

# **A G E N D A**

## **JAMES CITY COUNTY BOARD OF SUPERVISORS**

**County Government Center Board Room**

**November 27, 2012**

**7:00 P.M.**

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- A. CALL TO ORDER**
- B. ROLL CALL**
- C. MOMENT OF SILENCE**
- D. PLEDGE OF ALLEGIANCE** – Layla Brown, a 7<sup>th</sup> grade student at Berkeley Middle School
- E. PRESENTATIONS**
  - 1. Gold Medal Award Presentation to Department of Parks and Recreation
- F. PUBLIC COMMENT**
- G. BOARD REQUESTS AND DIRECTIVES**
- H. CONSENT CALENDAR**
  - 1. Minutes –
    - a. November 13, 2012, Regular Meeting
  - 2. Federal Grant Award – Bulletproof Vest Partnership (BVP) – \$9,750
  - 3. Grant Award – Dam Safety Assistance Fund for the Warhill Western Pond Dam – \$6,200
  - 4. Warhill Sports Complex Easement
- I. PUBLIC HEARINGS**
  - 1. Case No. ZA-0006-2012. Williamsburg Pottery – Proffer Violation Appeal (Lights)
  - 2. Case No. ZO-0007-2011 and Z-0009-2011. Residential Districts and Cluster Overlay District.  
Case No. ZO-0010-2012. Affordable and Workforce Terminology – Amendments to the Definitions Section and the Residential and Multiple Use Districts
- J. BOARD CONSIDERATIONS**
  - 1. Zoning Ordinance Transition
  - 2. Initiation of Rezoning, 225 Meadowcrest Trail
  - 3. Reimbursement of Capital Improvements
  - 4. Compensation Initiatives
- K. PUBLIC COMMENT**
- L. REPORTS OF THE COUNTY ADMINISTRATOR**
- M. BOARD REQUESTS AND DIRECTIVES**
- N. CLOSED SESSION**
- O. ADJOURNMENT** - 7 p.m. on December 11, 2012

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF NOVEMBER 2012, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. CALL TO ORDER**

**B. ROLL CALL**

John J. McGlennon, Chairman, Roberts District  
Mary K. Jones, Vice Chairman, Berkeley District  
W. Wilford Kale, Jr., Jamestown District  
James G. Kennedy, Stonehouse District, Present, via Phone  
James O. Icenhour, Jr., Powhatan District

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

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE** - Sam Collins, a recent graduate of Jamestown High School led the Board and citizens in the Pledge of Allegiance.

**E. PRESENTATIONS**

1. Resolution of Appreciation - Anheuser-Busch Williamsburg Brewery

Mr. McGlennon read the Resolution of Appreciation to representatives of Anheuser-Busch and the citizens recognizing their contributions to the County over the past 40 years.

2. Resolution of Appreciation - Ball Corporation Williamsburg Plant

Mr. McGlennon read the Resolution of Appreciation to the representatives of Ball Corporation Williamsburg Plant and the citizens recognizing their contributions to the County over the past 40 years.

3. Resolution of Appreciation - Mr. Dwight R. Dansby

Mr. McGlennon read the Resolution of Appreciation to Mr. Dwight Dansby and the citizens recognizing Mr. Dansby's contributions as the representative of the County to the Peninsula Alcohol Safety Action Program for several decades.

4. Virginia Department of Transportation (VDOT)

Mr. Rossi Carroll addressed the Board and the citizens giving an update on VDOT projects ongoing in the County.

Ms. Jones stated that she wanted to thank VDOT, and Mr. Carroll, for their responsiveness in handling issues in the County.

Mr. Icenhour thanked Mr. Carroll for getting the Old News Road Project underway. He also stated that he really appreciates the responsiveness of VDOT in regards to filling potholes. Mr. Icenhour stated that he appreciated VDOT and Mr. Carroll coming this evening and giving this update.

Mr. Carroll stated he wanted to make sure the citizens knew the number for the VDOT customer service line. This line is the easiest and most efficient way to report road issues and potholes directly to VDOT. Mr. Carroll stated that the customer service line is 1-800-4-ROADS (1-800-367-7623).

Mr. McGlennon stated that in the past, the Board would get printouts of the work orders and various projects going on in the County. He asked if the Board could begin getting those printouts again. Mr. McGlennon also stated that there are still citizen concerns over using the slurry seal for repaving and preserving road surfaces.

#### **F. PUBLIC COMMENT**

1. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board concerning the recent race for the Jamestown Board of Supervisors seat.

2. Mr. Keith White, 6309 Adam's Hunt Drive, addressed the Board concerning the recent race for the Jamestown Board of Supervisors Seat and the soon to be vacant Powhatan Seat.

3. Mr. David Allen, 2001 Busch Neck Road, addressed the Board concerning the Purchase of Development Rights easement listed under Board Considerations on the Agenda.

4. Ms. Caren Schumacher, 119 Elizabeth Harrison Lane, addressed the Board concerning the Purchase of Development Rights easement listed under Board Considerations on the Agenda.

5. Mr. John Pottle, 4233 Teakwood, a representative of Crosswalk Community Church, lead the Board and citizens in a moment of prayer.

6. Mr. Ed Oyer, 139 Indian Circle, addressed the Board stating that the Veteran's Day event at Stonehouse was great as usual.

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

Ms. Jones stated that she had a correction to the October 9, 2012, Regular Meeting Minutes in regards to the vote recorded for the nTelos Cell Tower Case. She stated that the amended minutes are before the Board this evening.

Mr. Icenhour stated that he had asked staff to put together information concerning filling the Powhatan District seat vacancy on the Board. He stated that he indicated to staff that he intended to assume the Jamestown Seat by December 1, 2012. He requested that staff brief the Board on the options that staff has prepared.

