenhour stated that funding would be short for the six-year plan.

Ms. Cook stated she believed there was additional funding.

Mr. Icenhour commented that the layout of this development did not meet the design criteria of New Town.

Ms. Cook stated the layout is more suburban in terms of the parking placement and building. She stated that it did go to the New Town DRB.

Mr. Icenhour asked if the wireless tower was still in use and how that would impact the development of the site.

Ms. Cook deferred to the applicant about the current use of the tower.

Mr. Kennedy asked about the percentage build-out of New Town.

Ms. Cook stated that a range of development square footage was approved through the rezoning which was between 1.7 and 2.3 million, and through the site plan development approval process about 1.7 million has been approved. She noted that number was not necessarily what has been built and received certificates of occupancy.

Mr. Kennedy commented he had reviewed the original application for New Town from 1997. He commented on several questions, including the projected urban development intensity. He commented that this area was not part of New Town. He asked if this was part of the original square footage.

Ms. Cook responded that it was not. She commented that the portion of the site used by Verizon was never a part of the New Town Master Plan. She commented that the other six parcels were shown as part of Section 10, but when it was originally rezoned, the property owner at that time did not choose to bind themselves through the proffers and master plan. She stated that it was more conceptual master planning that resulted in these parts of Section 10.

Mr. Kennedy asked about the consideration was given to square footage for Section 10 in reference to traffic. He asked if the service levels factored in these traffic impacts.

Mr. John Horne, General Services Manager, stated he did not recall if Section 10 was included in the traffic generations, but he believed it would have been. He stated he did not know for sure, but Mr. Williams did the traffic study and could respond as to whether or not the Section 10 square footage was included.

Mr. Kennedy asked what the reasonable expectations were for Level of Service (LOS) in the urban area created in New Town.

Mr. Horne stated the original rezoning standards were a reasonable reflection of the standards. He stated that the attempt was to maintain through-movement on the corridor at roughly C LOS, the standard Countywide LOS, and there was an understanding that some turning movements were likely not going to maintain a C LOS unless the roadway was expanded.

Mr. Kennedy commented that at one time Monticello Avenue was being considered for expansion to six lanes.

Mr. Horne stated that six lanes was a consideration, but it was determined that that was not the standard of design to which the project should adhere. He stated the original design and level of intensity had tension between the idea of a street-type corridor of connectedness and the need to maintain the level of traffic. He stated that the adopted standard was an accurate depiction of what exists.

Mr. Kennedy stated there was an understanding that the service level would be below C at certain times.

Mr. Horne stated that was correct for certain turning movements on the corridor.

Mr. Kennedy stated he did not agree with the design and asked the anticipated levels of service with six lanes at maximum buildout. He also asked if the traffic from Target and other nearby shopping centers were factored into the numbers.

Mr. Horne stated he did not recall the LOS for the six-lane option. He stated there was an assumption for background traffic from other traffic generators from the west.

Ms. Jones asked if the C LOS was based on the expectation that people would be walking around New Town rather than driving.

Mr. Horne stated that it was a design objective and expectation. He stated he did not believe there was much of an allowance in the traffic figures for that assumption.

Ms. Jones asked about the acceptable LOS in the County.

Mr. Horne responded it is historically acceptable to maintain a C LOS in a suburban corridor.

Ms. Jones commented on the expectations of LOS in a rural area versus an urban area.

Mr. Horne stated that translated to the original standard from 1997, which was a reduction in the standard that was expected to be maintained in other areas of the County.

Mr. McGlennon asked Ms. Cook if the development would be classified as a new urbanism type of shopping center.

Ms. Cook stated there were original design guidelines written for New Town, including Section 10. She stated that staff evaluated the build-to lines for the buildings parking fields. She stated the applicant produced tailored guidelines for this site, and a number of those elements are included.

Mr. McGlennon asked if this site would be pedestrian-friendly.

Ms. Cook stated that the master plan shows some footprints for buildings in all five development areas, but four of the areas were conceptual at this time. She stated that two show drive-through aisles for a pharmacy and a bank. She noted the master plan allowed for interior pedestrian walkways to the five development areas.

Mr. McGlennon asked about discussion at the Planning Commission level about the impact on Old Ironbound Road turning left or access from the shopping center from that portion of Ironbound Road.

Ms. Cook replied that the traffic study did include Ironbound Road and Strawberry Plains Road; however she stated it did not include an arterial LOS analysis for Old Ironbound Road. She stated the traffic consultant could follow up on that question.

Mr. McGlennon asked if staff was satisfied with the issue of the protection of the topography of the parcel and ability to shield the development from the line of sight.

Ms. Cook stated there was discussion related to the Community Character Corridor. She stated that the applicant has turned in a tree conservation plan for this site and the land that was not included in the SUP would be protected by the zoning ordinance.

Mr. McGlennon asked if staff did not expect there would be noncompliance.

Ms. Cook stated that the ordinance and conditions would be enforced at the development level.

Mr. Icenhour asked if Fresh Market would require an SUP in its current location.

Mr. Allen Murphy, Jr., Planning Director/Assistant Development Manager, stated that the location of Fresh Market was non-conforming and an SUP did not currently apply.

Mr. Icenhour asked if the Fresh Market would need an SUP if it was currently being built.

Mr. Murphy responded that it would.

Mr. Kennedy opened the Public Hearing.

1. Mr. Greg Davis, Kaufman and Canoles; gave a brief presentation on the project on behalf of the applicant. Mr. Davis reviewed the construction and noted that the Fresh Market building would be the anchor building with other buildings being built as leasing and development allowed. He also discussed the reduction of square footage which would reduce the traffic impact for this area. He mentioned the comments already received from the DRC about Fresh Market design. He mentioned with the built-out of Courthouse Commons that traffic would not change from today. He showed to the Board various possible businesses that could operate in this area of buildings. He discussed the Fresh Market and its expansion. The Fresh Market with more square footage would generate more sales and tax revenue for the County. He asked the Board not to allow traffic to be a deciding factor for this application.

Ms. Jones asked why Fresh Market did not relocate into Settler's Market.

Mr. Davis stated that Trader Joe's has a restriction which prohibits them from leasing to other grocery stores. The client also approached Wal-Mart about purchasing the property and their request was denied by Wal-Mart.

Ms. Jones asked about the trip generator in relation to the traffic discussion.

Mr. Dexter Williams mentioned the traffic study indicated 370 cars in and 340 cars out. He further explained the trip generations are standard rates used for developments.

Mr. Kennedy asked Mr. Williams about Section 10 Monticello and New Town.

Mr. Williams responded that a 1997 standard mentioned Monticello Avenue projected to six lanes of traffic with the inclusion of turn lanes and noted that Section 10 was not included in that study at that time. Mr. Williams commented that the traffic generators that were used during that time have changed. Mr. Williams commented that there was no change in traffic.

Mr. Kennedy asked if this was typical of traffic.

Mr. Williams responded the road was built for the amount traffic that the development generates.

Mr. Icenhour asked if the west side and east side Section 9 improvements would require the addition of a third lane in order to maintain a Level C LOS.

Mr. Williams stated that additional lanes would be constructed if needed, but the third eastbound lane would not be necessary.

Mr. Icenhour commented on Settlers Market, Section 9 being in bankruptcy.

Mr. Williams stated that most of the roadway construction funds for the Monticello Plan were intended for improvements on News Road.

Mr. Kennedy asked Mr. Davis if he had a fiscal impact analysis for this project.

Mr. Davis stated the application did not require a fiscal impact analysis and indicated there was no fiscal impact.

Mr. Kennedy asked Mr. Al Woods, Planning Commissioner, about the recent changes to the case by the applicant.

Mr. Woods commented that the Planning Commission recommended denial of the project due to the lack of specificity on the project as well the traffic impacts. He stated the reduction in square footage was an improvement. Mr. Woods said this was the first time he had heard about the improvements and commented that it was a very complex issue.

2. Mr. Louis Candell, 128 Water Edge Drive, asked if the applicant had demonstrated the community need and benefit for another shopping area.

3. Mr. Bob Spencer, 9123 Three Bushel Drive, commented on the traffic impacts and uncertainty of the project.

4. Mr. Ed Oyer, 123 Indian Circle, commented on the traffic impacts and increased commercial urban sprawl.

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

Mr. McGlennon asked Mr. Murphy why this application came forward as an SUP instead of rezoning.

Mr. Murphy stated the SUP process allows the Board to impose conditions that address impacts of a given proposal where the proposal is a substantial generator of those impacts. He commented that it was a narrow scope. He stated in this case there was a creative concept which was unprecedented and the Board and County were in a position that agreement must be reached with the developer. He stated there was more flexibility to address impacts, cash proffers, and other impacts in a rezoning process through a set of proffers. He stated there were significant differences in the processes. He stated there was maximum flexibility for proposing and accepting a proffer rather than asking for the consent of the developer for a proffer. He stated that was an unusual position for the County.

Mr. McGlennon asked about the undefined parcels on the property and asked what kind of changes would require the applicant to come back before the Board for approval.

Mr. Murphy stated there would be very few requirements if the proposed development fit generally within the designated build-to lines on the Master Plan, the developer would be allowed to develop by-right as long as the conditions of the SUP were met.

Mr. McGlennon asked if this would apply to drive aisles for stores.

Mr. Murphy stated there was an undefined nature and flexibility for these areas and ultimately the Planning Commission would decide what would be appropriate.

Mr. McGlennon asked if this was the first project of this kind to go through the SUP process.

Mr. Murphy stated it was the first he could recall where there a proffer process would need to be constructed from a separate legal process. He stated that he believed that the County was in a weaker position than if the case went through a rezoning process since the County must ask for the consent from the developers. He stated that the County Attorney has expressed concern about the process as well as the enforceability of the SUP conditions. He stated he believed this concern would be eliminated if this was a rezoning proposal.

Mr. Rogers stated a rezoning would give the applicant and the County greater flexibility to address the impacts in development and noted that SUP conditions were limited to on-site conditions. He stated that this was a creative approach to creating conditions to mitigate the impacts that would be enforceable on future property owners. He stated that he believed that they were enforceable and he would be willing to do so.

Mr. Goodson stated this parcel is zoned M1, commercial use, which is applicable. He commented that it was an unusual situation since the applicant was not having the property rezoned.

Mr. Goodson mentioned that four parcels could be built by-right.

Mr. Murphy indicated that an SUP process must be in accordance with the zoning ordinance.

Mr. McGlennon asked if the proposal would go to the DRC if it was rejected.

Mr. Murphy stated that it could; the applicant could appeal the decision and take their application to the DRC.

At 9:15 p.m. the Board took a break.

At 9:20 p.m., Mr. Kennedy reconvened the Board.

Mr. McGlennon made a motion to deny the application since he believed it should have come forward as a rezoning. He stated that approving this case as an SUP was conceding considerable influence of the nature and pace of this development and he believed it would be better to consider a request to rezone the property.

Mr. Goodson commented on the traffic service levels in relation to the urban setting and noted the economic development potential of the project and the potential loss of Fresh Market as a commercial tax revenue generator. He stated that the zoning ordinance allows this type of development in this zoning district. He stated he would not vote to deny the application.

Mr. Icenhour stated his concern with the traffic issues and stated he could not support the application. He stated he was especially concerned with the conceptual uses because unknown uses created unknown impacts. He stated that he felt it was a bad precedent to rezone through an SUP application. He stated that staff and the Planning Commission recommended denial and that he would vote to deny the application.

Ms. Jones stated the zoning ordinance required SUPs as a result of certain impacts and since the Planning Commission meeting, there has been a reduction in square footage and traffic impacts. She stated there was an additional contribution to the West Monticello roadway improvements. She stated a by-right development would make no contributions to the corridor. She stated that there were traffic concerns, but there would not be a change in the overall LOS at buildout because of this particular proposal. She commented that there was a need to retain businesses such as Fresh Market in the County. She stated there were positive fiscal and economic impacts. She also noted that there was a tree preservation condition for environmental impacts. She stated she would support the application.

Mr. Kennedy stated he has not been in favor of New Town from its inception. He stated that a prior Board created the commercial center of the County with intensive uses. He noted the need to retain Fresh Market and its jobs in the County. He commented that a process needed to be developed to address changes made to applications between the Planning Commission meeting and the Board of Supervisors meeting. He noted that some of the Planning Commissioners who were opposed to the project had their concerns addressed in the interim between the meetings. He commented on the traffic impacts and LOS projected over the years. He stated concerns with the outbuildings which have been partially mitigated. He stated that there was a need for the Fresh Market to expand or move in order to accommodate its clientele. He noted that he was concerned with setting a precedent with using an SUP application versus a rezoning. He commented that though he did not like what was proposed, the New Town development was proposed as an urban center.

Mr. Wanner called the roll on a motion to deny the application.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour (2). NAY: Goodson, Jones, Kennedy (3).

The motion failed.

Mr. Goodson made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Goodson, Jones, Kennedy (3). NAY: McGlennon, Icenhour (2).

RESOLUTION

CASE NO. SUP-0004-2010. COURTHOUSE COMMONS

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. Gregory Davis has applied on behalf of New Town Six, LLC for an SUP to allow for the construction of commercial and/or office uses on approximately 9.1 acres zoned M-1, Limited Business/Industrial, District; and

WHEREAS, the proposed development is shown on a plan prepared by AES Consulting Engineers dated June 7, 2010, (the "Master Plan") and entitled "Courthouse Commons Shopping Center Special Use Permit;" and

WHEREAS, the property is located at 5223 and 5227 Monticello Avenue, 4023 and 4025 Ironbound Road, and 113 New Quarter Drive and can be further identified as James City County Real Estate Tax Map Parcel Nos. 3840100003G, 3840100003E, 3840100003F, 3840100004, 3840100004B, and 3840100004A (the "Property"); and

WHEREAS, the Planning Commission, following its public hearing on June 2, 2010, voted 4-2 to recommend denial 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 Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the issuance of SUP-0004-2010 as described herein with the following conditions:

1. Master Plan: This Special Use Permit ("SUP") shall be valid for the construction of commercial/office uses located at 5223 and 5227 Monticello Avenue, 4023 and 4025 Ironbound Road, and 113 New Quarter Drive, also known as James City County Real Estate Tax Map Parcel Nos. 3840100003G, 3840100003E, 3840100003F, 3840100004, 3840100004B, and 3840100004A (the "Property"). The Property shall be developed generally as shown on the Master Plan drawn by AES Consulting Engineers entitled "Master Plan for Special Use Permit for Courthouse Commons" and date-stamped June 7, 2010 (the "Master Plan"). Minor changes may be permitted by the Development Review Committee (DRC), as long as they do not change the basic concept or character of the development.
- Community Character Corridor (CCC) Buffer: A CCC right-of-way landscape area of no less than an average of 40 feet in width shall be provided along the Monticello Avenue frontage. In addition, between 40 and 50 feet from the right-of-way lines, any specimen trees, as defined in the Zoning Ordinance, will be identified on any landscape plans for Areas 1, 2 and 5, and shall be incorporated into the site design of the project and preserved to the maximum degree practicable, as determined by the Planning Director. Street trees to be located along the Monticello Avenue frontage, as described in the Design Guidelines,

shall be located outside of the right-of-way landscape area required by Section 24-96 of the Zoning Ordinance, as approved by VDOT, and shall not be used to meet the plant quantity or size and mixture requirements in the Zoning Ordinance for right-of-way landscape areas.

3. Archaeology: A Phase I Archaeological Study for the entire Property, other than previously developed parcels 3840100004, 3840100004A, and 3840100004B, shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading, or construction activities thereon.
4. Stormwater Pre-Treatment: All stormwater run-off shall be filtered through a Hanson Stormceptor pre-treatment device or other comparable manufactured device, provided that it has been certified by Technology Acceptance and Reciprocity Partnership ("TARP") or New Jersey Corporation for Advanced Technology ("NJCAT") prior to its entering any underground infiltration or attenuation feature.
5. Stormwater Component Phasing: Prior to construction of any impervious areas in Areas 1-5 as shown on Master Plan Sheet 3, all proposed and approved stormwater components designed to treat said area(s) shall be in place and operational.
6. Special Stormwater Criteria: The County's Special Stormwater Criteria Policy adopted by the Board of Supervisors on December 14, 2004, shall apply to all areas of the Property, including areas in which stormwater is directed to the Mill Creek watershed.
7. Lighting: Any new exterior site lighting (excluding building lighting, which shall be similar in type and character to that permitted or in use within the New Town development) shall be comprised of recessed fixtures with no bulb, lens, or globe extending below the fixture housing. The housing shall be opaque and shall completely enclose the light source in such a manner that all light is directed downward and that the light source is not visible from the side of the fixture. Pole-mounted, pedestrian-scaled light fixtures shall not be

mounted in excess of 15 feet in height above the finished grade beneath them. Light trespass, defined as light intensity measured at 0.1 foot-candle or higher extending beyond any property line, shall be prohibited.

8. Water Conservation: The owner of the Property (“Owner”) shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (the “JCSA”) prior to final development plan approval. The standards shall include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought-resistant native and other adopted low-water-use landscaping materials and warm-season turf where appropriate, and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.

9. Waterline Loop: The existing dead-end waterline in New Quarter Drive shall be looped to the waterline in Monticello Avenue. Such waterline loop shall be shown on the development plans for and shall be constructed prior to issuance of a Certificate of Occupancy (CO) for buildings in Master Plan Area 1.

10. Traffic: The following transportation improvements shall be constructed/completed to the Virginia Department of Transportation (VDOT) standards:
 - a. Widening of Old Ironbound Road northbound at Monticello Avenue to provide a northbound left-turn lane and a northbound shared left/through/right-turn lane.
 - b. Connection of primary New Town Six driveway at Monticello Avenue/Settler’s Market signalized intersection with additions/modifications to traffic signal for vehicular traffic.
 - c. Addition of pedestrian signal on Monticello Avenue east of Settler’s Market Boulevard to include crosswalk from curb to curb, modifications to median to provide flush pedestrian crosswalk, median pedestrian pushbutton, and modifications to curbing and/or pavement necessary for design of pedestrian facilities under VDOT design criteria.
 - d. Extension of full-width westbound left-turn lane on Monticello Avenue at New Town Six driveway to 275 feet to provide adequate storage capacity.
 - e. Connection of secondary New Town Six driveway to Old Ironbound Road at Ironbound cul-de-sac to include a 200-foot right-turn taper on Old Ironbound Road northbound at New Town Six secondary driveway.
 - f. Addition of stop bar and stop sign on New Quarter Road approach to Old Ironbound Road.

These improvements shall be shown on the initial plan of development for the Property and installed prior to issuance of a final CO for any structure on the Property.

11. Trip Generation Cap: Total trip generation from the Property shall not exceed 730 trips in the PM peak hour and 348 trips in the AM peak hour. PM and AM peak hour information shall be submitted for each proposed use on the Property prior to preliminary site plan approval, including a calculation of the total site peak hour trips based on built or other proposed uses. Trip generation may be based on calculations used in the revised Exhibit 10, the original version of which was in the DRW Consultants, LLC Courthouse Commons traffic study dated May 15, 2010, for the specific uses included in the traffic study. For

any other types of uses proposed for this Property, trip generation shall be based on the most recent edition of the Institute of Traffic Engineers Trip Generation manuals, unless otherwise approved by the Director of Planning and VDOT.

12. Signal Optimization: The Owner of the Property shall provide to the Director of Planning and VDOT verification from a professional engineer licensed in the Commonwealth of Virginia and specializing in the area of transportation planning and traffic operations that the signal timing and signal coordination for those traffic signals along the Monticello Avenue corridor from Ironbound Road to News Road is optimized in accordance with VDOT policy and regulation. Such verification shall be provided within 12 months of issuance of a final CO for the commercial building in Area 1 of the Master Plan. Such verification shall be at the expense of the Owner of the Property and shall be based on the defined PM peak period (4-6 p.m.) travel time run (left and right through lanes [or left and center through lanes for three through lane sections] on westbound Monticello Avenue between Ironbound Road and News Road on a Tuesday, Wednesday or Thursday) performed/supervised by the Owner's traffic consultant or such other methods as may be requested by the Owner and approved by the Director of Planning and VDOT. If the travel time run or other methods used reflect that the signal timing and coordination is not optimized, then the Owner shall provide the Director of Planning and VDOT with a proposed signal optimization and coordination timing plan prepared in connection with this SUP. To fulfill the defined requirement, the signal timing plans must be approved and accepted by VDOT for field implementation. In addition, no sooner than 12 months after issuance of a final CO for 50,000 square feet on the Property and no later than July 1, 2016, the Owner shall submit a supplemental document that reflects and evaluates corridor conditions at that time and either re-affirms or amends the signal optimization and coordination timing plan, which shall also be at the expense of the Owner of the Property. Should amendments be indicated by the evaluation, they shall be approved by the Director of Planning and VDOT, and shall be implemented along the corridor. The timing of the signal optimization plan and supplement listed above can be modified with prior approval of the Planning Commission.

13. West Monticello Plan Transportation Improvements:

A. The following transportation improvements shall be constructed/completed to VDOT standards:

- Monticello Avenue: Exclusive right-turn lane westbound at WindsorMeade Way; adjust westbound right-turn radius and remove island at Old News Road; re-stripe for three westbound through lanes between Old News and Monticello Marketplace; and pave 10 feet of the existing 12-foot median for a second westbound left-turn lane at News Road.
- Ironbound Connector (News Road south of Monticello): Add an additional northbound through lane and for the southbound segment, realign the median and provide a dual right-turn lane onto Ironbound Road (and any associated improvements that may be necessary in terms of widening along southbound Ironbound Road to accommodate the proposed second right-turn lane).
- News Road (north of Monticello): Add a lane to provide a double southbound left turn.

These improvements shall be shown on the initial plan of development for the

Property and installed prior to issuance of a building permit for any structure on the Property.

- B. Alternatively, the Owner shall provide a cash contribution toward completion of the improvements listed in Section A above. Such contribution would constitute 3.4 percent of \$2,425,000, or \$82,450. Such contribution shall be provided to the County prior to the issuance of a building permit for any structure on the Property.
14. Natural Resources Policy: A natural resource inventory of the Property, other than previously developed Parcels Nos. 3840100004, 3840100004A, and 3840100004B of suitable habitats for S1, S2, S3, G1, G2, or G3 resources in the project area, shall be submitted to the Director of Planning for review and approval prior to land disturbance. If the inventory confirms that a natural heritage resource either exists or could be supported by a portion of the Property, a conservation management plan shall be submitted to and approved by the Director of Planning for the affected area. All inventories and conservation management plans shall meet the Department of Conservation and Recreation Natural Heritage Program (“DCR-DNH”) standards for preparing such plans and shall be conducted under the supervision of a qualified biologist as determined by the DCR-DNH or the United States Fish and Wildlife Service. All approved conservation management plans shall be incorporated into the plan of development for the site and the clearing, grading, or construction activities thereon, to the maximum extent possible. Upon approval by the Director of Planning, a mitigation plan may substitute for the incorporation of the conservation management plan into the plan of development for the Property.
15. Shared Maintenance of Site Improvements: Prior to final site plan approval for the initial site plan for the Property, Owner shall submit documentation demonstrating that all shared site improvements (including, but not limited to, utilities, stormwater facilities, landscaping, roads and parking lots, and lighting) are subject to appropriate shared maintenance agreements ensuring that the site improvements will be maintained continuously. Such documents shall be subject to review and approval of the County Attorney or his designee.
16. Design Review:
- A. The Property shall be developed generally in accordance with the design guidelines (the “Design Guidelines”) prepared by AES Consulting Engineers and Hopke and Associates, Inc. entitled “Design Guidelines for Courthouse Commons” date-stamped May 27, 2010, subject to these Guidelines receiving final approval from the Design Review Board (DRB), which shall occur prior to submission of the first site plan for the Property. All architectural elevations, building materials, colors, signage, and other project elements shall be submitted to the Planning Director and the New Town DRB, for the DRB’s review and approval for consistency with the Design Guidelines.
 - B. Prior to final approval of a site plan for any development of the Property, a declaration of restrictive covenants shall be (i) submitted to and approved by the County Attorney for consistency with this condition and (ii) recorded among the records of the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City (the “Clerk’s Office”) relating to design review. The declaration shall provide that all items listed in “A” above proposed for the Property shall be subject to review and approval by the New Town DRB as comprised and described in the New Town

Proffers, dated December 9, 1997, and recorded in the Clerk's Office as Instrument No. 980001284. At the request of the Owner, decisions of the DRB pursuant to the declaration may be appealed to the Development Review Committee of the Planning Commission (the "DRC") and modified and/or overturned at its discretion.

17. Limitation of Uses: As requested by the Owner, the following uses shall not be permitted on the Property:
 - a) Adult day care centers;
 - b) Automobile sales and service;
 - c) Funeral homes;
 - d) Heavy equipment sales and service;
 - e) Kennels;
 - f) Manufacturing uses listed in County Code Section 24-411;
 - g) Nurseries;
 - h) Welding and machine shops; and
 - i) Vehicle and trailer sales and service.

18. Declaration of Restrictive Covenants: Prior to final approval of a site plan for any development of the Property, a declaration of restrictive covenants shall be (i) submitted to and approved by the County Attorney for consistency with this condition and (ii) recorded among the records of the office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City (the "Clerk's Office"). The declaration shall incorporate all of the conditions described in this resolution and establish the same as private land use restrictions on the Property enforceable by the County as such, independent of this special use permit.

19. Commencement of Construction: If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.

20. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

6. Case No. ZO-01-10. Amendments to Chapter 24, Zoning, Article II, Special Regulations, Division 3, Exterior Signs Way-Finding Signage

Ms. Melissa Brown, Zoning Administrator, stated a request was received from Town Management to consider an amendment to the sign ordinance to address concerns faced by businesses in New Town during the normal operation of business. She said that staff facilitated a meeting on March 12, 2010, to better understand the concerns of the business owners and while the current zoning ordinance could address some of the issues, changes to the zoning ordinance would be needed to address allowance for way-finding signage and larger blade signs, and additional building face signage. She stated the proposed changes would be that blade signs currently permitted in Mixed Use would no longer count toward the total allowable building square footage, and instead each unit is permitted one 12-square-foot blade sign and additional signage in accordance with current building face signage requirements. She stated another change would allow the pedestrian-scale directional sign area to be increased from 16-square-feet to 24-square-feet to better accommodate maps and way-finding information on the sign board. She stated sandwich board signs

displaying daily specials would be allowed in Mixed Use districts with certain limitations on size and location and they would have to be removed each day at close of business. She noted an exception clause proposed to provide one additional building face sign per unit if it can be proved that a hardship is imposed on the business if it is located in a Mixed-Use district.

Staff found that these changes would act as an enhancement to the current sign ordinance and facilitate and enhance the types of businesses in New Town and other similar areas.

At its meeting on June 2, 2010, the Planning Commission recommended approval by a vote of 7-0.

Staff recommended approval of the ordinance amendment.

Mr. Goodson asked how staff determined the size for the sandwich boards.

Ms. Brown responded staff did a survey from other localities to make that determination and made a proposal based on an average of several localities.

Mr. Goodson stated that signs were standardized by the sign company and asked if the allowance for ten feet took the standardization into consideration.

Ms. Brown responded there were some variations on the signs from the survey and depending on the localities reviewed.

Mr. Goodson stated that a ten-foot sign would have odd dimensions.

Ms. Brown stated that the ten-foot and 14-foot signs were generally designed with a smaller display board with a standardized logo.

Mr. Kennedy asked if the ten-foot limitation applied to the face of the sign or the entire structure.

Ms. Brown responded that it applied only to the readable portion of the sign and not the mounting structure.

Mr. McGlennon asked if the size was intended to apply to the flat side and there could be two sides to the sign.

Ms. Brown stated that was correct. She stated the ten-foot limit applied to one flat side, and any sign could have two sides.

Mr. McGlennon asked if the localities varied in the permitted sizes.

Ms. Brown stated that localities with larger downtown areas generally permitted larger signs.

Mr. Goodson stated his discomfort with the dimensions of a ten-square foot sign. He stated he would like to change the size to 12-square-feet.

Mr. McGlennon asked if the New Town Associates reviewed the verbiage for the signs.

Ms. Brown stated it was reviewed by the New Town DRB.

Mr. McGlennon asked if it was reviewed by businesses in the area.

Ms. Brown stated the businesses commented at the meeting, but did not specify square footage for sandwich board signs. She stated that a representative was present for the amendment of that portion of the proposal and expressed his approval.

Mr. Kennedy opened the Public Hearing.

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

Mr. Goodson made a motion to adopt the ordinance amendment with a revision to allow 12-square-feet for a sandwich board sign.

Mr. McGlennon stated he would like to vote separately on the amendment or defer action since the Board did not know if there was a standard size for signs.

Mr. Goodson withdrew his motion in order to amend the ordinance.

Mr. McGlennon made a motion to adopt the ordinance amendment as presented by staff.

Mr. Goodson made a motion to amend the proposed ordinance to include 12-square-feet for sandwich board signs.

Mr. McGlennon stated he was uncomfortable voting on the size change since he was not sure of a standard size.

Mr. Kennedy commented that sandwich board sign sizes vary greatly.

Mr. Wanner asked Ms. Brown to confirm that the Policy Committee felt that 12-square-feet was too large.

Ms. Brown stated that the Policy Committee did feel that 12-square-feet was too big and asked that the size be reconsidered.

Mr. Goodson asked if there was any rationale to make it smaller.

Mr. Murphy stated that the Policy Committee envisioned a sandwich board sign at each shop in New Town, and given that vision, there was concern about having 12-square-foot signs at each store.

Mr. Kennedy stated that New Town would have their own covenants at each store.

Mr. Murphy stated that was correct. He stated they would pass judgment on designs and colors of the signs. He stated they did not have an issue with the current proposal.

The motion on the floor was to amend the square footage for the sandwich board signs from ten feet to 12 feet.

On a roll call vote, the vote was: AYE: Goodson, Jones, Kennedy (3). NAY: McGlennon, Icenhour (2).

The motion on the floor was to adopt the ordinance as amended.

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

7. Case Nos. ZO-0002-2010 and SO-0001-2010. Amendments to Chapter 24, Zoning, Article III, Site Plan, Sections 24-142 through 24-160 and Chapter 19, Subdivisions, Article II, Procedures and Documents to be Filed, Section 19-19 through 19-31 – Review Criteria and Procedures for Administrative and Commission Review of Conceptual Plans, Site Plans and Subdivisions

Mr. Christopher Johnson, Principal Planner, gave a presentation to the Board of Supervisors on the proposed changes to the ordinances and he stated that on April 7, 2010, the Planning Commission adopted an initiating resolution directing staff to pursue amendments to Chapter 24, Zoning, Article III, Site Plan, Sections

24-142 through 24-160 and Chapter 19, Subdivisions, Article II, Procedures and Documents to be Filed, Sections 19-19 through 19-31 - Review Criteria and Procedures for Administrative and Commission Review of Conceptual Plans, Site Plans and Subdivisions to help identify how the County could be a more value-added partner to the business and industrial community, identify potential business partners, and assess the needs of those potential partners. The Business Climate Task Force report was presented to the Board of Supervisors in January 2008. The report identified qualities, characteristics, and categories of businesses preferred in James City County, and proposed policies, programs, and ordinance changes that will attract, retain, and expand those businesses. Mr. Johnson reviewed the recommended zoning ordinance amendments.

At its June 2, 2010, meeting the Planning Commission voted 7-0 to recommend approval of the ordinance amendments.

Staff recommended adoption of the ordinance amendments.

Mr. McGlennon asked if any County citizens were represented at the meetings.

Mr. Johnson stated there was not citizen representation, but the meetings were open and citizens attended and participated in the discussion. He stated staff and developers communicated with citizens during the process.

Mr. McGlennon asked if the proceedings were influenced by the participation.

Mr. Johnson stated he could not cite something specific that was influenced, but there was active participation and debate in the meetings.

Mr. McGlennon stated he believed the applicant checklist made sense, and asked if there was a checklist ensuring that all the required elements to be submitted would be part of the process.

Mr. Johnson stated that was being considered and stated that most agencies produce some document that itemizes required materials to be submitted. He stated that the intent is to bring this information together into a development review guide by staff to assist developers and citizens.

Mr. McGlennon stated it would be helpful to ask the applicant to verify they have submitted all required items for review.

Mr. Johnson stated is correct, but there may be some inconsistencies if the applicant is making the determination that all elements have been submitted.

Mr. McGlennon asked if this should be included as a recommendation.

Mr. Johnson stated that there was currently some form of this being done, but the ultimate goal was to compile the information into a development review guide that could be posted online.

Mr. McGlennon commented on the ordinance and stated the recommendation from the Planning Commission was for a single building or multiple buildings exceeding 30,000 square feet, with the language relating to a “multi-family unit of 50 or more units” struck through. He understood the reason for removing that language was because those units had gone through the legislative process. He asked if the language could be added to include multi-family units that had not gone through the legislative review process so there was an opportunity for additional review of these cases.

Mr. Johnson stated that the number of subdivisions with 50 or more units which have not gone through a review process were very few.

Mr. McGlennon stated he felt it was a reasonable amendment to make and he would like to propose that addition.

Mr. Goodson asked if there was a consensus for these recommendations.

Mr. Johnson stated there was a consensus among the group for these recommendations.

Mr. Goodson stated the Planning Commission minutes stated that Mr. Peck was comfortable with a 40,000 square foot trigger, but the motion was for 30,000 square foot trigger. He asked how that change was made.

Mr. Johnson stated that Mr. Peck indicated he would feel more comfortable if the threshold was lowered from 50,000 square feet, and he believed that Mr. Poole made the motion for 30,000-square-feet and there was no additional discussion of a 40,000-square-foot threshold.

Mr. Goodson stated his concern with the square footage being changed without discussion.

Mr. Icenhour commented on Recommendation 6 that did not translate into the ordinance, including adding a Consent Calendar section to the DRC agenda.

Mr. Johnson responded that this process was being done administratively.

Mr. Icenhour asked if the DRC was satisfied with that change. He asked if the DRC had the ability to pull items for separate discussion.

Mr. Johnson stated that staff would contact the DRC to see if an item could be included on the Consent portion of the DRC agenda, and if there were concerns, it would be included as a regular discussion item.

Mr. Icenhour asked if there was anything specified in the ordinance about how staff and the DRC would like to proceed in the process of writing proffers.

Mr. Johnson stated that over time, more and more plans were subject to additional review, adding additional cost and time to the projects.

Mr. Icenhour asked if the rest of the recommendations were sufficiently accepted.

Mr. Johnson stated that the rest were recommendations that have been determined to already be in the ordinance elsewhere or needed to be in the ordinance.

Mr. Kennedy opened the Public Hearing.

1. Mr. Bob Spencer, 9123 Three Bushel Drive, spoke about businesses getting approval and will be reviewing to see how this process works.

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

Ms. Jones made a motion to adopt the zoning ordinance amendments and subdivision ordinance amendments as recommended by the Planning Commission.

Mr. McGlennon made the motion to amend the zoning ordinance to insert “or a multi-family development of 50 or more units which is not part of an approved and binding master plan that has been legislatively approved.”

The amendment was accepted by Ms. Jones.

On a roll call vote, the Board voted for the amendment AYE: McGlennon, Icenhour, Jones, Kennedy (4). NAY: Goodson (1)

The ordinances as recommended by the Planning Commission were adopted as amended.

I. BOARD CONSIDERATIONS

1. Contribution to Virginia Retirement System (VRS) Plan 2

Mr. Wanner stated that beginning July 1, 2010, there will be two Virginia Retirement System (VRS) Plans. He stated that current members, retirees, and members with service credit in VRS will remain in the present plan, now called VRS Plan 1, while new members or prior members with no service credit will be enrolled in the newly established VRS Plan 2. He reviewed the County’s history of picking up the five percent employee share.