Mr. Middaugh stated there are two options in the form of a timeline. He stated that the Board could choose either option and if the Board so chooses, a special meeting can also be included in the timeline. He also stated that before the Board is a copy of the job description and the application for their approval.

Ms. Jones stated that Mr. White asked during the Public Comment if a special election could be held to fill the Powhatan District vacancy, and she thought it would be beneficial for that question to be answered.

Mr. Leo Rogers, County Attorney, stated that a special election cannot be held. He stated that elections are held in November and there is not enough time for one to be done. He stated that State Code provides for the appointment of a Supervisor to fill the vacancy until the following November election.

Mr. Icenhour asked that next year when the Powhatan Seat is voted on, will the winner be required to take the seat in 30 days or would it be like a normal election where the winner takes their seat in January.

Mr. Rogers stated that when filling a vacancy, the election is similar to a Special Election where the winner would be required to take their seat within 30 days of being so elected.

Mr. McGlennon asked the Board for any discussions on the timeline provided by Mr. Middaugh.

Mr. Kennedy stated that he had a question about the Board deciding whom to interview. He stated that was not part of the process last year.

Mr. McGlennon stated that last year the number of applications was a manageable number so the Board interviewed all of the applicants.

Mr. Middaugh stated that the Chairman was correct. The Board waited to see how many applications were received and then decided to interview them all.

Mr. Kennedy stated that the memorandum from staff does not mention anything about conducting the interviews live on television.

Mr. McGlennon asked the rest of the Board if there was any objection to televising the interviews.

Mr. Icenhour said he has no objection to doing the interviews on television. He stated that whom the Board interviews and whether or not they are televised are decisions that can be made at the next meeting. He stated that his concern was getting the application process going as quickly as possible. Mr. Icenhour stated that he is fine with the job description and the application. He stated that he wants staff to get the application process started.

Mr. Kennedy stated that he is concerned about the timeline. He stated that the closing date of November 30 is not a lot of time for people to get applications submitted because of the Thanksgiving Holiday.

Mr. Icenhour stated that Option 1 of the memorandum could be amended with a closing date of December 7 to allow for more time for the submittal of applications. He stated that would still allow for the Board to review applications prior to the December 11 meeting.

Mr. Middaugh asked in terms of the Friday, December 7 closing date, did the Board want to set a time of Noon, or close of business.

Mr. McGlennon stated that close of business was fine.

Mr. Icenhour stated that if that was acceptable, then he would like to make a motion adopting Option 1

of the staff memorandum with the change of the closing date to close of business on December 7, 2012.

Mr. Kennedy asked about the type of advertising being used.

Mr. Middaugh stated that a press release would be sent out to the papers, it would be on the County television station, as well as the County website.

Ms. Jones asked for clarification, for the citizens, about why there are still five Board members on the dais yet the Board is discussing the process for filling the vacancy of the Powhatan Seat.

Mr. Rogers stated that State Code provides a provision for filling a vacancy after a redistricting. That process allows for the Board to appoint someone to fill the vacancy until the next election and the winner of that election can qualify. He stated that the Code says that the winner has 30 days in which to qualify and take the oath.

Mr. Icenhour stated that he intended to qualify and take the oath of office sometime between November 28 and December 1.

Ms. Jones stated that any citizens that have questions regarding the process can contact any member of the Board or staff.

Mr. McGlennon stated that there was a motion on the floor and asked Mr. Middaugh to call the roll.

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

Mr. Kale asked the Chairman if he could address Mr. White's comments as well. He stated that there is no provision in the State Code to allow for a Special Election to fill a vacancy of a Board Supervisor. He stated that the Code implicitly states that the sitting Board has the right and the authority to fill the vacancy, and if that decision cannot be made in a specific amount of time, then the decision falls to the Circuit Court. He stated that what Mr. White wants would require a change to the State Code.

## **H. CONSENT CALENDAR**

1. Minutes -
  - a. October 23, 2012, Work Session
  - b. October 23, 2012, Regular Meeting
  - c. October 9, 2012, Amended Regular Meeting Minutes

2. Contract Award – Phase II, Jamestown Beach Park Shoreline Stabilization and Beach Restoration – \$188,524

### **RESOLUTION**

#### **CONTRACT AWARD – PHASE II, JAMESTOWN BEACH PARK SHORELINE**

##### **STABILIZATION AND BEACH RESTORATION – \$188,524**

WHEREAS, funds are available in the Special Projects/Grants fund and the Maintenance Equipment Jamestown Beach Account; and

WHEREAS, two bids were considered for award and Henry S. Branscome, LLC was the lowest responsive and responsible bidder.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract for Phase II Jamestown Beach Park Shoreline Stabilization and Beach Restoration to Henry S. Branscome, LLC in the amount of \$188,524.

3. Grant Appropriation – Clerk of the Circuit Court – \$46,766

### **RESOLUTION**

#### **GRANT APPROPRIATION – CLERK OF THE CIRCUIT COURT – \$46,766**

WHEREAS, the State Compensation Board has awarded a Technology Trust Fund grant to the Clerk of the Circuit Court totaling \$46,766; and

WHEREAS, the grant will be used for the replacement of computer equipment and records modernization; and

WHEREAS, no local match is required for this grant.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Projects/Grant Fund:

##### **Revenue:**

Revenue from the Commonwealth	<u>\$46,766</u>
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##### **Expenditure:**

Clerk of the Circuit Court	<u>\$46,766</u>
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4. Funds Transfer – Emergency Solid Waste Disposal Costs – \$14,000

**RESOLUTION**

**FUNDS TRANSFER - EMERGENCY SOLID WASTE DISPOSAL COSTS - \$14,000**

WHEREAS, in July 2012 a windstorm cause damage in various neighborhoods in James City County; and

WHEREAS, disposal fees for residents of the storm were waived to provide assistance to residents; and

WHEREAS, these disposal costs were incurred by the Solid Waste Division and paid from accounts for which there were not sufficient funds for such emergency costs.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the transfer of \$14,000 from Operating Contingency to Solid Waste.

5. Resolution of Appreciation - Anheuser- Busch Williamsburg Brewery

**RESOLUTION OF APPRECIATION**

**ANHEUSER-BUSCH WILLIAMSBURG BREWERY**

WHEREAS, Anheuser-Busch has served as an important industry icon in the United States since the 1860s and has had operations in James City County since December 1971; and

WHEREAS, the Anheuser-Busch Williamsburg Brewery investment of \$40 million was at the time the largest capital investment by an out-of-state company in Virginia; and

WHEREAS, Anheuser-Busch Williamsburg Brewery has helped attract other businesses to James City County thereby strengthening and diversifying the area's economic base; and

WHEREAS, Anheuser-Busch Williamsburg Brewery modernized its facility in 2006, a statement of its continued commitment to its investment in James City County; and

WHEREAS, Anheuser-Busch Williamsburg Brewery has been an exceptional corporate citizen through numerous sustainability practices and community involvement, including support of State institutions of higher education and social responsibility programs; and

WHEREAS, Anheuser-Busch Williamsburg Brewery has consistently demonstrated the essential qualities of being a model corporate citizen and has contributed to the economic vitality of James City County for the last 40 years.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby recognizes the past and future successes and the many contributions to the County and its citizenry and hereby extends its appreciation to

**ANHEUSER-BUSCH WILLIAMSBURG BREWERY**

6. Resolution of Appreciation - Ball Corporation Williamsburg Plant

**RESOLUTION OF APPRECIATION**

**BALL CORPORATION WILLIAMSBURG PLANT**

WHEREAS, Ball Corporation invested \$12 million to construct the Williamsburg Can Manufacturing Plant from the ground up in 1972 to support Anheuser-Busch Williamsburg Brewery; and

WHEREAS, Ball Corporation has continued to meet national can production needs for the last 40 years by diversifying its business; and

WHEREAS, Ball Corporation Williamsburg Plant has been a landfill-free facility since 2011, a demonstration of its commitment to sustainability practices; and

WHEREAS, Ball Corporation Williamsburg Plant has demonstrated commitment to community involvement with 100 percent employee participation in United Way and annual corporate donations to over 18 community organizations; and

WHEREAS, throughout the last 40 years of business, Ball Corporation Williamsburg Plant contributed to the economic vitality of James City County and consistently demonstrated the essential qualities of being a model corporate citizen in James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby recognizes the past and future successes and the many contributions to the County and its citizenry and hereby extends its appreciation to

**BALL CORPORATION WILLIAMSBURG PLANT**

7. Resolution of Appreciation - Mr. Dwight R. Dansby

**RESOLUTION OF APPRECIATION**

**MR. DWIGHT R. DANSBY**

WHEREAS, Mr. Dwight R. Dansby faithfully and with honor, integrity, and great distinction served as the representative of James City County to the Peninsula Alcohol Safety Action Program for several decades; and

WHEREAS, Mr. Dwight R. Dansby has always been mindful of alcohol awareness and safety and he has worked tirelessly to advance the Peninsula Alcohol Safety Action Program; and

WHEREAS, Mr. Dwight R. Dansby has provided outstanding leadership and guidance to the Peninsula Alcohol Safety Action Program; and

WHEREAS, Mr. Dwight R. Dansby served in many officer positions of the Policy Board throughout his years of volunteer service, and most recently served as Chair of the Policy Board during Fiscal Years 2009 and 2010.



NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby formally acknowledges and extends its profound appreciation to Mr. Dwight R. Dansby for his many years of volunteer service to James City County and to the cause of the Peninsula Alcohol Safety Action Program.

Mr. Kale made a motion to approve all nine items on the Consent Calendar.

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

## **I. PUBLIC HEARINGS**

### **1. Case No. SUP-0011-2012. Bernfeld Centerville Road Family Subdivision**

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

Mr. Icenhour asked for clarification on the layout of the lots. He stated it appeared that the larger lot would be in the front with the three smaller lots in the back.

Ms. Reidenbach stated that that is the intention, however it is subject to any RPAs and where the sewer lines are.

Mr. Kale asked if this is meant to have four lots on this property.

Ms. Reidenbach stated that that would be ideal.

Mr. Kale asked what is not ideal.

Ms. Reidenbach stated that soil samples have not been conducted yet. She stated if there is not adequate space for four lots because of the septic system, then the lots will have to be adjusted to what they can fit on the property.

Mr. McGlennon stated he had some concerns over the fact that the owner does not currently reside on the property. However, the owner has owned the property for about 10 years, and the plan is for the owner to move to the property with their family and reside there.

Ms. Reidenbach stated that yes that is the intention.

As the Board had no more questions for staff, Mr. McGlennon opened the Public Hearing.

As no one wished to speak on the issue, Mr. McGlennon closed the Public Hearing and looked to the Board for direction.

Ms. Jones made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). ABSTAIN: Mr. Kennedy (1). NAY: (0).