Mr. Wanner stated that due to recent events, the 2010 Virginia General Assembly passed new plan provisions for employees hired on or after July 1, 2010, with no prior VRS service credit. He stated that VRS Plan 2 has different provisions that make it less lucrative than Plan 1, such as increasing the minimum age for unreduced retirement and averaging the highest five years instead of three years to compute the benefit amount. Mr. Wanner explained that the Code stipulates that under Plan 2, employees will pay their five percent contribution through pre-tax payroll deduction; however, certain employers, including local governments and school divisions, may elect to pay some or all of the five percent on the employee’s behalf.

Mr. Wanner stated that most Boards and Councils had not made a formal decision about whether or not to pick up the employee share, but most surrounding localities other than Virginia have elected to pick up the employee share. He recommended that the Board adopt a resolution opting to pick up the employee share of the VRS contribution to maintain equity among employees, to remain competitive particularly in the public safety sector, and due to the reduction of County positions, controlling benefit costs. He stated that this was a revocable decision that can be revisited in the future.

Mr. Goodson stated that originally there was a way to revisit this change which was later removed by the General Assembly. He stated he voted against this at the Hampton Roads Planning District Commission, along with Portsmouth and Norfolk. He stated he would not support this resolution.

Mr. Icenhour asked what the average County employee’s salary was.

Mr. Wanner estimated about \$40,000.

Mr. Icenhour stated his concern that the new retirement plan was a lesser plan, which could negatively impact recruitment, particularly for public safety. Mr. Icenhour stated his support for the proposal.

Ms. Jones stated she did not support contributing the five percent for new employees. She stated that the County could not afford to pick up the costs, and she felt that there would not be a negative impact on recruitment. She stated she did not support the resolution.

Mr. McGlennon stated his support for the resolution. He stated that the intention was to offer this benefit to employees since government employees have experienced stagnant salaries in comparison to the private sector. He commented on an article indicating that public employees were better paid than private employees which did not compare similar jobs. He stated this was an opportunity to reward employees and help improve competition with surrounding localities for public safety positions.

Mr. Kennedy stated his support for the proposal. He stated he was in support of picking up the employee contribution to VRS only for public safety employees and he would ask the Board to support an item in its next Legislative Agenda for the General Assembly to allow public safety employees to be differentiated in this part of the law. He recognized the need to remain competitive with compensation and benefits, particularly in relation to public safety positions.

Mr. McGlennon made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Icenhour, Kennedy (3). NAY: Goodson, Jones (2).

RESOLUTION

CONTRIBUTION TO VRS (VIRGINIA RETIREMENT SYSTEM) PLAN 2

WHEREAS, the Virginia General Assembly in its 2010 session passed legislation creating a separate retirement plan for employees hired on or after July 1, 2010 (hereafter referred to as "Plan 2 Employees"). The legislation stipulates that Plan 2 Employees will pay their five-percent member contribution and that, absent other action by the employer, such contribution will be paid through salary reduction according to Internal Revenue Code § 414 (h) on a pre-tax basis; and

WHEREAS, the legislation allows certain employers, including James City County, to pick up and pay all or a portion of the member contributions on behalf of its Plan 2 Employees as an additional benefit not paid as salary; and

WHEREAS, the election to pick up and pay all or a portion of the member contributions on behalf of its Plan 2 Employees as an additional benefit not paid as salary shall, once made, remain in effect for the applicable fiscal year (July 1 - June 30) and shall continue in effect beyond the end of such fiscal year absent a subsequent resolution changing the way the five-percent member contribution is paid; and

WHEREAS, employee contributions that are picked up as an additional benefit not paid as salary are not considered wages for purposes of VA Code § 51.1-700 et seq. nor shall they be considered salary for purposes of VA Code § 51.1-100 et seq.; and

WHEREAS, the County desires to pick up and pay its Plan 2 Employees' member contributions to VRS as

an additional benefit not paid as salary in an amount equal to five percent of creditable compensation; and

WHEREAS, VRS tracks such picked-up member contributions and is prepared to treat such contributions as employee contributions for all purposes of VRS.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that effective the first day of July 2010, the Board of Supervisors for James City County shall pick up member contributions of its Plan 2 Employees to VRS as an additional benefit not paid as salary in an amount equal to five percent of creditable compensation subject to the terms and conditions described above.

NOW, THEREFORE, BE IT FURTHER RESOLVED that such contributions, although designated as member contributions, are to be made by James City County in lieu of member contributions. Nothing herein shall be construed so as to permit or extend an option to VRS members to receive the picked-up contributions made by the County directly instead of having them paid to VRS.

2. Referendum Question – November 2010

Mr. Kennedy mentioned the item was subject to a discussion during the work session and the Board wished to defer this item until the July 13, 2010, Board meeting.

Mr. Goodson asked staff if it was possible to add a comment to disclose to voters that voting for the referendum would probably require an increase in the tax rate by approximately \$0.0225 to handle the debt service.

This item was deferred until July 13, 2010.

3. Request for a Limited-Access Break on Route 199

Mr. Wanner stated that Ms. Gloria Freye, of McGuire Woods, on behalf of NTELos, has placed a request with VDOT for a limited-access break on Route 199 for a wireless communications facility. He noted that VDOT's process for granting a limited-access break requires endorsement from the local governing body and in order to preserve the continuing functionality of Route 199 as a major limited-access bypass and thoroughfare in the County, staff recommended the Board of Supervisors not endorse an entrance break. He stated that allowing a limited-access break for a private development is contrary to the goals of the limited-access corridor and will set a negative precedent for similar requests in the future.

Mr. Wanner recommended denial of the request for endorsement of a limited access break on Route 199.

Mr. Goodson made a motion to adopt the resolution. He stated he did not believe this would create a negative precedent because this was an access specifically designed for wireless facilities. He stated there were a number of similar entrances on Route 199. He stated that the importance of this limited access break was the difficulty of finding sufficient wireless facility sites.

Mr. McGlennon stated he was confused about why Eastern State Hospital was unwilling to provide access to the facility.

Ms. Gloria Freye, on behalf of NTELOS, replied that Eastern State Hospital could not encumber the land in any way due to trust restrictions.

Mr. Icenhour commented that he remembered this portion of about nine acres being cut off with no access. He stated that when this is done in other cases, the piece of property might be given access or purchased by the County. He asked how this property was isolated without access.

Mr. Rogers stated that this property was neither condemned nor purchased by the County. He stated that since Route 199 is a limited-access roadway, VDOT not only paid for the right-of-way, but also paid for the damages to the remainder of the property, but did not need the additional land for a public purpose.

Mr. Icenhour asked if this was an acceptable way to handle this.

Mr. Rogers stated that was correct.

Mr. Icenhour asked if the Board was being asked to endorse the application to VDOT in order for VDOT to entertain the request. He stated VDOT makes the ultimate decision based on its own regulations.

Mr. Hicks responded that the Commonwealth Transportation Board (CTB) has a public hearing before voting on this action.

Mr. McGlennon asked if a public hearing should be held before the Board acts on this motion.

Mr. Hicks recommended that the Board hold a public hearing before taking an action on this item.

On a roll call vote, the vote was: AYE: Goodson, Icenhour, Jones (3). NAY: McGlennon, Kennedy (2).

RESOLUTION

REQUEST FOR A LIMITED-ACCESS BREAK ON ROUTE 199

WHEREAS, NTELOS has obtained an option on Parcel ID No. 3820100005 which is landlocked and would need access from Route 199 for the development and operations of a wireless communications tower; and

WHEREAS, Richmond 20 MHz, LLC, d.b.a. NTELOS, has submitted an application for a Special Use Permit (SUP) for a wireless communications tower (SUP-0024-2009) to be located on the property of Hospice House and Support Care of Williamsburg; and

WHEREAS, said application has been deferred to allow NTELOS to research the feasibility of Parcel ID No. 3820100005 as an alternative site; and

WHEREAS, NTELOS has obtained an option on Parcel ID No. 3820100005 which is landlocked and would need access from Route 199 for the development and operations of a wireless communications tower; and

WHEREAS, the Board of Supervisors wishes to support NTELOS in its efforts to determine if Parcel ID

No. 3820100005 would be a viable, alternative site for consideration by the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, on this 22nd day of June, 2010, that a change in limited access control be granted that would permit a private entrance, as defined in 24 VAC 30-72-10, in part, as an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, from Route 199 to Parcel ID No. 3820100005 for the sole, exclusive, limited purpose of developing and operating a wireless communications tower, which would permit the Commonwealth Transportation Board to consider such a change of limited access control pursuant to 24 VAC 30-401.

J. PUBLIC COMMENT - None

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner recommended that the Board consider the reappointments to the Colonial Community Services Board in open session and noted that the County Fair would be held from June 24 to June 26, 2010. Mr. Wanner reminded the Board and citizens that Monday, July 5, 2010, was a Federal, State, and local holiday and offices will be closed in observance of Independence Day. He noted that when the Board completed its business, it should recess to 4:30 p.m. on June 29, 2010, for a special meeting to appoint the new County Administrator. He stated the Board also needed to hold a meeting of the JCSA Board of Directors.

L. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon made a motion to reappoint Dr. William Pugh and Mr. Samuel Lazarus to the Colonial Community Services Board.

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

Ms. Jones congratulated the recent graduates of the area high schools, including Mr. McGlennon's son.

Mr. Icenhour stated he attended the GED graduation at Warhill High School and recognized it as a quality program.

M. RECESS to 4:30 pm. on June 29, 2010.

At 10:36 p.m., Mr. Kennedy recessed the Board to 4:30 p.m. on June 29, 2010.

Sanford B. Wanner
Clerk to the Board

AT A CONTINUED MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 29TH DAY OF JUNE 2010, AT 4:30 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

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

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

C. BOARD CONSIDERATION

Mr. Kennedy thanked the Board for its participation in the selection process of the new County Administrator.

1. Resolution - Appointing Robert C. Middaugh, Jr., as County Administrator

Mr. Goodson made a motion to adopt the resolution.

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

RESOLUTION

APPOINTING ROBERT C. MIDDAUGH, JR., AS COUNTY ADMINISTRATOR

WHEREAS, Sanford B. Wanner, County Administrator, announced that after 29 years of service to the Williamsburg-James City County (WJCC) Public Schools, the James City Service Authority, and the County, including 15 years of service as County Administrator, he will be retiring effective August 1, 2010; and

WHEREAS, the Board of Supervisors recently concluded a nationwide search to find a new County Administrator; and

WHEREAS, the Board of Supervisors is unanimous in its enthusiastic support for Robert C. Middaugh, Jr., to serve as the County Administrator of James City County commencing August 2, 2010; and

WHEREAS, the Board of Supervisors is of the unanimous and unqualified opinion that Robert C. Middaugh, Jr., has the education, experience, and training to fulfill the duties of County Administrator for James City County; and

WHEREAS, the Board of Supervisors and Robert C. Middaugh, Jr., have agreed to terms of an employment agreement for Robert C. Middaugh, Jr., to serve as County Administrator for renewable two-year terms effective August 2, 2010.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that Robert C. Middaugh, Jr., is appointed to the position of County Administrator of James City County, effective August 2, 2010.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Chairman of the Board of Supervisors is hereby authorized to execute an employment agreement with Robert C. Middaugh, Jr., based on the terms and conditions agreed to by the Board of Supervisors.

At 4:33 p.m., Mr. Kennedy recessed the Board for a short break.

D. PRESS CONFERENCE

At 4:38 p.m., Mr. Kennedy reconvened the Board for a press conference with Mr. Robert C. Middaugh, Jr.

The Board, staff members, and press held a press conference with Mr. Middaugh regarding his appointment as County Administrator, effective August 2, 2010.

E. ADJOURNMENT to 7:00.p.m. on July 13, 2010.

Mr. Icenhour made a motion to adjourn.

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

At 5:09 p.m., Mr. Kennedy adjourned the Board until 7:00 p.m. on July 13, 2010.

Sanford B. Wanner
Clerk to the Board

AT A SPECIAL MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 3RD DAY OF JUNE 2010, AT 7:30 A.M. AT LEGACY HALL, 4301 NEW TOWN AVENUE, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

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

Sanford B. Wanner, County Administrator

C. CLOSED SESSION

Mr. McGlennon made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter, the interviews of the prospective County Administrator.

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

At 7:31 a.m., Mr. Kennedy recessed the Board into Closed Session.

At 9:45 a.m., Mr. Kennedy reconvened the Board.

Mr. McGlennon made a motion to adopt the Closed Session resolution.

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

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

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

D. ADJOURNMENT to 7 p.m. on June 8, 2010

Mr. McGlennon made a motion to adjourn.

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

At 9:46 a.m., Mr. Kennedy adjourned the Board to 7 p.m. on June 8, 2010.

Sanford B. Wanner
Clerk to the Board

AT A SPECIAL MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF JUNE 2010, AT 9:00 A.M. AT LEGACY HALL, 4301 NEW TOWN AVENUE, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

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

C. CLOSED SESSION

Mr. McGlennon made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter, the interviews of the prospective County Administrator.

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

At 9:03 a.m., Mr. Kennedy recessed the Board into Closed Session.

At 11:11 a.m., Mr. Kennedy reconvened the Board.

Mr. McGlennon made a motion to adopt the Closed Session resolution.

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the

closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1) of the Code of Virginia, to consider a personnel matter, the interviews of the prospective County Administrator.

D. RECESS

At 11:12 a.m., Mr. Kennedy recessed the Board.

Sanford B. Wanner
Clerk to the Board

061310bos_min

MEMORANDUM

DATE: July 13, 2010

TO: The Board of Supervisors

FROM: Scott J. Thomas, Environmental Director
Leo P. Rogers, County Attorney

SUBJECT: Chesapeake Bay Preservation Ordinance Violation - Civil Charge - Omega Construction, 206 and 210 Sandy Bay Road

Attached is a resolution for consideration by the Board of Supervisors involving a violation of the County's Chesapeake Bay Preservation ordinance. The case involved transporting, filling, and grading of land without an approved plan of development and without securing a land-disturbing permit; and causing impact to Chesapeake Bay Preservation Area (CBPA) located on the above-referenced properties. Impact area was approximately 40,000 square feet of land-disturbing, outside the limit of existing gravel areas situated on the parcels, which was within a Resource Management Area (RMA) and approximately 2,180 square feet of impact within a defined Resource Protection Area (RPA).

Work on the parcels was first observed by County staff on or around August 19, 2009. Initially, work on the parcels was maintenance-related consisting of placing new gravel over top of existing gravel and minor grass mowing activities. Our Division coordinated with the site contractor, who was hired by the owner of the parcels and allowed work to continue in a limited fashion under the provisions of maintenance and staff kept monitoring the situation. On August 26, 2009, work on the site expanded considerably from a maintenance operation to a land development and land-disturbing type activity (filling, grading, and soil disturbance). A Stop Work Order (SWO) was posted by the Environmental Division on August 28, 2009, and a Notice of Violation (NOV) was subsequently issued on September 4, 2009.

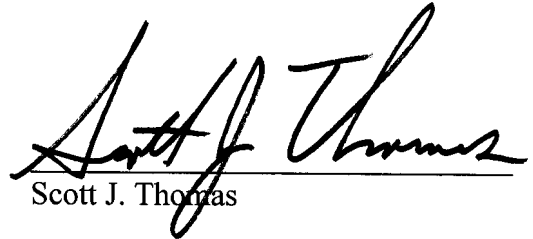
In accordance with provisions of the Ordinance, replanting of native vegetation and a civil charge are proposed to remedy the violation. The owner of the parcels has voluntarily entered into a consent agreement and both the owner and contractor have entered into a Chesapeake Bay Restoration Agreement with the County. A Chesapeake Bay Preservation Area (CBPA) restoration plan has been submitted, reviewed, and approved; and surety has been provided to guarantee the implementation of the approved restoration plan. The approved restoration plan will restore impacted RPA area and stabilize other disturbed Resource Management Area (RMA) on the parcels, outside previously present (existing) gravel areas.

The resolution and attachments present specific details of the violation and recommended civil charges. Under the provisions of the Ordinance, the Board may accept civil charges for each violation of up to \$10,000. Staff and the owner/contractor have agreed to the recommended civil charge of \$1,500 for violation of Sections 23-9 and 23-10 of the County's Chesapeake Bay Preservation Ordinance. The Owner has endorsed the civil charge consent agreement and Chesapeake Bay Restoration agreement; however, the Contractor has assumed all liability on behalf of the Owner for the violation – agreeing to pay the civil charge and implement the requirements of the approved CBPA Restoration Plan.

The Chesapeake Bay Ordinance Civil Penalty Procedures Policy endorsed by the Board in August 1999 was used by staff as guidance in determining the civil charge amount. The Policy considers the water quality impact and the degree of noncompliance involved in the case. For the violation of Sections 23-9 and 23-10 of the Ordinance, the water quality impact and the violation intent have been assessed as minor and major, respectively, by staff.

Chesapeake Bay Preservation Ordinance Violation - Civil Charge - Omega Construction, 206 and 210 Sandy Bay Road
July 13, 2010
Page 2

Staff recommends adoption of the attached resolution establishing the civil charges for the Chesapeake Bay Ordinance violation presented.



Scott J. Thomas

CONCUR:



Leo P. Rogers

SJT/gb
OmegaVio_mem

Attachments

RESOLUTION

CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATION - CIVIL CHARGE –

OMEGA CONSTRUCTION, 206 AND 210 SANDY BAY ROAD

- WHEREAS, Sandy Bay Interests, L.C. of 23 Mile Course, Williamsburg, Virginia is the owner of certain parcels of land commonly known as 206 and 210 Sandy Bay Road designated as Parcel Nos. 4730100020 and 4730100019 within the James City County's Real Estate Tax Map system, herein referred to as the "Properties"; and
- WHEREAS, the Owner retained Omega Construction of Portsmouth VA, herein referred to as the "Contractor," to perform work on the Properties; and
- WHEREAS, on or about August 26, 2009, the Contractor transported, filled, and graded land on the Properties without an approved plan of development and without securing a land-disturbing permit; and caused impact to Chesapeake Bay Preservation Area (CBPA) located on the Properties; and
- WHEREAS, Sandy Bay Interests, LC has executed a Consent Agreement and a Chesapeake Bay Restoration Agreement with the County which requires the Contractor to install temporary erosion and sediment control measures; to stabilize existing disturbed areas in the Resource Management Area (RMA) outside existing present gravel areas; and perform work and install native plantings within Resource Protection Area (RPA), in accordance with an approved CBPA Restoration Plan in order to remedy a violation of the County's Chesapeake Bay Preservation Ordinance. The owner has posted sufficient surety guaranteeing the installation and restoration of Resource Management Area and Resource Protection Area on the Properties; and
- WHEREAS, the Contractor has agreed to pay a total of \$1,500 to the County as a civil charge under the County's Chesapeake Bay Preservation Ordinance; and
- WHEREAS, the James City County Board of Supervisors is willing to accept restoration of the impacted areas and the civil charge in full settlement of the Chesapeake Bay Preservation Ordinance violation, per Section 23-18 of the Code of the County of James City.
- 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 \$1,500 civil charge from Omega Construction, as full settlement of the Chesapeake Bay Preservation Ordinance Violations at the Property.

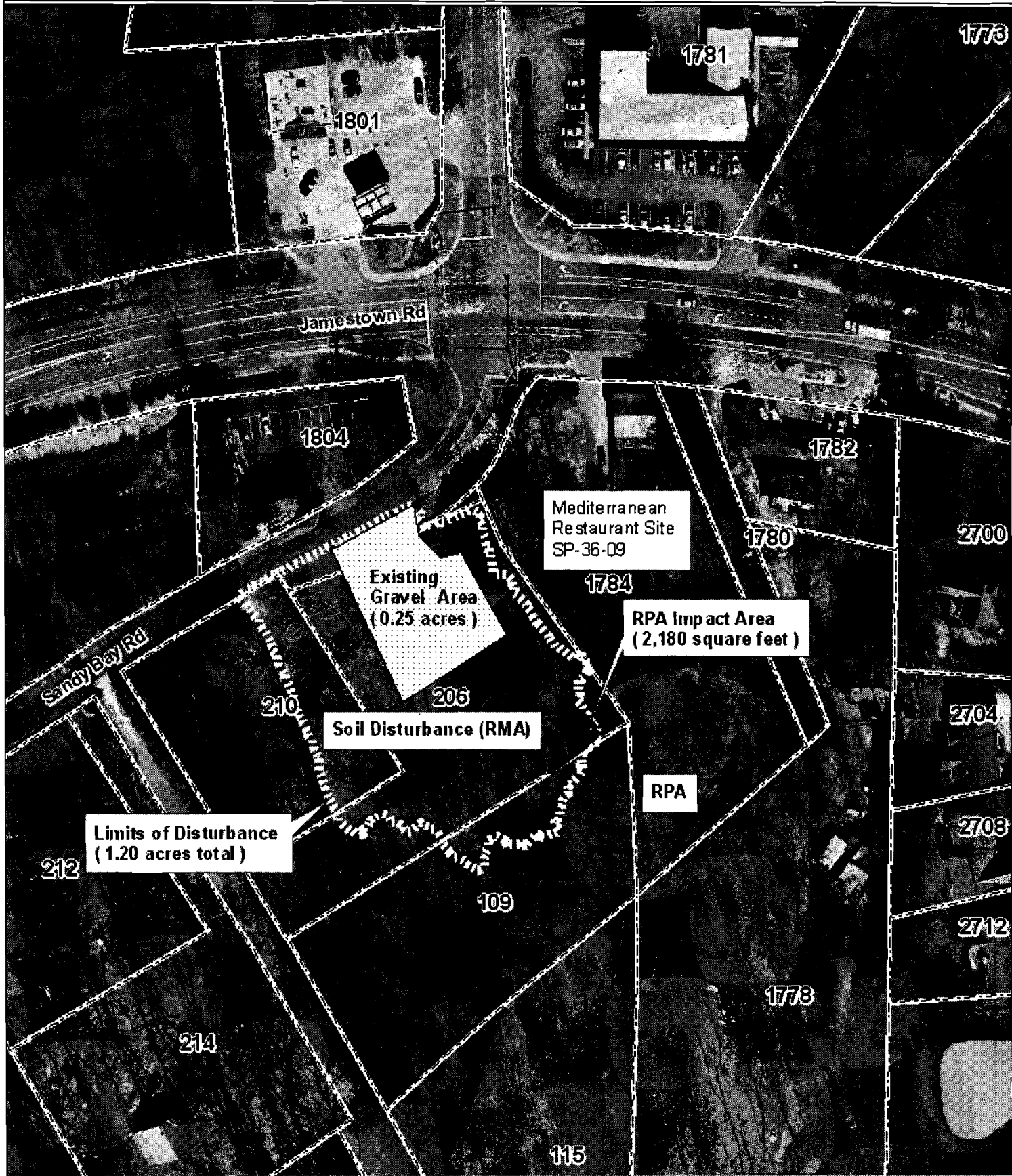
James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July,
2010.

OmegaVio_res



Chesapeake Bay Ordinance Violation

206 & 210 Sandy Bay Road

(CBV-10-04)



This drawing is not for a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County Mapping/GIS Section. Aerial Imagery Copyright 2005 James City County.

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MEMORANDUM

DATE: July 13, 2010
TO: The Board of Supervisors
FROM: Stephanie Luton, Purchasing/Management Services Director
SUBJECT: Contract Award – Asphalt Overlay-Variou Routes – \$535,421

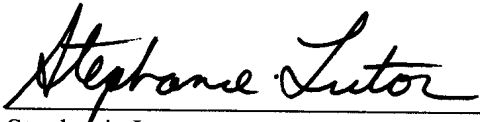
On December 8, 2009, the Board of Supervisors appropriated \$518,394 in American Reinvestment and Recovery Act (ARRA) funds for an Asphalt Overlay/Resurfacing project. An Invitation for Bids for Asphalt Overlay-Variou Routes was publicly advertised and the following bids were considered for award.

<u>Firm</u>	<u>Base Bid</u>	<u>Additive Bid #1</u>	<u>Additive Bid #2</u>
Branscome, Inc.	\$339,682.76	\$195,738.24	\$192,516.87
Basic Construction Company, LLC	370,458.47	214,578.58	213,796.82

The Base Bid included overlay for 1.2 miles on Route 658, Olde Towne Road, and 1.2 miles on Route 617, Lake Powell Road. Additive Bid #1 was overlay for 1.1 miles on Route 616, Strawberry Plains Road. Additive Bid #2 was overlay for 1.2 miles on Route 615, Ironbound Road.

Sufficient funds currently exist to award the Base Bid amount to Branscome, Inc., the lower responsive and responsible bidder. On June 24, 2010, the County Administrator submitted a request to the Virginia Department of Transportation (VDOT) and the Hampton Roads Transportation Planning Organization (HRTPO) to transfer excess ARRA funds from the Route 199/Route 5 Intersection Improvements/Turn Lane project to this Asphalt Overlay project to enable the Additive Bid #1 work to be awarded in addition to the Base Bid. Responses from VDOT and HRTPO are currently pending and the additional \$17,027 needed to fund alternative bid #1 will be brought to the Board for appropriation when that response is received.

Staff recommends adoption of the attached resolution authorizing the County Administrator to execute a contract up to the amount of \$535,421 with Branscome, Inc. for Asphalt Overlay-Variou Routes.


Stephanie Luton

CONCUR:

John E. McDonald

SL/gb
CA_AsphOverlay_mem

Attachment

RESOLUTION

CONTRACT AWARD - ASPHALT OVERLAY-VARIOUS ROUTES - \$535,421

WHEREAS, bids were publicly advertised for Asphalt Overlay-Variou Routes funded by American Reinvestment and Recovery Act (ARRA) funds appropriated by the Board of Supervisors on December 8, 2010; and

WHEREAS, two bids were considered for award and Branscome, Inc. was the lower responsive and responsible bidder; and

WHEREAS, sufficient funds are available to award the Base Bid amount of \$339,682.76 and may become available to award the Additive Bid #1 amount of \$195,738.24.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute a contract up to the amount of \$535,421 with Branscome, Inc. for Asphalt Overlay-Variou Routes.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July, 2010.

CA_AsphOverlay_res

MEMORANDUM

DATE: July 13, 2010

TO: The Board of Supervisors

FROM: John T. P. Horne, General Services Manager
John E. McDonald, Manager, Financial and Management Services

SUBJECT: Budget Transfer – Capital Contingency to Facility Improvements – \$200,000

With the use of Capital Improvements Program (CIP) funds from previous years and FY 11, General Services has developed a plan to implement a wide range of facility improvements that will increase reliability and achieve significant energy savings at County facilities. Examples of projects that were planned to proceed in FY 11 include:

- Relamping of many fixtures and lighting controls at Buildings A, B, E, Human Services, and the Community Center
- New HVAC controls at Buildings A, B, and F
- New high-efficiency boilers and HVAC units at the Community Center

While discussing with Administration the long-term needs and opportunities at County buildings, staff pointed out two additional unfunded needs. They are:

- Replacement of the HVAC equipment that serves the Board meeting and work session rooms
- Full completion of all relamping and lighting controls at County buildings

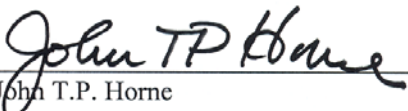
The HVAC equipment serving the Board and work session rooms is no longer manufactured and the company no longer exists. Deterioration has accelerated recently and if the units fail, obtaining parts is very difficult and could take a very long time. Continued use of the rooms would be very difficult. The units also cannot be controlled by the new HVAC controls system being installed in the building. Completion of the relamping will show immediate energy savings and save considerable staff time on repairs and replacements. Lighting improvements such as those described here should have a payback time of approximately four to five years. The energy savings on the boilers at the Community Center should be very high. The boilers in place are 20 years old and the new high-efficiency designs will be approximately 20 percent more efficient. The boilers provide all the heating for hot water and the pool on a continuous basis so they are a major fuel user at the facility.

Staff requests approval of the attached resolution to transfer \$200,000 from the Capital Contingency to the Facility Improvements fund for the above purposes.

Budget Transfer – Capital Contingency to Facility Improvements – \$200,000

July 13, 2010

Page 2



John T.P. Horne

John E. McDonald

CONCUR:



Sanford B. Wanner

JTPH/JEM/nb
ContgcyTrfr_mem

Attachment

RESOLUTION

BUDGET TRANSFER – CAPITAL CONTINGENCY TO

FACILITY IMPROVEMENTS – \$200,000

WHEREAS, the Board of Supervisors wished to support the efficient operation of County facilities; and

WHEREAS, the Board wishes to undertake actions to reduce energy consumption and decrease the production of greenhouse gases from the operation of County buildings; and

WHEREAS, the accelerated implementation of replacement of building system equipment will also accelerate the cost savings from reduced energy consumption and reduced staff maintenance time.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, does hereby authorize the transfer of \$200,000 from the Capital Contingency to the Facility Improvements fund.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July, 2010.

ContgcyTrfr_res

MEMORANDUM

DATE: July 13, 2010
TO: The Board of Supervisors
FROM: Richard B. Hanson, Housing and Community Development Administrator
SUBJECT: Grant Appropriation - Homeless Intervention Program - \$149,231

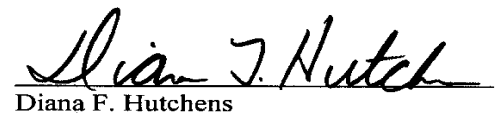
The Virginia Department of Housing and Community Development (VDHCD) has awarded James City County an allocation of \$149,231 of Homeless Intervention Program (HIP) grant funds for Fiscal Year 2011. James City County's Office of Housing and Community Development (OHCD) has operated HIP since 1990 serving James City County, the City of Williamsburg, and Upper York County with a Williamsburg address.

The purpose of HIP is to prevent homelessness and to assist homeless or temporarily housed persons and families in obtaining permanent housing. The program provides counseling and short-term rental or mortgage assistance for individuals and families who are experiencing a temporary, unavoidable financial crisis. Additionally, HIP may provide security deposit and temporary rental assistance to individuals or families who are homeless or in temporary housing who have located affordable permanent housing.

Staff recommends adoption of the attached resolution authorizing execution of the grant agreement and appropriation of the \$149,231 HIP grant funds to the Community Development Fund budget.


Richard B. Hanson

CONCUR:


Diana F. Hutchens

RBH/gb
HomelessGrant_mem

Attachment

RESOLUTION

GRANT APPROPRIATION - HOMELESS INTERVENTION PROGRAM - \$149,231

WHEREAS, the Virginia Department of Housing and Community Development (VDHCD) has awarded State General Funds in the amount of \$149,231 to James City County to provide services through the Homeless Intervention Program (HIP) for Fiscal Year 2011; and

WHEREAS, James City County Office of Housing and Community Development (OHCD) will use HIP grant funds to provide financial assistance and supportive services to persons at risk of becoming homeless or who are homeless, including families and individuals from James City County, the City of Williamsburg, and York County with a Williamsburg address in accordance with HIP Program Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Grant Agreement and to allocate the following appropriation to the Community Development fund:

Revenue:

Homeless Intervention Program Grant	<u>\$149,231</u>
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Expenditure:

Homeless Intervention Program Assistance	<u>\$149,231</u>
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James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July, 2010.

HomelessGrant_res

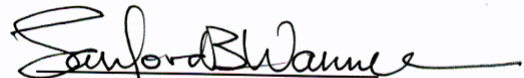
MEMORANDUM

DATE: July 13, 2010
TO: The Board of Supervisors
FROM: Sanford B. Wanner, County Administrator
SUBJECT: Appointments to the Williamsburg Area Transit Authority (WATA) Board of Directors

James City County is represented by two Board-appointed staff members on the Williamsburg Area Transit Authority (WATA) Board Directors. Assistant County Administrator Doug Powell and James City Service Authority (JCSA) General Manager Larry Foster were appointed to fill these positions.

Mr. Foster was originally appointed to a two-year term which expired in March 2009 and Mr. Powell was appointed to a three-year term which expired in March 2010. Mr. Foster and Mr. Powell wish to continue serving and the WATA Bylaws specify that the next appointments made by the County shall serve four-year terms.

I recommend approval of the attached resolution reappointing Mr. Powell and Mr. Foster to four-year terms on the WATA Board of Directors, with Mr. Foster's term set to expire on June 30, 2013 and Mr. Powell's term set to expire June 30, 2014.



Sanford B. Wanner

SBW/gb
WATA-appt_mem

Attachment

RESOLUTION

APPOINTMENTS TO THE WILLIAMSBURG AREA TRANSIT AUTHORITY (WATA)

BOARD OF DIRECTORS

WHEREAS, the Williamsburg Area Transit Authority (WATA) Board of Directors has two Board-appointed staff members from James City County; and

WHEREAS, the terms of Mr. Larry Foster and Mr. Doug Powell have expired.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby reappoint Larry Foster and Doug Powell to the WATA Board of Directors for four-year terms to expire June 30, 2013 and June 30, 2014, respectively.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July, 2010.

WATA-appt_res

SPECIAL USE PERMIT-0024-2009. Hospice House and Support Care of Williamsburg Wireless Communication Facility Tower
Staff Report for the July 13, 2010, Board of Supervisors Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

December 2, 2009, 7:00 p.m.
January 12, 2010 (applicant deferral), 7:00 p.m.
February 9, 2010 (applicant deferral), 7:00 p.m.
March 9, 2010, (applicant deferral), 7:00 p.m.
June 8, 2010, (applicant deferral), 7:00 p.m.
July 13, 2010, 7:00 p.m.

SUMMARY FACTS

Applicant: Gloria Freye, McGuire Woods

Land Owner: Hospice House and Support Care of Williamsburg

Proposal: To allow for the construction of a 124-foot-tall (120-foot tower with 4-foot lightning rod) monopole wireless communications facility "WCF" on the subject property. Wireless communications facilities are specially permitted uses in the R-8, Rural Residential, zoning district.

Location: 4445 Powhatan Parkway

Tax Map Parcel Number: 3830100001a

Parcel Size: .48 acres out of 11.182 acres

Zoning: R-8, Rural Residential

Comprehensive Plan: Low Density Residential and Conservation Area

Primary Service Area: Inside

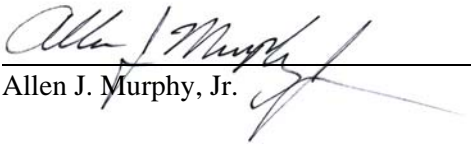
STAFF RECOMMENDATION

The applicant has requested that this case be deferred until the November 9, 2010, meeting. This deferral will allow the applicant to determine if the Route 199 parcel will be a viable alternative site. Planning staff concurs with this decision on the part of the applicant and recommends that the Board of Supervisors defer this case as requested.

Staff Contact: Jason Purse Phone: 253-6685

Jason Purse

CONCUR:


Allen J. Murphy, Jr.

sup24-09WCF-def.doc

REZONING-0001-2009/SPECIAL USE PERMIT-0007-2010/MP-0001-2009. Colonial Heritage Deer Lake Staff Report for the July 13, 2010, Board of Supervisors Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

May 5, 2010, 7:00 p.m.
June 22, 2010, 7:00 p.m. (applicant deferral)
July 13, 2010, 7:00 p.m.

SUMMARY FACTS

Applicant: Mr. Gregory Davis, Kaufman and Canoles

Land Owner: Lennar Corporation

Proposal: To rezone a 130.3-acre portion of the 731.5 acre Deer Lake parcel located at 499 Jolly Pond Road from A-1, General Agricultural, with proffers, to MU, Mixed-Use, with amended proffers, with a Special Use Permit for the extension of public utilities.