## **RESOLUTION**

### **CASE NO. SUP-0011-2012. BERNFELD CENTERVILLE ROAD FAMILY SUBDIVISION**

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. Mariann Bernfeld has requested an SUP to allow for a family subdivision with lots less than three acres in size in an A-1, General Agricultural, District, located at 6120 Centerville Road, further identified as James City County Real Estate Tax Map Parcel No. 3110100025; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-0011-2012; and

WHEREAS, the Board of Supervisors is of the opinion that the SUP to allow for the above-mentioned family subdivision should be approved.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. SUP-0011-2012, as described herein, pursuant to the following conditions:

1. **Plan.** This SUP is valid for a family subdivision for the creation of no more than three new lots and one parent lot with each lot being no less than one acre in size as generally shown on the plan drawn by L.V. Woodson and Associates, Inc., titled "A Survey for Conveyance to Robert H. Yancey, Lot 5 Deed of Partition, John Jones Estate," and dated June 1, 1993. The final number of lots shall be determined by the Director of Planning subject to a review of septic drainfield information and evaluation of Resource Protection Areas on the property.
2. **Access.** Only one entrance serving all lots through a shared driveway shall be allowed onto Centerville Road. The entrance shall meet all appropriate Virginia Department of Transportation (VDOT) requirements.
3. **Water Conservation Guidelines.** The applicant shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority prior to final subdivision plat approval. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources.
4. **Commencement.** Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the permit shall become void.
5. **Severance Clause.** The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

### 2. **Case No. SUP-0009-2012. Murphy Family Subdivision**

Mr. Luke Vinciguerra, Planner, addressed the Board giving a summary of the Staff Report found in the Agenda Packet.

Mr. Icenhour stated that the new lot is inside the RPA, and would need to have a new sewer line to the proposed house. He asked if putting in a sewer line would be permissible inside of the RPA.

Mr. Vinciguerra stated that the applicant has worked with the Health Department and the other lot is able to accommodate the sewer and drain field.

As the Board had no other questions for staff, Mr. McGlennon opened the Public Hearing.

Mr. Will Holt, of the Law Offices of Kaufman and Canoles, addressed the Board on behalf of the applicant. Mr. Holt gave the Board a brief summary of the case. Mr. Holt provided the Board with an aerial view of the property along Sycamore Landing Road. He noted that the Murphy's lot is much larger than the surrounding lots in the area. He stated that by subdividing the Murphy's lot, the resulting two lots would still be larger in size than the surrounding lots.

Mr. McGlennon asked the Board if there were questions for the applicant.

Seeing and hearing none, and as no one else wished to speak, Mr. McGlennon closed the Public Hearing.

Mr. Icenhour made a motion to approve the resolution.

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

## **RESOLUTION**

### **CASE NO. SUP-0009-2012. MURPHY FAMILY SUBDIVISION**

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, the applicant has requested an SUP to allow for a family subdivision with lots less than three acres in size in an A-1, General Agricultural, District, located at 10100 Sycamore Landing Road and further identified as James City County Real Estate Tax Map No. 0720300001; and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that the SUP to allow for the above-mentioned family subdivision should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Case No. SUP-0009-2012 as described herein with the following conditions:

1. This SUP is valid for a family subdivision for the creation of a lot approximately 1.2 acres in size with the remaining parcel approximately 1.24 acres in size as generally shown on the plan titled "Exhibit Showing Well And Drainfield Locations for Murphy Family Subdivision 10100 Sycamore Landing Road," prepared by AES Consulting Engineers, and dated September 4, 2012.
2. Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the SUP shall become void.

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

## **J. BOARD CONSIDERATIONS**

### **1. The Virginia Department of Transportation (VDOT) Revenue Sharing Program Fiscal Year 2014**

Ms. Tammy Rosario, Principal Planner, addressed the Board giving a summary of the Staff Report found in the Agenda Packet.

Ms. Jones asked for clarification on the County's matching funds. She stated that these funds have not been allocated yet and during the upcoming budget discussions, what happens if the County finds they cannot match.

Ms. Rosario stated that as the budget discussion unfolds, if the County finds they cannot match the funds, then staff would contact VDOT and have the applications pulled.

Mr. Kale stated that he believed the phrasing and language in the resolutions firmly commits the County to funding. He asked if the funding can come from the Contingency Budget that the County has now.

Mr. Rogers stated that it could be done, however he cannot speak to it from a budgetary sense. He stated that the purpose of this resolution is to get in to the grant pool with VDOT. He stated that if the County could not come up with the matching money, then the grant would fail, even if it had been awarded. He stated that the Board has the discretion to make those decisions at the budget discussions later. Mr. Rogers stressed that there is a timeline for these applications, and this resolution allows the County to proceed with the grant applications.

Ms. Jones asked Ms. Rosario what the timeline for submittal was.

Ms. Rosario stated that the applications need to be submitted by the end of November or beginning of December. She stated that the applications are reviewed through spring, when the County would then be notified of any grant money awarded. She stated that any grant awards would come in July, and the County would have a specified amount of time to act with the matching funds.

Ms. Jones stated that she wanted staff to make sure this item was on the agenda for the budget discussions.

Mr. Icenhour made note that the streets in the Williamsburg West Subdivision, which comprise a large chunk of the money in this Revenue Sharing project, are not in the VDOT system. He stated that the County is responsible for them, and by doing this project, these roads could be adopted into the VDOT system and no longer a liability for the County.

Mr. Icenhour made a motion to adopt the resolutions

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

**RESOLUTION**

**REVENUE SHARING PROGRAM-FISCAL YEAR 2014**

**7-ELEVEN ENTRANCE CHANNELIZATION ISLAND – \$30,000**

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$30,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2014 Revenue Sharing Program; and

WHEREAS, the County will allocate \$30,000 to match Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$60,000 is requested to fund the entrance channelization island at the 7-Eleven at 4840 Longhill Road.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$30,000 through the VDOT Revenue Sharing Program and further approves a County contribution up to \$30,000 toward this project.

**RESOLUTION**

**REVENUE SHARING PROGRAM-FISCAL YEAR 2014**

**WILLIAMSBURG WEST SUBDIVISION STREET RECONSTRUCTION – \$200,000**

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$200,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2014 Revenue Sharing Program; and

WHEREAS, the County will allocate \$200,000 to match Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$400,000 is requested to fund the reconstruction of Williamsburg West subdivision roads.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$200,000 through the VDOT Revenue Sharing Program and further approves a County contribution up to \$200,000 toward this project.