Location: 499 Jolly Pond Road

Tax Map/Parcel No.: 2240100007

Parcel Size: 731.5 acres (130.3 acres subject to the new rezoning)

Existing Zoning: A-1, General Agricultural, and MU, Mixed-Use with proffers

Proposed Zoning: MU, Mixed-Use, with amended proffers

Comprehensive Plan: Rural Lands and Low-Density Residential

Primary Service Area: Outside, but requesting public water and sewer service

STAFF RECOMMENDATION

Staff finds the proposal to be contrary to the Land Use policies of the Comprehensive Plan and the Comprehensive Plan Land Use Map designation. Staff also finds this proposal conflicts with the Primary Service Area (PSA) as a growth management tool, as it proposes an extension of suburban residential development outside the PSA. While the proposed 90-acre conservation open space area provides a substantial contiguous amount of land for conservation, on balance, this feature with other aspects of the proposed design show no distinct environmental benefit compared to the rural cluster. Given the recent redesign of the stormwater master plan, the 90 acres of open space is a necessity in terms of meeting the required 10-point stormwater credit system. Regardless of any positive impact created by the proposed residential cluster, under this new proposal 66 acres of land would be rezoned Mixed-Use and incorporated into a larger land bay where the proposed density is 4.6 units per developable acre, which is much greater than the .33-dwelling units an acre recommended for Rural Lands outside the PSA. Furthermore, the approved rural cluster development potential for this area is .226-dwelling units an acre. Many of the proposed units would not be realized on this land if not rezoned. Any perceived benefits from the proposed residential cluster must also take into account the impact that will be created by the new Mixed-Use area as well. This

amended application is also not consistent with the Board of Supervisors adopted cash proffer policy. Finally, the proffered conservation easement proffered for the “Powhatan Terrace” development, while beneficial from a conservation standpoint, has no direct relationship with this development or the land use issues associated with it. The Board of Supervisors previously approved a rezoning for that parcel that would allow for 36 homes on those sites. Staff recommends the Board of Supervisors deny this rezoning, master plan amendment, and the special use permit application. Should the Board of Supervisors wish to approve the applications, resolutions have been provided as attachments to this report.

Staff Contact: Jason Purse Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

On May 5, 2010, the Planning Commission voted 4-2 to recommend approval of this application.

Proposed Changes Made Since Planning Commission Meeting

Proffers have been resubmitted with the following changes: \$50,000 proffered to the County for a stream restoration project; the conveyance of all development rights for the “Powhatan Terrace” development to the County, along with the removal of the underground storage tanks on the “Powhatan Terrace” site; and, a proffer noting that all units (50 total) in Land Bay IX will be constructed in accordance with the national green and sustainable building program and guidelines. The green building proffer does not apply to the other units which would be built on the property to be rezoned Mixed-Use.

The applicant has purchased the “Powhatan Terrace” development, which is located at 1676 and 1678 Jamestown Road and 180 Red Oak Landing. A project for 36 townhomes, at an overall density of 2.18 units an acre, was approved by the Board of Supervisors, under case Z-0007-2007/MP-0005-2007/SUP-0020-2007, on March 25, 2008. The Colonial Heritage developer has acquired the property and has proffered, as a part of the Deer Lake rezoning, that all development on the “Powhatan Terrace” parcel would be prohibited. A proffer from the “Powhatan Terrace” approval also required the removal of underground storage tanks on the property, and as a part of this application, that proffer has been continued.

The inclusion of this proffer has no direct relationship with the Deer Lake portion of Colonial Heritage or the land use issues associated with it.

The applicant asked to have Condition No. 1 of the Utility Extension SUP changed to reflect a 60-month time frame, rather than the proposed 36-month time for construction of the water and sewer utilities. Staff has no object to this change.

Proffers

The proffer package was signed and submitted in accordance with the James City County Proffer Policy.

PROJECT HISTORY

On November 27, 2001, the Board of Supervisors approved rezoning and master plan applications (Case Nos. Z-4-00 and MP-1-01) for a 2,000-unit, gated and age-restricted community known as Colonial Heritage at Williamsburg. The applications rezoned approximately 777 acres from A-1, General Agricultural, and M-1, Limited Business/Industrial, to MU, Mixed Use, with proffers. The master plan for the development included 425,000 square feet of commercial development fronting on Richmond Road. The owner, Lennar Corporation, has marketed the community to retirees and those approaching retirement, and restricts the age of residents to 55 and above through proffers and covenants. The community focuses on an 18-hole golf course with associated amenities and provides several residential products, including single-family, townhomes, and multifamily condominiums.

In 2004, the applicant filed a rezoning application to incorporate the approximately 731-acre Boy Scout property into the existing Colonial Heritage at Williamsburg development. The applicant received approval to rezone approximately 229 acres from A-1, General Agricultural, to MU, Mixed Use, with proffers to incorporate the PSA portion of the Boy Scout property into the previously approved Colonial Heritage development with no increase to the approved 2,000 residential dwelling units and the entire proffer package was amended and restated at that time. The applicants also applied to rezone approximately 503 acres from A-1, General Agricultural, to A-1, General Agricultural, with proffers. The 503-acre portion of the Boy Scout property located outside the PSA would be subject to the amended and restated proffers but would not be subject to the amended master plan. The amended Colonial Heritage at Williamsburg master plan proposed up to 1,400 single-family residential lots, 800 townhomes, 240 condominiums (subject to the proffered 2,000-unit cap), and 425,000 square feet of commercial, retail, and office space, 18 holes of golf course, amenities, and open space.

The 229 acre portion of the Boy Scout property located within the PSA is designated Low-Density Residential on the Comprehensive Plan Land Use Map. The 503-acre portion of the Boy Scout property located outside the PSA is designated Rural Lands on the Comprehensive Plan Land Use Map.

In addition, the applicants applied for a special use permit to allow a 50-lot rural cluster development (SUP-0021-2004). The proposed rural cluster would be located on the portion of the Boy Scout Property located outside the PSA.

Table No. 1-Comparison between revised Applications for the Colonial Heritage

	2001 Application	2004 Application	2009 Application
Scope of Project	<p>Rezoning application: To rezone 777 acres from A-1 to MU, with proffers.</p> <p>2,000-unit, gated and age-restricted community and 425,000 square feet of commercial development fronting on Richmond Road</p>	<p>Rezoning application: Incorporated 732-acre Boy Scout property into existing Colonial Heritage Master Plan. Rezoned 229 acres of that property from A-1 to MU. The remaining 503-acres was rezoned from A-1 to A-1 with proffers, which dedicated 282-acres as conservation open space. The 2,000 unit cap did not change. The entire proffer package was amended and restated at that time.</p> <p>SUP application: From the 503-acre A-1 property, the 221 acres <u>not</u> dedicated as open space could also contain a 50-lot rural cluster which was located outside the PSA and would be sold at market rate, but was not age-restricted.</p>	<p>Rezoning application: From the original 503 acres that was left as A-1 in 2004 there were 221 acres that was not dedicated as open space. Of the 221 acres, 130.3 acres would be rezoned to Mixed-Use. Approximately 66 of those acres would be rolled into Land Bay 7&8, while the remainder would be developed as a 50-lot cluster development. The remaining 90 acres will be dedicated as additional conservation open space.</p>

PROJECT DESCRIPTION

Mr. Greg Davis, of Kaufman and Canoles, on behalf of the Lennar Corporation, has applied to rezone a 130.3 acre portion of the 731.5 acre Deer Lake parcel located at 499 Jolly Pond Road from A-1, General Agricultural, with proffers, to MU, Mixed-Use, with amended proffers, with a Special Use Permit for the extension of public utilities. The applicant is no longer requesting a Special Use Permit for a residential cluster, because the density and yard requirements gained by the cluster overlay are achievable under the MU zoning designation. The cluster design for the 50-unit area southwest of Deer Lake is still proposed as the same design as under the old proposal.

The existing Master Plan for Colonial Heritage has a unit cap of 2000, which includes a 50-lot rural cluster on approximately 221 acres of land located outside the PSA and zoned A-1. On that same 221 acres, the new

proposal is seeking to rezone 66.4 acres to Mixed-Use to be included in the existing Land Bays 7&8, and also rezone 63.9 acres to Mixed-Use for the 50 lot cluster. Both of these applications are requesting an extension of public water/sewer. The applicant would dedicate the remaining 90 acres zoned A-1 as conservation area. The applicant is not seeking a change to the total 2000 unit cap of the Colonial Heritage Master Plan.

The Primary Service Area line was affirmed by the Board of Supervisors in November 2009. A land use application change request was submitted by the applicant to allow essentially the same rezoning proposal that would have moved the PSA line to include this area of land. However, the Board of Supervisors did not approve the change during the Comprehensive Plan update process and therefore this land (the 503 acres of the Deer Lake parcel not a part of the Colonial Heritage Master Plan) is still located outside the PSA and is designated Rural Lands on the Comprehensive Plan Land Use Map.

All references made to the “rural cluster” refer to the 50-lot rural cluster previously approved under SUP-0021-2004. References made to the “residential cluster” refer to the current rezoning proposal with 50-lots to the southwest of Deer Lake.

Along with attachments showing the newly proposed Master Plan, staff has also included the Master Plan for the rural cluster (approved under SUP-0021-2004) along with those approved SUP conditions as well.

Surrounding Zoning and Development

Colonial Heritage is located along Richmond Road across from the Pottery Factory and adjacent to the Colonial Towne Plaza shopping center. The Deer Lake portion of this development extends from the intersection of Jolly Pond Road and Centerville Road down Cranston’s Mill Pond across the street from the School Operations Center. While there is MU, Mixed-Use zoned parcels that are a part of the Colonial Heritage Master Plan area, a majority of the parcels adjacent to the Deer Lake area are zoned A-1, General Agricultural.

Proffers

The existing proffers for the Colonial Heritage Mixed-Use zoned property remain unchanged and would extend to the newly proposed Mixed-Use land. The previously proposed 50-lot rural cluster was subject to both the proffers and to SUP conditions (SUP-0021-2004). In parenthesis, next to the proffers for this new case, staff has identified which proffers were present under the existing proffers or conditions for Colonial Heritage or whether they are new to this application.

- These proffers have been added specific to this property
- Water Conservation standards to be approved by the JCSA (**existing**)
- Additional 90 acres of conservation open space to be dedicated (**new**)
- Adherence to the Yarmouth Creek Watershed Plan goals and priorities (**new**)
- Implementation of the County Streetscape guidelines (**new**)
- Neighborhood Recreation Facility and adherence to the Parks and Recreation proffer guidelines (**new**)
- Archeology and Natural Resource Inventory studies (**existing**)
- Owners Association (**new**)
- JCSA cash contributions (**new**)
- Private streets, including maintenance fund establishment (**new**)
- 40% of cluster property permanently preserved as open space in the 50-lot development (**new**)
- 35-foot for structures from steep slopes and 20-foot buffer for clearing from steep slopes (**existing**)
- 150-foot buffer along Jolly Pond Road (**existing**)
- \$50,000 proffered to the County for stream restoration projects (**new since Planning Commission**)
- Conservation easement over the “Powhatan Terrace” development (**new since Planning Commission**)
- Green building construction for all units (50 total) in Land Bay IX (**new since Planning Commission**)

PUBLIC IMPACTS

Environmental

Watershed: Yarmouth Creek

Proffers:

- 35-foot buffer for structures from steep slopes and 20-foot buffer for clearing from steep slopes
- 90 acres of additional conservation area/open space along Deer Lake
- Adherence to the Yarmouth Creek Watershed Plan goals and priorities
- \$50,000 proffered to the County for stream restoration projects
- Green building construction for all units (50 total) in Land Bay IX

Staff Conclusions: The Environmental Division has reviewed the application and does not believe the amended Master Plan, Community Impact Statement and proffers offer added benefit over what is already been approved for the site and offers the following analysis. Additionally, more detailed plan review will occur when development plans are submitted.

Environmental staff evaluated the proposed residential cluster against the previously approved rural cluster and offers the following pros and cons for the new proposal:

Pros:

- The new residential cluster would be subject to County Special Stormwater Criteria.
- The new development would also be subject to the Board of Supervisors resolution for Resource Management Area (RMA) buffers for legislative cases. This would require a 50-foot buffer on intermittent streams and non-Resource Protection Area (RPA) wetlands as well as a 200-foot buffer beyond the 100-foot RPA buffer on the non-tidal mainstem of Yarmouth Creek. The 200-foot buffer on the mainstem would be already contained in the 90 acre conservation area. The rural cluster would not be subject to the BOS resolution as the SUP was approved before the resolution and the plan has sufficient lot and road level detail to grandfather it under the old requirements.
- Public sewer service would be provided, thus eliminating the need for septic drainfield systems, which if not properly designed and maintained, could be a source of nonpoint source pollution in the watershed.
- The new residential cluster plan would also be more consistent with priority conservation area recommendations from the Yarmouth Creek Watershed Management Plan (Priority Area C-4). Area C-4 is a very large area proposed in the watershed plan, basically stretching from Deer Lake to Cranstons Mill Pond Road. However, it should be noted that 282 acres is already being dedicated in this area, regardless of the approval of this new rezoning proposal to meet watershed management plan priority conservation area requirements.
- \$50,000 has been proffered to the County for stream restoration projects.
- All of the new units in Land Bay IX (a total of 50 units) will be constructed in accordance with Green Building standards.

Cons:

- It is anticipated that total impervious cover between the two development scenarios would be equal. However, while the rural cluster would spread out the impervious cover over 219 acres, while the impervious cover for the newly proposed 50-lot design would be squeezed into the land bay area in a higher density format. This would result in a loss of a “distributed” impact approach for impacts associated with impervious cover (stormwater water quality and quantity-volume). The residential cluster would concentrate impact to one stream/wetland segment and cause accelerated impact to the natural receiving stream/wetland system on the east inflow stream to Deer Lake. The rural cluster would distribute it more evenly across the entire site.
- The overall open space design for the proposed rezoning consists of greater density at the south and east sides of the tract but with a large tract of open space in the north and is not consistent with Better Site Design/Natural Open Space layout practice for a site with these characteristics. Normally natural open spaces are integrated throughout the entire development and blend the manmade-to-natural

landscape and are located in areas that conserve features worthy of protection such as natural streams, wetlands, lakes, etc.

- Based on topography and the requested density, it is expected that the MU tracts would need to be mass cleared and graded, during development. This is near certain as the already completed sections of Colonial Heritage have required mass clearing and grading already. Mass clearing and grading generally go against two primary performance standards of the County's Chesapeake Bay ordinance including: limit land disturbing to the area necessary and preserve existing vegetation to the maximum extent practicable. This is a major difference between the two development scenarios. No mass clearing and grading is expected of lot development areas in the rural cluster. Infrastructure and lot development would strive to honor existing topography. It should be noted that if clearing and grading are required to balance the overall site layout, the Chesapeake Bay Preservation ordinance allows this as a means of consideration.
- Mass clearing and grading in the residential cluster scenario could conflict with the RMA buffer resolution, especially the 50-foot intermittent stream buffers. This conflict could result in a reduction of the number of proposed lots or the need to issue waivers to the Policy.
- The approved rural cluster would be spread across 221 acres on both the east and west sides of Deer Lake. The proposed overall density would be no greater than .226-dwelling units an acre. With the proposed rezoning, 66.4 acres to the east of Deer Lake would be rezoned to Mixed-Use and would be incorporated into a larger land bay where the proposed density of up to 4.6-dwelling units per developable acre. This sizable density increase adjacent to Deer Lake could threaten sensitive environmental features more than the rural cluster option.
- Chesapeake Bay Ordinance exceptions would be needed for utility crossings. Sewer crossings are not administratively approvable, and would require the Chesapeake Bay Board to grant waivers through the exception process. This would not be expected for the rural cluster.
- Additional impacts (i.e. road and/or utility crossings) will require modifications and amendments to the existing permits from both U.S. Army Corps of Engineers and the Department of Environmental Quality.
- Both the U.S. Army Corps of Engineer and the DEQ permits already require a 50-foot intermittent stream buffer in their project specific conditions, so many of the perceived benefits of applying the Yarmouth Creek Watershed Management Plan are already covered under the existing permit.
- The existing stormwater master plan was revised for the purposes of the 50-lot cluster to substitute certain water quality components with others. One of these items includes the 90-acres of conservation area that is being dedicated in conservation easement to satisfy the stormwater management 10-point system requirements. Land that was previously allocated as natural open space credit for stormwater points, under the new proposal, is being developed as Mixed-Use. The applicant must make up for that shift in credit by setting aside additional acreage dedicated as open space. Essentially, the applicant is consolidating the enhanced RPA buffers to a 90-acre site, in lieu of a linear distribution along the limits of the RPA.

Staff would note that both developments (the previously approved rural cluster and newly proposed MU residential cluster) show an equal amount of environmental benefits. Therefore, the proposed rezoning, based on the availability of information, cannot show distinct environmental benefit compared to the rural cluster from an Environmental analysis. The Environmental Division acknowledges the new provisions added to the proffers since the May 5, 2010, Planning Commission meeting. The Environmental Division's position on the project, based on a review of these amended/revised proffers, remains unchanged.

Public Utilities

The site is located outside the Primary Service Area, and the 50-lot rural cluster would be served by a central well and septic fields. The application proposes water and sewer service be extended from the existing lines that serve the Colonial Heritage Development and from existing service along Jolly Pond Road. The 50-lot rural cluster would have been served by a central well, which from a financial standpoint, costs the County money once it is taken over by the JCSA. Recommendations to increase the cost from developers to the JCSA upon acceptance were recommended in the 2009 Comprehensive Plan

to help off-set this shortfall, but have not been implemented to this point. However, the Board of Supervisors had approved a resolution to proceed with consideration of this matter at their second Board meeting in June.

Proffers:

- Water Conservation standards to be reviewed and approved by the JCSA.
- JCSA cash contributions per unit
- All units shall be connected to gravity sewer

JCSA Staff Conclusions: The James City Service Authority has reviewed the proposal and concurs with the Master Plan and proffers as proposed. During the development plan phase, the applicant will be required to confirm the water/sewer capacity of the existing service in the area to ensure it is capable of supporting the additional development.

Traffic

The unit cap for the development is not changing under this proposal. The total number of units for the Colonial Heritage Master Plan remains at 2,000. The traffic study conducted by the applicant in 2004 is still valid.

The proposed 50 single-family lots have the potential to generate 480 daily, 38 AM peak hour, and 51 PM peak hour trips on the roadway network based on ITE trip generation rates. The trip generation appears to be consistent with the existing approved use of the site. However, the trips will now be generated on Richmond Road (Lightfoot corridor) or Centerville Road, rather than onto Jolly Pond Road, as was the case with the previous proposal.

2006 Annual Average Daily Traffic Volume (per VDOT) (Richmond Road): From Croaker Road to Centerville Road there were 19,000 trips. James City County’s 2007 traffic count data for Route 60 (Richmond Road) from Croaker Road to Lightfoot Road there were 21,892 trips.

2035 Daily Traffic Volume Projected: For Richmond Road, between Croaker and Centerville there is a projection of 33,500 trips. This section of Route 60 is listed in the “watch” category.

Proffers:

None at this time.

VDOT Conclusions VDOT reviewed the Master Plan and concurs that the proposal will not generate any additional vehicle trips over what is currently approved under the existing Colonial Heritage Master Plan.

PRIVATE STREETS

Section 24-528 (b) of the Zoning Ordinance states that: *‘Private streets may be permitted upon approval of the board of supervisors and shall be coordinated with existing or planned streets of both the master plan and the county Comprehensive Plan. Private streets shown on the development plan shall meet the requirements of the Virginia Department of Transportation.’* The applicant has indicated the possibility of private streets in the some areas of the development, as shown in the master plan, and has proffered (Proffer #12) maintenance of the private streets through the Home Owners Association.

Fiscal Impact

A Fiscal Impact Study prepared for this development by the Wessex Group, and revised in March 2010, (attached to this report) was provided along with the rezoning application for County review. It should be noted that the approved rural cluster was not to be a part of the Colonial Heritage development (age-restricted) and was to be sold at market rate. At one point, during the Comprehensive plan Land Use Map Designation change request process, the applicant had considered developing these units as workforce housing, but the units will continue to be sold at market rate regardless of whether this rezoning be approved. The Fiscal Impact Study continues to evaluate all three proposals (market rate separate from Colonial Heritage, market rate as a part of Colonial Heritage, and workforce housing separate from Colonial Heritage), but the applicant is proposing the 50-lot cluster to be market rate units as a part of the Colonial Heritage “age-restricted” community.

Staff Comments: The Colonial Heritage development, as a whole, remains fiscally positive. According to the Wessex Group, the proposed 50-lot development that would be a part of the Colonial Heritage age-restricted community would also be fiscally positive.

Public Facilities

Proffers:

- The applicant is not offering to adhere to the cash proffer policy. The BOS adopted policy does not exempt “age-restricted” developments, so therefore this application is not in compliance.

Parks and Recreation

Proffers:

- A contribution in the amount of Ninety-four dollars and 82/100 Dollars (\$94.82) shall be made to the County for each Residential Unit developed on the Cluster Property in accordance with the County Comprehensive Parks and Recreation Plan proffer guidelines. The proffers also require one park at least .3 acres, a minimum of .25 of a mile biking/jogging trail, and a minimum of one facility designed for an age-appropriate activity.

Staff Comments: Staff finds that the proffers meet the requirements established by the Parks and Recreation proffer guidelines.

COMPREHENSIVE PLAN

Land Use

Designation	<p><i>Low-Density Residential and Rural Lands (Page 152 and 153):</i> Rural Lands are areas containing farms, forests, and scattered houses exclusively outside of the Primary Service Area (PSA), where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for in the future. Recommended uses for areas designated Rural Lands are agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.</p> <p>Recommended uses for Low-Density Residential include, very limited commercial establishments, churches, single family homes, duplexes, and cluster housing with a recommended gross density of 1 unit per acre up to 4 units per acre in developments that offer particular public benefits.</p> <p>Staff Comment: All of the existing Colonial Heritage master planned development is currently located inside the Primary Service Area on land designated Low-Density Residential or Mixed-Use, with the exception of the 50-lot rural cluster, which is consistent with its’ Rural Lands designation.</p> <p>The new proposed development is all located on lands designated Rural Lands and proposes extension of public water and sewer outside the Primary Service Area to serve a suburban residential development design. The Rural Lands description notes that lands are exclusively outside the PSA, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for the future. None of the proposed development, including the 50-lot cluster, is consistent with the Rural Lands Comprehensive Plan designation, and the development would be located in areas where utilities and services were not planned for.</p> <p>Furthermore, the plan conflicts with the PSA as a growth management tool and sets a possible precedent for expansion of private development outside the PSA. The type and intensity of development already approved is consistent with the affirmation of the PSA boundary by the Board of Supervisors in November 2009 and consistent with the Rural Lands description in the Comprehensive Plan. Approved development in the rural cluster</p>
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	<p>outside the PSA is very low density and consists of 50 lots on 221 acres or .226 units an acre.</p> <p>The newly proposed Mixed-Use land (66 acres) would be incorporated into Land Bay 8 of the Colonial Heritage Master Plan and, overall, would have a proposed density of 4.6-dwelling units per developable acre. Regardless of any positive impact created by the proposed residential cluster, 66 acres of land would be developed at this proposed density higher than the .33-dwelling unit an acre recommendation for lands designated Rural Lands and located outside the PSA. Again, the by-right development potential for this area is .226-dwelling units an acre. Many of the proposed units would not be realized on this new land if not rezoned.</p>
Density	<p><i>Recommended Rural Lands Density-Page 152:</i> In terms of the desired scale of rural land developments, very low density development, significantly lower than currently permitted, or rural clusters on a small scale which meet the design guidelines of the Rural Lands Development Standards are encouraged while large concentrations of residential development are strongly discouraged as such subdivisions interrupt rural qualities and significantly increase the demand for urban services and transportation facilities.</p> <p>Staff Comment: The current density of rural lands is one-dwelling unit per three acres. The Comprehensive Plan recommends development be significantly lower than this, however, the proposed Master Plan would have a density of 4.6-dwelling units an acre for the Mixed-Use acreage and a density of almost one-dwelling unit an acre for the 50-lot cluster. The language in this section also <i>strongly discourages</i> concentrations of residential development as such subdivisions interrupt rural qualities and significantly increase demand for urban services and transportation facilities.</p>
Development Standards	<p><i>1. Use and Character Compatibility (a)- Page 152:</i> Uses in Rural Lands should preserve the natural, wooded, and rural character of the County. Particular attention should be given to the following: (i) locating structures and uses outside of sensitive areas, (ii) maintaining existing topography, vegetation, trees, and tree lines to the maximum extent possible, especially along roads and between uses, (vii) minimizing the number of street and driveway intersections along the main road by providing common driveways and interconnection of development.</p> <p><i>2. Residential Rural Clusters-Page 152:</i></p> <p>a) Minimize the impact of residential development by preserving a substantial amount (at least two-thirds) of the site in large undivided blocks of land for permanent open space.</p> <p>b) Appropriate goals for open space and lot layout include preservation of farmland, open fields, scenic vistas, woodland, meadows, wildlife habitats, and vegetation; protection of environmentally sensitive land including wetlands, stream corridors, and steep slopes; roadway buffers; and preservation of scenic views.</p> <p>c) The goals of the open space and lot layout should be shown on a conceptual plan, and the design should support these goals. For instance, if preservation of agriculture is one of the main goals of the open space, the open space should encompass that land which is most suitable for farming (topography, soils). Blocks of land large enough to support a farm should be set aside in the open space. In addition, potential conflicts between the uses should be minimized by designing buffers between the farmland and the residential development. Similar design considerations would be expected to support other open space goals as well.</p> <p>d) The open space should be placed in a conservation easement or the equivalent to ensure that the land will remain undeveloped.</p> <p>e) The visibility of the development from the main road should be minimized. It is recommended that lots be placed along an access road rather than along the main route so that the view from the main route still appears rural in nature.</p>

	<p>Staff Comment: All sites in the County have different characteristics that need to be taken into account when determining site design standards for cluster development. As explained in the Environmental Impact discussion section earlier in this application, there are both positive and negative site design features for the 50-lot cluster compared to the already approved rural cluster.</p> <p>Normally natural open spaces are integrated throughout the entire development and blend the manmade-to-natural landscape and are located in areas that conserve features worthy of protection such as natural streams, wetlands, lakes, etc. While the proposed 90 acre conservation open space area provides a substantial contiguous amount of land for conservation, other aspects of the design have greater environmental impacts than the rural cluster. Mass clearing and grading could impact intermittent streams and the greater density proposed for the eastern side of Deer Lake (because of the Mixed-Use area) could threaten endangered species conservation area more than the rural cluster option.</p> <p>The residential cluster, as proposed, is not consistent with current rural cluster provisions in the A-1 zoning district.</p>
Goals, strategies and actions	<p><i>Action 1.1.3-Page 163:</i> Use policy and ordinance tools to ensure the provision of open space. In particular, maintain or increase incentives for cluster development in exchange for additional open space that provides significant benefits to the community.</p> <p><i>Strategy #1.4- Page 164:</i> Direct growth into designated growth areas in an efficient and low-impact manner.</p> <p><i>Action 1.4.1-Page 164:</i> Enforce policies of the Comprehensive Plan to steer growth to appropriate sites in the Primary Service Area.</p> <p><i>Action 1.4.4-Page 165:</i> Restrict the extension of water and sewer utilities, and the formation of new central sewer systems in areas outside the PSA. Extend water and sewer service in the Primary Service Area according to a phased plan in accordance with the County’s Comprehensive Plan and JCSA master water/sewer planning.</p> <p>Staff Comment: This proposal is contrary to Actions 1.4.1 and 1.4.4 of the Comprehensive Plan. The Comprehensive Plan uses the Primary Service to direct growth to appropriate sites and restrict the extension of water and sewer utilities. The plan proposes an extension of public utilities outside the PSA and sets a precedent for that extension for private development.</p> <p>The applicant has already proffered to conserve 282 acres of the Boy Scout property under the existing Colonial Heritage Master Plan. While the additional 90 acres provides a benefit to the County, most of it would be required anyway to comply with the Chesapeake Bay requirements.</p>

Economic Development

Goals, strategies and actions	<p><i>Action 1.2.3-Page 29:</i> Support the provision of mixed cost and affordable/workforce housing near employment centers and transportation hubs.</p> <p>Staff Comment: The original proposal for the 50-lot cluster was for market rate housing. The new proposal continues to propose market rate units. The applicant had considered offering workforce housing units during the Comprehensive Plan Land Use Map designation change process, but has decided to continue to offer the units at market rate under this rezoning proposal.</p>
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Housing

Goals, strategies and actions	<p><i>Action 1.1.4-Page 45</i> Guide new residential development to areas that are served by public utilities and that are convenient to public transportation and major thoroughfares, employment centers, schools, recreation facilities, and shopping facilities.</p> <p><i>Strategy 1.3-Page 47:</i> Increase the availability of affordable and workforce housing, targeting households earning 30%-120% area median income as established by HUD.</p> <p><i>Action# 1.3.15-Page 47:</i> Promote the full integration of affordable and workforce housing units with market rate units within residential developments and throughout the Primary Service Area.</p> <p>Staff Comment: The original proposal for the 50-lot cluster was for market rate housing. The new proposal continues to propose market rate units. The applicant had considered offering workforce housing units during the Comprehensive Plan Land Use Map designation change process, but has decided to continue to offer the units at market rate under this rezoning proposal.</p>
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Environment

Yarmouth Creek Watershed Management Plan	<p><i>Page 66:</i> Yarmouth Creek is a predominantly forested watershed of about 12 square miles located in the lower James River Basin. The Creek drains into the Chickahominy River, which discharges into the James River. A recent natural areas inventory classified almost half of the watershed as moderate to high in terms of biodiversity present. The watershed contains extensive complexes of wooded swamp, freshwater wetland, and rare tidal freshwater marsh which support at least one heron rookery and seven globally rare or state rare species among other flora and fauna. The Board of Supervisors adopted the six goals and 14 priorities associated with the Yarmouth Creek Watershed Management Plan by resolution dated October 10, 2006.</p> <p>Staff Comment: The new residential cluster would be subject to County Special Stormwater Criteria.</p> <p>The new development would also be subject to the Board of Supervisors resolution for Resource Management Area (RMA) buffers for legislative cases because of the Yarmouth Creek Watershed Management Plan. This would require a 50-foot buffer on intermittent streams and non-Resource Protection Area (RPA) wetlands as well as a 200-foot buffer beyond the 100-foot RPA buffer on the non-tidal mainstem of Yarmouth Creek. The 200-foot buffer on the mainstem would be contained in the 90-acre conservation area. The rural cluster would not be subject to the BOS resolution as the SUP was approved before the resolution and the plan has sufficient lot and road level detail to grandfather it under the old requirements.</p>
Goals, strategies and actions	<p><i>Action 1.1.3-Page 78:</i> Through the Chesapeake Bay Preservation Ordinance, enforce Resource Protection Areas (RPAs) protecting all tidal wetlands, tidal shores, non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, perennial streams and a 100-foot-wide buffer adjacent to and landward of other RPA components.</p>

	<p><i>Action 1.3.5-Page 81:</i> Continue to develop and enforce zoning regulations and other County ordinances that ensure the preservation to the maximum extent possible of rare, and threatened and endangered species, wetlands, flood plains, shorelines, wildlife habitats, natural areas, perennial streams, groundwater resources, and other environmentally sensitive areas.</p>
	<p>Staff Comment: Both the existing approved rural cluster and the newly proposed residential cluster provide for the 100-foot buffer adjacent to RPA. Both developments meet the Chesapeake Bay Preservation Ordinance goals of protecting tidal wetlands, tidal shores, non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, as described in Action 1.1.3.</p> <p>The existing Master Plan for Colonial Heritage has identified a number of rare or endangered species in the existing Land Bay 7&8 areas as shown on the Master Plan. These areas are set aside for conservation purposes.</p> <p>However, given the additional proposed land being added to Land Bay 8, this sizable density increase adjacent to Deer Lake could impact sensitive environmental features more than the rural cluster option.</p>

Community Character

<p>Goals, strategies and actions</p>	<p><i>Action #1.3.5- Page 99:</i> Expect all currently approved and new development to blend carefully with the topography and surrounding vegetation, to preserve unique formations, greenery, and scenic views, and to use sustainable plantings and building techniques.</p> <p>Staff Comment: As previously discussed in the Environmental Impact section, cluster developments need to be evaluated for their environmental benefits on a case-by-case basis. This parcel contains a number of sensitive environmental features. Cluster development for this parcel would most likely mean mass clearing and grading which may adversely affect the surrounding character of the area. While land is preserved around the northwest portion of Deer Lake, the entire expanse of the eastern side of the lake will be exposed to much more intense development because of the added Mixed-Use zoned land proposed by the applicant. While the approved rural cluster proposes units in this area it is at a much less intense density (.226-dwelling units an acre). Since mass clearing and grading is not anticipated for this approved rural cluster, staff believes that this development would better blend with the topography and surrounding vegetation, to preserve the unique character of this area, more so than the proposed development.</p>
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Transportation

	<p><i>Action#1.1.2-Page186:</i> Ensure that new developments do not compromise planned transportation enhancements. New development should minimize the impact on the roadway system by:</p> <ul style="list-style-type: none"> (a) Limiting driveway and other access points and providing shared entrances, side street access and frontage roads; (b) Providing a high degree of interconnectivity within new developments, adjoining new developments, and existing developments using streets, trails, sidewalks, bikeways, and multipurpose trails; (e) Implementing strategies that encourage shorter automobile trips and accommodate walking, bicycling, and use of public transit.
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	<p>Staff Comment: The new rezoning proposal by the applicant does not increase the total number of units in the Colonial Heritage development or the 50-lot cluster options. There will not be a significant number of new trips generated because of this proposal. Both the approved rural cluster and the proposed residential cluster are proposing the same number of entrances onto Jolly Pond Road (one entrance, with the ability of the Planning Commission to approve an additional entrance if requested by the applicant), so both developments should minimize the impact on the roadway system.</p> <p>VDOT requested that the applicant provide a turn lane warrant analysis for the Jolly Pond Road entrance to this property prior to site plan approval for the development and the applicant has included that provision in their proffers.</p>
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Comprehensive Plan Staff Comments

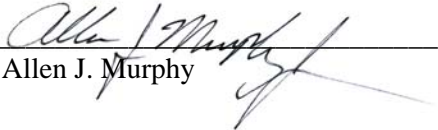
Staff finds the proposal to be contrary to the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. The expansion of public utilities outside the Primary Service Area, and the development of suburban residential densities on Rural Lands is strongly discouraged by many sections of the Comprehensive Plan. While 90 acres of the rural cluster site is being proposed as open space, over 66 acres on the east side of Deer Lake, that was previously a part of the rural cluster acreage, would be rezoned to Mixed-Use and would develop at a much greater intensity than would be possible under the approved rural cluster. Much of the newly proposed acreage will be designed, not as a cluster development, but rather under the same design as the Colonial Heritage development. Even with the proposed 90 acres of conservation area, the total acreage under this application will see a much more intense development than the approved rural cluster.

RECOMMENDATION

Staff finds the proposal to be contrary to the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. Staff also finds this proposal conflicts with the Primary Service Area as a growth management tool, as it proposes an extension of suburban residential development outside the PSA. While the proposed 90-acre conservation open space area provides a substantial contiguous amount of land for conservation, on balance, this feature with other aspects of the proposed design show no distinct environmental benefit compared to the rural cluster. Given the recent redesign of the stormwater master plan, the 90 acres of open space is a necessity in terms of meeting the required 10-point stormwater credit system. Regardless of any positive impact created by the proposed residential cluster, under this new proposal 66 acres of land would be rezoned Mixed-Use and incorporated into a larger land bay where the proposed density is 4.6 units per developable acre, which is much greater than the .33-dwelling units an acre recommended for Rural Lands outside the PSA. Furthermore, the approved rural cluster development potential for this area is .226-dwelling units an acre. Many of the proposed units would not be realized on this land if not rezoned. Any perceived benefits from the proposed residential cluster must also take into account the impact that will be created by the new Mixed-Use area as well. This amended application is also not consistent with the Board of Supervisors adopted cash proffer policy. Finally, the proffered conservation easement proffered for the “Powhatan Terrace” development, which beneficial from a conservation standpoint, has no direct relationship with this development or the land use issues associated with it. The Board of Supervisors previously approved a rezoning for that parcel that would allow for 36 homes on those sites. Staff recommends the Board of Supervisors deny this rezoning, master plan amendment, and the special use permit application. Should the Board of Supervisors wish to approve the applications, resolutions have been provided as attachments to this report.