**RESOLUTION**

**REVENUE SHARING PROGRAM-FISCAL YEAR 2014**

**BIKE/PEDESTRIAN CAPITAL TRAIL ACCESS – \$25,000**

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$25,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2014 Revenue Sharing Program; and

WHEREAS, the County will allocate \$25,000 to match Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$50,000 is requested to fund bike-pedestrian access connections at the Monticello Avenue (Route 321)/John Tyler Highway (Route 5) intersection.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$25,000 through the VDOT Revenue Sharing Program and further approves a County contribution up to \$25,000 toward this project.

2. Purchase of Development Rights – Offer to Sell a Conservation Easement - \$1,300,000

Mr. Douglas Powell, Assistant County Administrator, addressed the Board giving a summary of the Memorandum in the Agenda Packet.

Ms. Jones asked for clarification on the development potential by the owner.

Mr. Powell stated currently there are five lots, but by right there could be up to nine lots.

Ms. Jones stated that if there was significant investment in the property, including public utilities and road improvements, there would be the development potential of up to 20 additional lots.

Mr. Powell stated that was correct.

Mr. Kennedy stated he would not be supporting this resolution. He stated that he supports the PDR program, but he cannot support this particular application because of the high price and that the property is not in danger.

Ms. Jones stated that she would not be supporting this resolution either. She stated that she supports the program and preserving the nature in the community. However, she stated that she does not believe the development potential is dire, and this purchase would be the largest cost outlay purchase from this program. Ms. Jones stated that while the County can spend the money, she stated that she is not sure that the County should.

Mr. Kennedy stated that he wanted to clarify the phrase “land czar” that many citizens have been speaking out against. He stated that no one on the Board, or staff, ever used that phrase. He stated that the phrase was coined and penned by The Virginia Gazette in one of their headlines.

Mr. Kale stated that he disagreed with Ms. Jones and Mr. Kennedy in regards to the development potential of this property. He stated that in conjunction with another property, the development potential is very high; and he stated that he believes this application will save the property from future development. Mr. Kale stated that he strongly supports this application and hopes that the surrounding landowners will get involved with the PDR program in the future which would protect the whole area from future development.

Mr. Icenhour stated that the application meets every requirement of the program guidelines that the County set up. He stated that it is not necessary to use the bond funds. He stated that if this application receives considerable opposition from the Board, than he would suggest that it is time to reevaluate the entire PDR program. He stated that he would be supporting this application because he believes that the development potential is great and could negatively affect the County if it was developed in the future. Mr. Icenhour also stated that the Board needs to have a serious discussion on the future of this program.

Mr. Kennedy stated that these applications are brought before the Board for a reason, and nowhere in

the guidelines of the program does it say that the Board is obligated to vote in the affirmative. Mr. Kennedy also stated that the Board did have discussions about the PDR program during a work session in the past few months. He stated that there were discussions about green space and land programs. He stated that he is supportive of the programs, just not supportive of this project for the reasons he gave earlier. He stated that the cost of development would be astronomical and therefore he does not believe this property is at risk of development. He stated he is disappointed that the County has not been able to secure PDR rights on other larger pieces of property that are in more scenic areas of the County.

Ms. Jones stated that she continues to hear concerns from citizens about the County spending money on these land acquisitions that could be better utilized elsewhere. She stated that the money would be better served by being prepared for a downturn in the economy, helping to keep taxes low, and supporting our schools and public safety. She stated that hearing those comments from citizens affects her decision and when weighed with the low development potential for this property, she cannot support the application.

Mr. McGlennon stated that he respects the differing opinions of the Board members. He stated that he appreciates Mr. Kennedy being supportive of the program and can understand his concerns over this particular application. Mr. McGlennon stated that he has heard different comments from citizens about this program, and most seem to be in favor of it. He stated that if the County wants landowners to believe that the County is serious about this program, then the ranking system in place in the system should carry some weight in the decision. Mr. McGlennon stated that he is definitely in favor of this application.

Mr. Kale made a motion to approve the resolution.

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

## **RESOLUTION**

### **PURCHASE OF DEVELOPMENT RIGHTS (PDR) - OFFER TO SELL A**

### **CONSERVATION EASEMENT - \$1,300,000**

WHEREAS, the County has received an offer to sell a conservation easement under the Purchase of Development Rights (PDR) Program from David H. and Stephanie M. Allen, owners of the property known as 2001 Bush Neck Road; and

WHEREAS, the owner offered to sell a conservation easement on the property for a purchase price of \$1,300,000 subject to the conditions set forth in the proposed deed of easement referenced in the County's invitation of offer.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the offer to sell a conservation easement described above, or as modified by the County Attorney and authorizes the County Administrator to execute all documents necessary for completing the acquisition.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby directs the PDR Administrator to send a copy of this resolution to the owner of the property identified herein.

**K. PUBLIC COMMENT**

1. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board concerning spending and the PDR program.
2. Mr. Ed Oyer, 139 Indian Circle, addressed the Board concerning spending 1.3 million dollars on land conservation.
3. Mr. Keith White, 6309 Adams Circle Drive, addressed the Board concerning the disenfranchisement of the Powhatan District.

**L. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Middaugh stated that between November 5 and November 19 and January 2 and January 14, James City County residents may drop off leaves free of charge at the Jolly Pond Convenience Center, 1204 Jolly Pond Road, daily between 7 a.m. and 5 p.m. The County will provide one round of curbside leaf collection, and the collection dates are available on the County Website.

Mr. Middaugh stated that the County is offering citizens and visitors another family-friendly recreational opportunity in New Town, a synthetic ice skating rink in Sullivan Square. The rink opens daily after Thanksgiving, November 23 through January 13. Skating is \$7/person including skate rental or \$5/person with your own skates. Season passes are also available for \$50 and include skates. Sullivan Square is located behind Legacy Hall, in New Town, at 4301 New Town Avenue. Hours of operation and more information are available on the County Website.