Jason Purse

CONCUR:


Allen J. Murphy

JP/gb
Z01-09DeerLake.doc

ATTACHMENTS:

1. Resolutions
2. Approved minutes from the May 5, 2010, Planning Commission meeting
3. Location Map
4. Master Plan dated June 21, 2002, and most recently revised April 20, 2010
5. Proffers
6. Community Impact Statement
7. Fiscal Impact Statement
8. Master Plan and conditions for SUP-0021-2004-50 lot rural cluster

RESOLUTION

CASE NO. Z-0001-2009/MP-0001-2009. COLONIAL HERITAGE DEER LAKE

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, 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-0001-2009/MP-0001-2009, for rezoning 731.5 acres from A-1, General Agricultural, with proffers, to MU, Mixed-Use, with amended proffers; and

WHEREAS, the proposed project is shown on a Master Plan, prepared by AES, entitled “Master Plan Amendment of Colonial Heritage”, and dated April 20, 2010; and

WHEREAS, the property is located at 499 Jolly Pond Road and can be further identified as James City County Real Estate Tax Map/Parcel No. 2240100007; and

WHEREAS, the Planning Commission of James City County, following its public hearing on May 5, 2010, recommended approval of this application by a vote of 4-2; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-0001-2009/MP-0001-2009 and accept the voluntary proffers.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July, 2010.

Z01-09DeerLake_res

RESOLUTION

CASE NO. SUP-0007-2010. COLONIAL HERITAGE DEER LAKE UTILITY EXTENSION

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. Gregory Davis, of Kaufman and Canoles, on behalf of the Lennar Corporation, has applied to extend utilities to 130.3 acres of land associated with the Colonial Heritage Deer Lake rezoning Z-0001-2009; and

WHEREAS, the property is located at 499 Jolly Pond Road on land zoned A-1, General Agricultural, and can be further identified as James City County Real Estate Tax Map/Parcel No. 2240100007; and

WHEREAS, the Planning Commission of James City County, following its public hearing on May 5, 2010, recommended approval of this application by a vote of 4-2; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing does hereby approve the issuance of Special Use Permit No. 0007-2010 as described herein with the following conditions:

1. If construction has not commenced on this project within 60 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as clearing, grading, and excavation of trenches necessary for the water and sewer mains.
2. No connections shall be made to the water main which would serve any property located outside the Primary Service Area (PSA) except for connections of the Mixed-Use area under the Colonial Heritage Master Plan project. In addition, for each platted lot recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City as of July 13, 2010, that is vacant, outside the PSA, and adjacent to the water main, one connection shall be permitted with no larger than a 3/4-inch service line and 3/4-inch water meter.
3. No connections shall be made to the gravity sanitary sewer main which would serve any property located outside the PSA except for connections of the Mixed-Use area under the Colonial Heritage Master Plan project. In addition, for each platted lot recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City as of July 13, 2010, that is vacant, outside the PSA, and adjacent to the main, one connection shall be permitted with no larger than a 4-inch service line.
4. All permits and easements shall be acquired prior to the commencement of construction for the water and sewer transmission mains.

5. This SUP is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July,
2010.

Sup07-10DeerLake_res

RESOLUTION

CASE NO. SUP-21-04. U.S. HOME - COLONIAL HERITAGE.

BOY SCOUT PROPERTY RURAL CLUSTER

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 process; and

WHEREAS, Mr. Alvin Anderson and Mr. Gregory Davis of Kaufman & Canoles have applied on behalf of Colonial Heritage, LLC, for a special use permit to allow a 50-lot rural cluster development in accordance with the provisions of Section 24-214(c) of the Zoning Ordinance on the portion of the Boy Scout Property located outside the Primary Service Area (PSA); and

WHEREAS, the properties are located at 6175 Richmond Road, zoned MU, Mixed-Use, with proffers, and further identified as Parcel No. (1-21) on James City County Real Estate Tax Map No. (23-4); 6799 Richmond Road, zoned MU, Mixed-Use, with proffers, and further identified as Parcel No. (1-32) on James City County Real Estate Tax Map No. (24-3); 6993 Richmond Road, zoned MU, Mixed- Use, with proffers, and further identified as Parcel No. (1-11) on James City County Real Estate Tax Map No. (31-1); and 499 Jolly Pond Road, zoned A-1, General Agricultural, and further identified as Parcel No. (1-7) on James City County Real Estate Tax Map No. (22-4); and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on November 1, 2004, recommended approval of this application by a vote of 4 to 1.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-21-04 as described herein with the following conditions:

1. Development Limitation. No more than fifty residential lots shall be platted on the portion of the Boy Scout of America (BSA) property located outside the PSA. Any residential lots developed on the BSA property located outside the PSA shall be subject to the 2,000-residential-unit density cap.
2. Conservation Easement. A conservation easement shall be submitted for review and approved by the County Engineer prior to issuance of a land-disturbing permit for any related plan of development of the portion of the BSA property located outside the PSA. The conservation easement shall be dedicated to James City County or an agency acceptable to the County prior to final site plan or subdivision approval for any plan of development or subdivision of lots for the ±282 acres shown on the plan "Special Use Permit Plan on a Portion of Colonial Virginia Council, Boy Scouts of America, a Virginia Corporation" prepared by AES Consulting Engineers, September 24, 2004. The area within the conservation easement shall be available and the Owners shall retain the right to utilize the open space and conservation area for stormwater management structures and facilities, required open space, required impervious/pervious cover calculations, and watershed protection measures for the

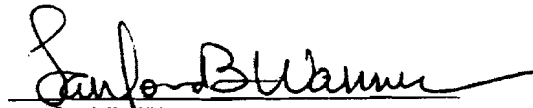
9. Steep Slopes. Any plan of development for the portion of the BSA property located outside the PSA shall maintain a separation of at least 35 feet between the top of 25 percent and steeper slopes and any structure and a 20-foot separation from the limits of grading to the top of 25 percent and steeper slopes. This is intended to apply to the larger, contiguous areas of steep slopes, not isolated areas, as determined by the Environmental Director. The Environmental Director shall have the ability to grant variances from this criteria to provide flexibility in application of this condition.
10. RPA/Perennial Stream. The applicant shall conduct a perennial stream evaluation which shall receive approval from the Environmental Director prior to preliminary approval being granted for any plan of development of the portion of the BSA property located outside the PSA. If perennial streams are present on the site, a 100-foot buffer shall be required around them and any wetlands contiguous to and connected by surface flow to the stream. Any plan of development for the portion of the BSA property located outside the PSA shall also maintain a structural separation of 35 feet from any Resource Protection Area (RPA) on the property.
11. Severability. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.



Bruce C. Goodson
Chairman, Board of Supervisors

<u>SUPERVISOR</u>	<u>VOTE</u>
BRADSHAW	AYE
HARRISON	AYE
BROWN	AYE
MCGLENNON	NAY
GOODSON	AYE

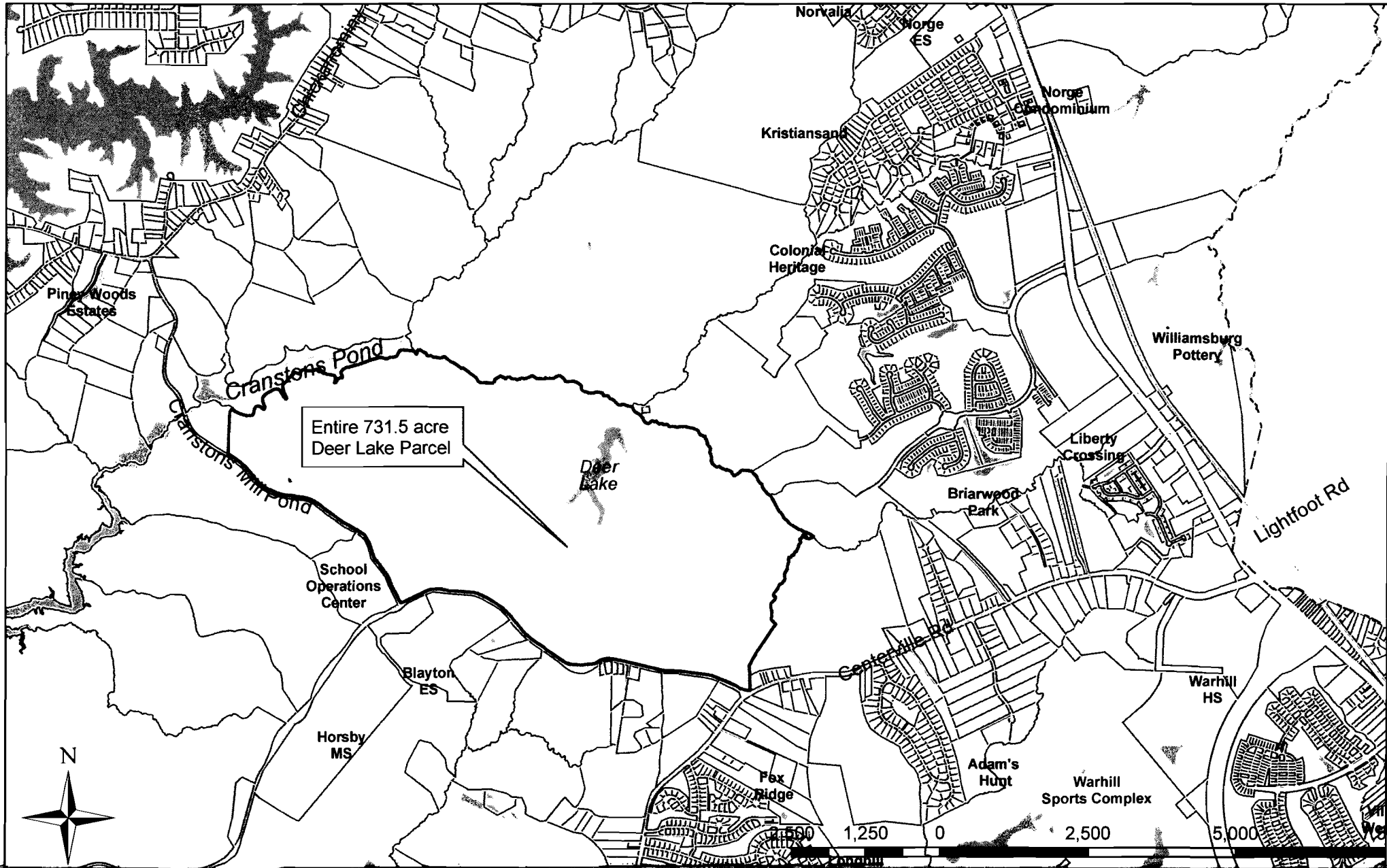
ATTEST:



Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of December, 2004.

Z-0001-2009/SUP-0007-2010/SUP-0011-2010/MP-0001-2009 Colonial Heritage Deer Lake





APPROXIMATE WETLANDS
RPA

RPA

DEER LAKE

AREAS SUBJECT TO THE SUB
231 ACRES
NO MORE THAN 1 LOT

PSA

DN

b5

WELL ST

WELL ST

APPROVED MINUTES FROM THE MAY 5, 2010 PLANNING COMMISSION MEETING

Z-0001-2009 / MP-0001-2009 / SUP-0007-2010 – COLONIAL HERITAGE DEER LAKE

Mr. Jason Purse stated Mr. Greg Davis, on behalf of Lennar Corporation, applied to rezone 130.3 acres of the 731.5 acre Deer Lake parcel at 499 Jolly Pond Road from A-1, General Agricultural, with Proffers, to MU, Mixed Use with Amended Proffers. A special use permit is also requested to extend public utilities to the site. The applicant is no longer requesting a special use permit for the residential cluster, since Mixed Use zoning would allow the cluster's density and yard requirements. The proposal has been amended since the last Planning Commission public hearing to allow for private streets. Schools proffers have been withdrawn after the cluster was revised from workforce housing to age-restricted housing. Park proffers will develop an on-site trail rather instead of payments to the County. Access points have been moved, resulting in the removal of the Jolly Pond traffic study proffer. Staff finds the proposal contrary to the Comprehensive Plan and violates the Primary Service Area (PSA). The proposed 90 acre open space area shows no distinct environmental benefit compared to the rural cluster. The development's 4.6 dwelling units per acre exceed the 0.33 units per acre for rural lands without public utilities. Staff recommends denial of master plan amendment, rezoning, and special use permit.

Mr. Krapf asked if staff had received inquiries about extending the PSA to new or existing developments since the April Commission meeting.

Mr. Purse stated that at least one developer has contacted JCSA staff regarding requirements to connect to public water.

Mr. Krapf asked about the proposal's net environmental benefits.

Mr. Scott Thomas stated Colonial Heritage has a 10-Point Stormwater Master Plan. He stated the system uses BMP's, open space, and low-impact development throughout the area. Deer Lake itself serves as BMP. Different points are awarded for different types of open space. More points are earned for buffers beside existing resource protection areas (RPA's). The reconfigured proposal layout reduces additional RPA buffering. Although 90 acres of open space is added, only 8.25 additional acres can be added to the stormwater system. Open space areas have to be natural and undisturbed.

Mr. Krapf stated the previous proposal used distributed impacts for its impervious cover. The current proposal uses concentrated impervious cover with stormwater passing through forebay treatments and into Deer Lake.

Mr. Thomas stated there were positives and negatives to each proposal. The rural cluster fits the natural topography better. Clearing could be minimized during both utilities installation and construction. The Mixed Use cluster would have to be mass cleared and would concentrate pollutants in Deer Lake.

Mr. Fraley asked about the benefits of the area being subject to the Yarmouth Creek Watershed Management Plan.

Mr. Thomas stated that the Yarmouth management plan's application was beneficial.

Mr. Fraley stated that newly proposed blocked open space was agreeable due to the parcel's large size. He stated the new proposal preserves high-permeable Types A & B soils.

Mr. Thomas stated the elimination of septic drain fields would be a positive environmental impact.

Mr. Fraley stated that distributed stormwater runoff was preferable to concentrated stormwater runoff. He asked if there would be discharge into Yarmouth Creek under the rural cluster design.

Mr. Thomas stated that either proposal would have some impact on Yarmouth Creek. He stated that under the residential cluster, the road could impact multiple headwater streams. The rural cluster, following a ridgeline, would avoid most of the intermittent streams. Under the residential cluster, the runoff only pours into a small section of Deer Lake.

Mr. Peck asked if incremental development was a major source of watershed pollution over the past decade.

Mr. Thomas stated that non-point source pollutions, including urban development, agriculture, and transportation, impact the watershed.

Mr. Peck stated the large yards use large amounts of fertilizer outside County control. He asked if those fertilizers are a significant source of pollution.

Mr. Thomas stated that fertilizers were a source of pollution, but that the County has several fertilizer use educational programs. He stated he was unsure if smaller lots lead to less fertilizer usage.

Mr. Peck asked about the primary policy goals of the PSA. He stated the PSA should reduce the cost of public utilities and reduce sprawl-driven environmental impacts.

Mr. Purse stated that the PSA is one of the County Comprehensive Plan tools. Staff expects development to occur in the PSA and tries to guide growth there. The rural cluster will not be a part of the PSA.

Mr. Peck asked if the rural cluster wells would have a unified rate structure.

Mr. Purse stated that they would have a unified rate structure.

Mr. Peck stated that individual groundwater systems are costly compared to using central water systems. He stated the services were being extended one way or another, in violation of

PSA policy. Current ratepayers would pay for this extension of the PSA.

Mr. Purse stated that the PSA and central wells were growth-management tools for the rural lands. He stated central wells were very cost prohibitive, and few of those developments have taken place. Densities in A-1 have also been reduced to lessen growth.

Mr. Peck asked Mr. Purse to elaborate on the use of the PSA to sequence the provision of County services.

Mr. Purse stated that one current school and two under construction were built outside of the PSA. Their locations were selected in part to place them in proximity to the most users. The School Selection also considered land availability.

Mr. Peck stated that schools, a major sports complex, a major park, a recycling center, a new police station, and fire station were all in the PSA near the proposal.

Mr. Purse stated that no public facilities were lacking in that area, and that staff attempts to direct all growth inside the PSA. He stated incremental development outside the PSA ultimately causes the need for more facilities.

Mr. Peck stated that denying the proposal would not achieve PSA policy goals to reduce JCSA costs or reduce pollution.

Mr. Purse stated that Planning staff would not support a suburban residential development outside of the PSA. Suburban development is considered between one and four units per acre. By-right developments outside of the PSA include the 1 unit per 3 acres density.

Mr. Fraley stated that staff was receiving by-right rural lands proposals with central wells that were not subject to public hearings. He stated central wells and higher densities were not cost-prohibitive enough.

Mr. Purse stated that as part of the Zoning Ordinance update, several actions can be taken to remedy those types of situations.

Mr. Fraley stated the Comprehensive Plan contained three action items on PSA boundary review.

Mr. Purse stated the approval of the proposal could result in many more units in the area, with a proposed density of 4.6 units per acre.

Mr. Purse stated that proposed units are within the Colonial Heritage master plan limit.

Mr. Henderson asked if the trigger for Planning Commission review of the proposal was private roads being prohibited in R-2 zoning.

Mr. Purse stated that due to the proposed change in zoning, staff had to re-advertise the

proposal, and it essentially became a new application.

Mr. Henderson stated that the applicability of private roads in R-2 should be considered during Zoning Ordinance updates.