**M. BOARD REQUESTS AND DIRECTIVES**

Ms. Jones stated that on Thursday she would be attending the HRTPO and the HRPD board meetings. She asked that staff and citizens look at the legislative agendas online and pass along any comments or suggestions to her prior to the meeting.

Mr. Icenhour stated that he attended the VACo conference with Mr. Middaugh. He stated that the presentation to the finance committee by Delegate Watson was very interesting. He stated that Delegate Watson is supporting a piece of legislation that will add a tax increase on gas to help cover the transportation funding deficit.

Mr. Icenhour requested that staff update the Board on the County's plans to accommodate Black Friday.

Mr. Powell stated that the plan for Black Friday is similar to what has been done in the past few years. He stated that off-site parking will be available and that police will be patrolling the neighborhoods to prevent unauthorized parking.

Mr. Kale asked if unauthorized vehicles in those neighborhoods adjacent to Premium Outlets are able to be moved or towed.

Mr. Powell stated that because of the presence of the police officers they have been able to prevent the parking issues in those neighborhoods. He stated that the County has not had to tow anyone.

Mr. Middaugh stated that the police officers actually intercept the vehicles as they are coming into the



neighborhoods, and turn around those cars that do not reside there.

Mr. McGlennon stated that he also attended the VACo conference and the High Growth Coalition Meeting. He also stated that last week the County held their Celebration of Business with the EDA and recognized our Captain John Smith Award winner, Kingsmill.

**N. CLOSED SESSION** – None

**O. ADJOURNMENT** – to 4 p.m. on November 27, 2012

Mr. Kale made a motion to adjourn the meeting until 4 p.m. on November 27, 2012.

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

At 9:02 p.m., Mr. McGlennon adjourned the meeting.

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Robert C. Middaugh  
Clerk to the Board

111312bos\_min

## MEMORANDUM COVER

**Subject:** Federal Grant Award – Bulletproof Vest Partnership (BVP) – \$9,750

**Action Requested:** Shall the Board approve the resolution that accepts the Bulletproof Vest Partnership grant award?

**Summary:** The James City County Police Department has been awarded a Bulletproof Vest Program (BVP) grant from the Office of Justice Programs' Bureau of Justice Assistance for \$9,750 (\$4,875 grant/\$4,875 local match). The funds are to be used to purchase approximately 15 replacement bulletproof vests for officers.

Staff recommends adoption of the attached resolution to appropriate funds.

**Fiscal Impact:** Requires cash match of \$4,875.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.:** H-2

**Date:** November 27, 2012

## M E M O R A N D U M

DATE: November 27, 2012

TO: The Board of Supervisors

FROM: Emmett H. Harmon, Chief of Police

SUBJECT: Federal Grant Award – Bulletproof Vest Partnership (BVP) – \$9,750

---


The James City County Police Department has been awarded a Bulletproof Vest Program (BVP) grant from the Office of Justice Programs' Bureau of Justice Assistance for \$9,750 (\$4,875 grant/\$4,875 local match). The funds are to be used to purchase approximately 15 replacement bulletproof vests for officers.

The Bulletproof Vest Program has typically been a recurring grant program made available each year to law enforcement agencies throughout the United States. This grant expires August 31, 2014, which allows replacement of vests as needed or the purchase of vests for new officers throughout the grant period.

Each sworn officer within the Department is offered a bulletproof vest as part of their normal issued equipment. Currently, 99 bulletproof vests are issued. Unless recalls are made or the vest is damaged, the lifespan of vests is typically five years. The vests used by the Department are engineered for superior performance and integrate high-performance ballistic materials with a temperature-regulating carrier for maximum comfort. Additionally, the vest carriers utilize technology, a fabric designed to dissipate the electric charge delivered by electronic control devices, such as a TASER.

The grant requires a match of \$4,875, which is available in the Special Projects/Grants Fund.

Staff recommends adoption of the attached resolution to appropriate funds.

  
Emmett H. Harmon

EHH/nb  
GA-BProofVest\_mem

Attachment

## RESOLUTION

### FEDERAL GRANT AWARD – BULLETPROOF VEST PARTNERSHIP (BVP) – \$9,750

WHEREAS, the James City County Police Department has been awarded a Bulletproof Vest Program (BVP) grant from the Office of Justice Programs' Bureau of Justice Assistance for \$9,750 (\$4,875 grant/\$4,875 local match); and

WHEREAS, the grant requires a match of \$4,875, which is available in the Special Projects/Grants Fund; and

WHEREAS, the funds are to be used to purchase approximately 15 replacement bulletproof vests for officers.

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 appropriation amendment to the Special Projects/Grants Fund:

Revenues:

BVP-FY 12	\$4,875
Grant Match Account	<u>4,875</u>
Total:	<u>\$9,750</u>

Expenditure:

BVP – FY 12	<u>\$9,750</u>
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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

GA-BProofVest\_res

## MEMORANDUM COVER

**Subject:** Grant Award – Dam Safety Assistance Fund for the Warhill Western Pond Dam – \$6,200

**Action Requested:** Shall the Board approve the attached resolution to accept the \$6,200 grant for the Warhill Sport Complex Western Pond Dam?

**Summary:** The Virginia Department of Conservation and Recreation has awarded a Dam Safety, Flood Prevention, and Protection Assistance Fund grant to James City County in the amount of \$6,200 for the development of a dam break inundation zone map required for the County owned and operated Western Pond Dam at the Warhill Sports Complex. The dam break map is required to renew the regular six-year Operation and Maintenance certificate to comply with State dam safety regulations. The project has an estimated cost of \$12,500. The terms of the grant agreement require a County match of \$6,300.

Staff recommends adoption of the attached resolution.

**Fiscal Impact:** The County will save \$6,200 of the cost required to remain compliant with State dam safety regulations.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.:** H-3

**Date:** November 27, 2012

**MEMORANDUM**

DATE: November 27, 2012

TO: The Board of Supervisors

FROM: Scott J. Thomas, Director of Engineering and Resource Protection

SUBJECT: Grant Award – Dam Safety Assistance Fund for the Warhill Western Pond Dam – \$6,200

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The Virginia Resources Authority, as administrator of the Dam Safety, Flood Prevention, and Protection Assistance Fund for the Virginia Department of Conservation and Recreation, has awarded James City County a \$6,200 grant for dam break inundation zone analysis, mapping, and digitization, known as a dam break inundation map, for the Warhill Sports Complex Western Pond Dam, State Inventory No. 09528. A dam break inundation map is an engineering analysis using topographic information and computer models to examine the area downstream of a dam that may be inundated or otherwise directly affected by failure of a dam. This analyses is performed using several different dam break scenarios and results are used to determine the hazard classification of the dam for permitting purposes and any preparedness or emergency actions that may be required under threatening or failure conditions.

Grants from the fund require a minimum 50 percent match by the recipient and funds are dispersed and reimbursed after completion of work. The County does not have the tools or resources to perform dam break inundation mapping; therefore, it intends to contract with a qualified consultant from the County's Annual Service Contract list to develop deliverables as required by the terms of the grant agreement and to meet the provisions of Virginia Dam Safety Act and Impounding Structure Regulations. The estimated cost of the project is \$12,500 with County match required at \$6,300. This amount is available in the County's Grant Match Account with appropriation to the Special Projects/Grant Fund.

The Warhill Western Pond Dam is situated in the woods west of the Warhill Trail entrance road behind the basketball courts and the former soil stockpile/storm debris staging area. The Western Pond Dam is a recreational amenity and part of Warhill District Park master plan. The dam/lake was upgraded to serve as a regional Best Management Practice (BMP) as part of the Warhill Public-Private Education Facilities and Infrastructure Act (PPEA) project by the County in 2005-2006. The BMP serves a drainage area of 200 acres and provides water quality and stream channel protection volume control for most of the drainage area associated with the Williamsburg Outlet Mall, Warhill High School, Law Enforcement Center, Sanford B. Wanner community sports stadium, Thomas Nelson Community College, Opportunity Way, stadium access road, and the six synthetic turf athletic fields. The Western Pond Dam controls large storm events and outlets into the natural water storage area of the former Warhill Trail Dam (Warhill Trail Road) which was recently decommissioned.

The County currently owns and operates the Western Pond Dam. The County brought the dam into compliance with State dam safety standards in 2005 by obtaining an alterations permit and a conditional (temporary) Operation and Maintenance (O&M) Certificate in 2005. In 2006 a regular, six-year O&M Certificate was then secured. At that time, the State assigned a Class III hazard classification to the impounding structure and a dam break inundation map was not required. The current O&M Certificate expired July 31, 2012. The County made submission for renewal of the six-year certificate in June 2012. However, because of dam safety law and regulation changes in 2008, dams are now classified in a different manner and a comprehensive dam break inundation map submittal is required. To remain in compliance during this interim period, the County has secured a conditional (temporary) O&M Certificate for the Western Pond Dam which is good until July 31, 2013.

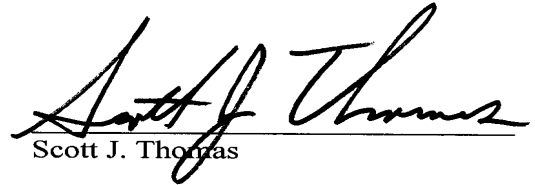
Grant Award – Dam Safety Assistance Fund for the Warhill Western Pond Dam – \$6,200

November 27, 2012

Page 2

Recommendation:

Accepting the grant will save the County \$6,200 of the cost required to remain compliant with State dam safety regulations. Staff recommends approval of the attached resolution to accept the \$6,200 grant, execute the grant agreement, and appropriate the funds as described.



Scott J. Thomas

CONCUR:

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Allen J. Murphy, Jr.

SJT/nb

GA-WarhillDam\_mem

Attachment

## RESOLUTION

### GRANT AWARD – DAM SAFETY ASSISTANCE FUND FOR THE

#### WARHILL WESTERN POND DAM – \$6,200

WHEREAS, the Virginia Department of Conservation and Recreation and the Virginia Resources Authority, as administrator of the Dam Safety, Flood Prevention, and Protection Assistance Fund, has awarded James City County a grant to improve dam safety; and

WHEREAS, funds are needed for the Warhill Western Pond Dam to develop a dam break inundation map as required for renewal of a regular six-year Operational and Maintenance Certificate in accordance with Virginia Dam Safety Act and Impounding Structure Regulation Requirements; and

WHEREAS, the award is in the amount of \$6,200 (\$6,300 local match required); and

WHEREAS, the matching funds of \$6,300 are available in the County's Grant Match Account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the \$6,200 grant awarded by the Virginia Department of Conservation and Recreation and the Virginia Resources Authority for the Warhill Western Pond Dam and authorizes the County Administrator to execute the grant agreement.