Mr. Krapf stated that if any part of an application is returned to the Planning Commission, the entire application is subject for discussion. He stated the Deer Lake case was one of the most significant cases ever before the Commission. The Commission has an obligation to clarify all aspects of a returned case.

Mr. Peck stated that most of the County's water comes from groundwater. He stated the JCSA does not expect the State to grant any withdrawal increase since the aquifer is stressed.

Mr. Allen Murphy stated that the County has an agreement with Newport News for supplemental groundwater. He stated the aquifer is stressed at certain times of the year. The Newport News contract was based on surface water.

Mr. Peck stated that the State was monitoring the peninsula's aquifer for stress. He stated the Hampton Roads Planning Commission discussed the State tightening groundwater withdrawals. Central groundwater systems are mandated under current rural cluster policy. Those policies are mandating additional aquifer stress.

Mr. Peck opened the public hearing.

Mr. Greg Davis, representing the applicant, stated the case had gone through minor technical changes since last month's meeting and approval. He stated that since the Commission recommended the development become part of Colonial Heritage, the proposed access to Jolly Pond Road has been eliminated. Private Colonial Heritage roads will be used. The cluster design and benefits are retained, with only minor changes to access. There will be no additional units or traffic impact. The age-restricted development would create a positive fiscal impact due to creating very few school children. Dispensing with central wells would benefit JCSA.

Mr. Krapf asked if the applicant agreed with the staff position that neither the rural or residential cluster proposals result in positive fiscal impacts for the County.

Mr. Davis stated that the age-restricted proposal would provide a positive fiscal impact of \$89,000 annually. He stated if the Commission had guided the development as workforce or market rate housing, the fiscal impact would be negative due to students.

Mr. Purse stated that age-restricted housing has a better fiscal impact than other forms. Colonial Heritage has a positive fiscal impact to due to large commercial spaces.

Mr. Krapf stated that the school proffers had been withdrawn in violation of the Board of Supervisors policy that age-restricted communities should pay school proffers.

Mr. Davis stated the age-restricted development will place no burden on County schools.

He stated the Board proffer policy does not exempt age-restricted housing, but mandates “reasonableness and rough proportionality.” Colonial Heritage, with 580 homes, has generated 2 school kids total. Colonial Heritage’s positive fiscal impact improves with the approval of the Deer Lake cluster. Elimination of the Jolly Pond access will cost the applicant another \$400,000 to connect to Colonial Heritage.

Mr. Arch Marston stated that the \$400,000 in traffic costs was the net sum from moving access from Jolly Pond Road to Colonial Heritage.

Mr. Jacob Hostetter, 6323 Glen Wilton, stated that workforce housing was needed in the area, but has been removed from the proposal. He stated a road to the existing highway would make sense environmentally and financially.

Ms. Sarah Kadec, 3504 Hunters Ridge, stated that she expects the Commission to follow its own Comprehensive Plan. The Comprehensive Plan should prohibit expansion of the PSA. The proposal’s school proffer removal and environmental impacts are negative.

Mr. Craig Metcalf, 4435 Landfall Drive, stated the Commission has gone against staff recommendations on the proposal. He stated he supported staff recommendations.

Mr. Bob Spencer, , Vice-President of the James City County Concerned Citizens (J4Cs), 9123 Bush Hill Drive, stated the newly adopted Comprehensive Plan was already being discarded. Staff recommendations are also ignored. The J4Cs recommended no expansion of the PSA during the Comprehensive Plan process. Proposed proffers should take effect immediately.

Mr. Peck closed the public hearing.

Mr. Joe Poole stated the application has gone from bad to worse since the last meeting. The density increase from .33 to 4.6 is unacceptable in an area designated Rural Lands by the Comprehensive Plan. Removed school proffers are also unacceptable. Moving outside the PSA sets a dangerous precedent. If the application is approved, proposals outside of the PSA will increase.

Mr. Krapf stated this case represents a litmus test of whether the Comprehensive Plan will be enforced. He stated if the proposal is approved, there will be heavy development pressure outside the PSA. The applications benefits are mostly hollow and already used for other requirements. Converting rural lands to Mixed Use outside the PSA is not the answer to growth.

Mr. Henderson stated if the PSA line were drawn topographically, and not arbitrarily, Deer Lake would already be in the PSA. He stated he would be prepared to support the applicant, but had wished to see additional restrictions. Colonial Heritage will not create a fiscal impact on Schools.

Mr. Fraley stated the proposal’s benefits are substantial. He stated the proposal’s Mixed Use areas extended too far. SUPs and rezoning are exceptions by nature, and will not set

precedent for future PSA discussions.

Mr. Peck stated the Comprehensive Plan makes the PSA a tool; it does not make the PSA inflexible. Positive proposed benefits compensate for extending the PSA. Both County water and rural lands policies should be reviewed comprehensively. The project is in the best interest of the County.

Mr. Poole stated he wished the issue of PSA expansion had been thoroughly discussed during the Comprehensive Plan process.

Mr. Peck stated the proposal's facts lead him to believe it follows the Comprehensive Plan.

Mr. Henderson moved for approval of the rezoning, special use permit, and master plan.

In a roll call vote, the Commission recommended approval (4-2: Yes: Maddocks, Fraley, Henderson, Peck; No: Poole, Krapf; Absent: Woods).

MEMORANDUM

DATE: July 13, 2010
TO: The Board of Supervisors
FROM: Angela M. King, Assistant County Attorney
SUBJECT: Ordinance to Vacate a Private Right-of-Way of Quarterpath Trail in Kingsmill

Busch Properties, Inc., has applied to vacate approximately 198,860 square feet of private right-of-way for Quarterpath Trail at its intersection with Southhall Road (see attached plat). The vacation is requested to allow Busch Properties, Inc., to negotiate with a property owner regarding a boundary line adjustment. Vacation of the entire right-of-way is required before the boundary line adjustment may proceed.

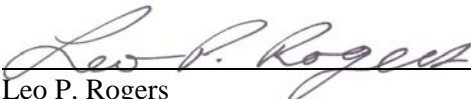
County staff has reviewed the request and has no objection to the vacation. There is no functional use of the right-of-way for streets or utilities.

After the required public hearing, staff recommends adoption of the attached vacation ordinance.



Angela M. King

CONCUR:



Leo P. Rogers

AMK/nb
KingsmillROW_mem

Attachments

ORDINANCE NO. _____

ORDINANCE TO VACATE A PRIVATE RIGHT-OF-WAY AS SHOWN ON THAT CERTAIN PLAT ENTITLED "PLAT OF RIGHT-OF-WAY VACATION QUARTERPATH TRAIL KINGSMILL ON THE JAMES" DATED MAY 6, 2010

WHEREAS, application has been made by Busch Properties, Inc., to vacate a private right-of-way located within the Kingsmill subdivision and shown on a plat more particularly described below; and

WHEREAS, notice that the Board of Supervisors of James City County would consider such application has been given pursuant to Section 15.2-2272 of the Code of Virginia, 1950, as amended; and

WHEREAS, the Board of Supervisors held a public meeting and did consider such application on the 13th day of July 2010, pursuant to such notice and the Board of Supervisors was of the opinion that such vacation would not result in any inconvenience and is in the interest of the public welfare.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Supervisors of James City County, Virginia, that the private right-of-way as shown on that certain plat, entitled "PLAT OF RIGHT-OF-WAY VACATION QUARTERPATH TRAIL KINGSMILL ON THE JAMES," dated May 6, 2010, and prepared by AES, Consulting Engineers, is hereby vacated.

This ordinance shall be in full force and effect from the date of its adoption.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July, 2010.

KingsmillROW_res

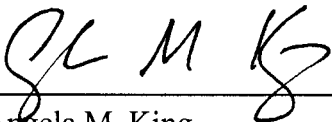
M E M O R A N D U M

DATE: July 13, 2010
TO: The Board of Supervisors
FROM: Angela M. King, Assistant County Attorney
SUBJECT: Transfer of Route 5 Transportation Improvement District (TID) Assets

Attached is a resolution which requests the Virginia Department of Transportation (VDOT) to assimilate three parcels of property into the existing right-of-way for existing Route 5000, Monticello Avenue.

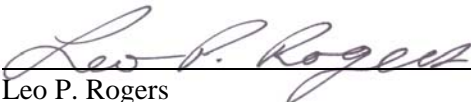
On August 12, 2008, the Transportation Improvement District (TID) Commission adopted a resolution which authorized the transfer of all residual assets (and any liabilities) of the TID to the County and to VDOT. The cash assets and four parcels of property (identified as Tax Map Nos. 4510100003, 4510100004, 4510100015, and 4510100019) were transferred to the County; however, the three parcels of property (identified as Tax Map Nos. 3830100024, 3830100025, and 3830100026) have not been transferred to VDOT. VDOT has requested that the three parcels of property be transferred to the County and that the County then request VDOT to assimilate the three parcels of property as supplemental right-of-way. The three parcels of property are slivers located in the VDOT right-of-way for Route 5000, Monticello Avenue. They are shown as fractions of an acre and have no practical value. The three parcels of property are the only remaining assets of the TID. On July 13, 2010, the TID approved transfer of these assets to the County so that the County may request VDOT to assimilate the parcels as supplemental right-of-way into the VDOT right-of-way for Route 5000, Monticello Avenue.

Staff recommends adoption of the attached resolution.



Angela M. King

CONCUR:



Leo P. Rogers

AMK/nb
TransferTrns_mem

Attachment

RESOLUTION

TRANSFER OF ROUTE 5 TRANSPORTATION IMPROVEMENT DISTRICT (TID) ASSETS

WHEREAS, the Route 5 Transportation Improvement District (TID) was created to finance the construction of a road known as Alternate Route 5 and which became an extension of Monticello Avenue; and

WHEREAS, the TID adopted a resolution on July 13, 2010, to transfer three parcels of property to the County (Tax Map Nos. 3830100024, 3830100025, and 3830100026) (the “Properties”); and

WHEREAS, the Properties are slivers of land located within the right-of-way for Route 5000, Monticello Avenue; and

WHEREAS, the County desires the Properties be incorporated as part of the right-of-way of the existing Route 5000 and cause it to be under the jurisdiction of the Virginia Department of Transportation (VDOT), and that VDOT take fee simple title of the Properties.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of James City County, Virginia, pursuant to §§33.1-229 and 33.1-69, Code of Virginia, 1950, as amended, the Board of Supervisors of James City County, Virginia, hereby establishes the supplemental right-of-way shown on the following referenced plat or plats, as recorded in the Clerk’s Office of the Circuit Court for James City County, as part of the abutting public road and requests VDOT to consolidate the supplemental right-of-way as part of the right-of-way of the State Route identified below and assume ownership and jurisdiction thereof:

State Route Number(s)	Plat Identification or Recordation Reference	Date Recorded
5000	TM No.: 3830100024 PB: 64/89-92	9/4/96
5000	TM No.: 3830100025 PB: 64/89-92	9/4/96
5000	TM No.: 3830100026 PB: 64/89-92	9/4/96

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Board of Supervisors hereby guarantees the supplemental right-of-way to be clear and unencumbered, any easements thereon having been quitclaimed, subject to a VDOT approved subordination of rights agreement, or otherwise found acceptable by VDOT to remain in place.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that a certified copy of this resolution and copies of the plat(s) referenced above shall be provided to the District Administrator and the Regional Right-of-Way Manager for VDOT.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July,
2010.

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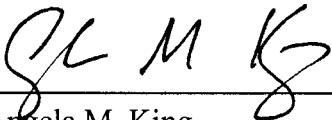
MEMORANDUM

DATE: July 13, 2010
TO: The Board of Supervisors
FROM: Angela M. King, Assistant County Attorney
SUBJECT: Dissolution of Route 5 Transportation Improvement District (TID)

Attached is a resolution which, if adopted by the Board of Supervisors, would dissolve the Route 5 Transportation Improvement District (TID).


At this time all of the debts of the TID have been paid, all of the assets of the TID have been transferred, and all of the purposes for which the TID was created have been fulfilled. Accordingly, there is no reason that the TID should continue to exist. In addition, dissolution of the TID is in the best interests of property owners and residents, and is in furtherance of the James City County Comprehensive Plan. The TID Commission adopted a resolution on July 13, 2010, recommending that the Board dissolve the TID. Should the Board adopt the attached resolution dissolving the TID, notice of such dissolution shall be recorded in the Clerk's Office of the Circuit Court for James City County.

Staff recommends adoption of the attached resolution.



Angela M. King

CONCUR:



Leo P. Rogers

AMK/nb
DissolTrns_mem

Attachment

RESOLUTION

DISSOLUTION OF ROUTE 5 TRANSPORTATION IMPROVEMENT DISTRICT (TID)

WHEREAS, the Route 5 Transportation Improvement District (TID) was created to finance the construction of a road known as Alternate Route 5 and which became an extension of Monticello Avenue; and

WHEREAS, all debts of the TID have now been paid, all assets of the TID have been transferred; and all purposes for which the TID was created have been fulfilled; and

WHEREAS, it is in best interests of the property owners and residents that the TID be dissolved; and

WHEREAS, such dissolution is in furtherance of the James City County's Comprehensive Plan; and

WHEREAS, notice that the Board of Supervisors would consider such dissolution at a public hearing on July 13, 2010, has been given; and

WHEREAS, the Board of Supervisors held a public meeting and did consider such dissolution on the 13th day of July 2010, pursuant to such notice and the Board of Supervisors was of the opinion that the purposes of the TID have been fulfilled, that such dissolution is in the best interests of the property owners and residents, and that such dissolution is in furtherance of the County's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors District of James City County, Virginia, hereby dissolves the Route 5 Transportation Improvement with a notice of such dissolution to be recorded in the Clerk's Office of the Circuit Court for James City County.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July, 2010.

DissolTrns_res

MEMORANDUM

DATE: July 13, 2010
TO: The Board of Supervisors
FROM: John E. McDonald, Manager, Finance and Management Services
SUBJECT: Referendum Question – November 2010

The Board of Supervisors has indicated an interest in a November 2010 referendum authorizing General Obligation bonds in an amount not to exceed \$30 million for stormwater projects. The Board has discussed the projects and the fiscal impact of a possible referendum with staff and representatives of the County's financial advisors, Davenport & Company, at a work session on June 22, 2010.

The attached resolution has been prepared by Stephen Johnson of Troutman Saunders, the County's bond counsel.

An inquiry from the Board at the work session to include a statement that this indebtedness could result in an increase in the real property tax rate of two cents was passed on to our bond counsel. It is his advice that lenders prefer straightforward referendum questions and the suggestion of a possible tax increase could adversely impact on the sale of the bonds. All information distributed to advise voters about the referendum will include a statement that a tax increase of two cents may be necessary to retire the bonds, with interest.

The original referendum question is, therefore, recommended for your consideration. Your approval of the attached resolution would authorize the question listed in the resolution to be included on the ballot for voters to consider in the general election on November 9, 2010.

John E. McDonald

CONCUR:


Sanford B. Wanner

JEM/gb
GenObliBonds_mem

Attachment

RESOLUTION OF THE BOARD OF SUPERVISORS OF JAMES CITY COUNTY, VIRGINIA,
TO

INCUR A DEBT IN THE FORM OF GENERAL OBLIGATION BONDS AND TO REQUEST A
PUBLIC REFERENDUM ON THE ISSUANCE OF SUCH BONDS TO FINANCE

STORMWATER MANAGEMENT PROJECTS

WHEREAS, the Board of Supervisors (the “Board”) of James City County, Virginia (the “County”) believes that it is necessary and expedient to undertake certain stormwater management projects in the County (collectively, the “Projects”); and

WHEREAS, the Board desires to determine the interest of the County’s qualified voters in issuing debt in the form of general obligation bonds to finance a portion of the cost of such Projects; and

WHEREAS, Section 15.2-2640 of the Code of Virginia of 1950, as amended (the “Code”), requires that the purposes for which the bonds are to be issued and the maximum amount of bonds to be issued be set forth in a resolution; and

WHEREAS, Sections 15.2-2610 and 15.2-2638 of the Code require that voter approval be obtained at a referendum before such bonds can be issued, and Section 15.2-2640 requires that the Board by resolution must request the Circuit Court for the City of Williamsburg and the County of James City, Virginia (the “Circuit Court”), to order an election on the question of contracting the debt and issuing the proposed bonds.

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

1. The Board finds and determines that it is necessary and expedient to undertake the Projects, all of which will promote the public welfare of the County and its inhabitants.
2. The Board determines that it is advisable to determine the interest of the qualified voters of the County on the incurrence of debt by the County in the form of the County’s general obligation bonds to finance the cost of the Projects.
3. The Board requests that the Circuit Court, pursuant to Sections 15.2-2610, 15.2-2611 and 24.2-684 of the Code, enter an Order requiring County election officials to conduct a special election for the qualified voters of the County on November 2, 2010, the day of the general election, and that a referendum question be placed on the ballot in substantially the following form:

QUESTION: Shall James City County, Virginia, contract a debt and issue its general obligation bonds in a principal amount not to exceed \$30,000,000 pursuant to the Public Finance Act of 1991, as amended, for the purpose of financing a portion of the cost of stormwater management projects?

() YES

() NO

4. The Clerk of the Board shall certify a copy of this resolution to the Circuit Court.
5. This resolution shall take effect immediately.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of July, 2010.

GenObliBonds_res

CERTIFICATION

The undersigned Clerk of the Board of Supervisors of James City County, Virginia hereby certifies that the foregoing constitutes a true, correct and complete copy of a resolution duly adopted by the Board of Supervisors of James City County, Virginia, at a meeting duly called and held on July 13, 2010, during which a quorum was present and acting throughout, by the vote set forth below, and that such resolution has not been repealed, revoked, rescinded, or amended:

<u>Board Member</u>	<u>Present/Absent</u>	<u>Vote</u>
James G. Kennedy, Chair		
Mary K. Jones, Vice Chair		
John J. McGlennon		
James O. Icenhour, Jr.		
Bruce C. Goodson		

WITNESS my signature as Clerk of the Board of Supervisors of James City County, Virginia, this _____ day of July, 2010.

Clerk, Board of Supervisors
James City County, Virginia

(SEAL)

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