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:

Revenues:

Dam Safety Assistance Fund	\$ 6,200
County's Grant Match Account	\$ 6,300
Total:	<u>\$12,500</u>

Expenditure:

Warhill Western Pond Dam	<u>\$12,500</u>
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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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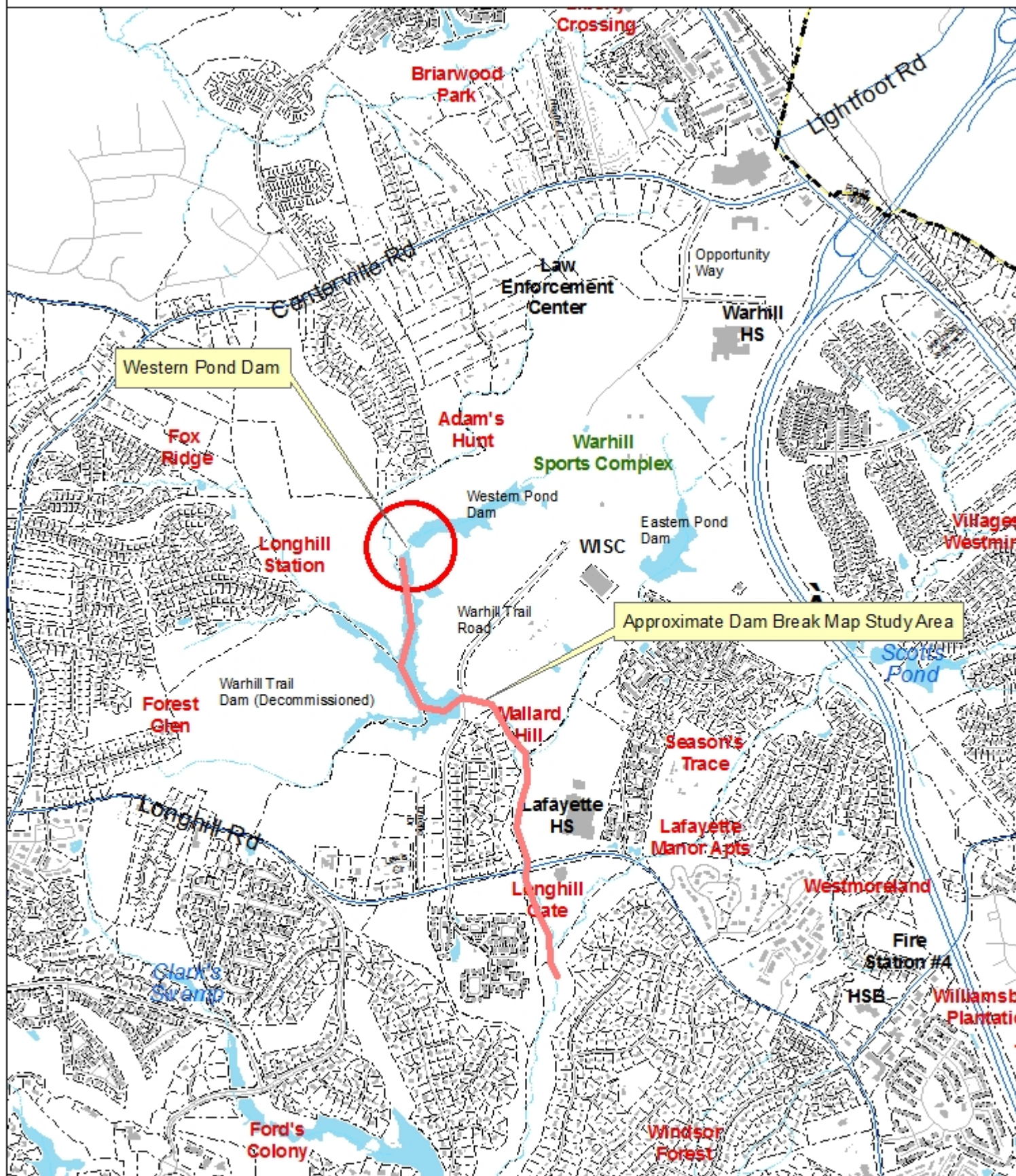
Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

GA-WarhillDam\_res



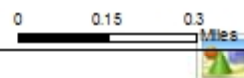


## Grant Award - Dam Safety Assistance Fund for the Warhill Western Pond Dam - \$6,200



This drawing is neither 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.



## MEMORANDUM COVER

**Subject:** Warhill Sports Complex Easement

**Action Requested:** Shall the Board of Supervisors approve an easement to Dominion Virginia Power to bring electrical service to existing basketball courts?

**Summary:** As part of the FY 13 Capital Improvements Program (CIP) budget, funds were approved for the lighting of the existing basketball courts at the Warhill Sports Complex. Dominion Virginia Power currently has easements in place for all existing power in the park and a new easement is required to establish service to the basketball courts. Utility lines will be contained underground.

In order for the lighting to be operational by spring and the project to remain on schedule, the approval of the easement is necessary.

Staff recommends approval of the attached resolution.

**Fiscal Impact:** \$190,000 is approved in the FY 13 CIP to complete the project.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution
3. Location Maps

**Agenda Item No.:** H-4

**Date:** November 27, 2012

**MEMORANDUM**

DATE: November 27, 2012

TO: The Board of Supervisors

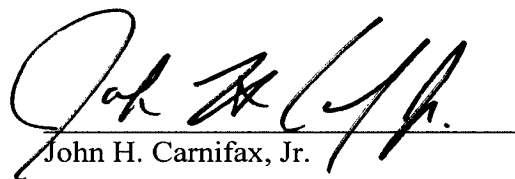
FROM: John H. Carnifax, Jr., Director of Parks and Recreation

SUBJECT: Warhill Sports Complex Easement

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As part of the Fiscal Year 2013 Capital Budget, funds were approved for the lighting and resurfacing of basketball courts at the Warhill Sports Complex. Currently, Dominion Virginia Power has easements within the park for all areas served by power and a new easement is necessary to establish service at the basketball courts. Utility lines will be placed underground. The scheduled completion date for the project is spring 2013 and the approval of the attached easement is necessary to ensure timely completion of the project.

Staff recommends approval of the attached resolution granting an easement to Dominion Virginia Power to establish electrical service at the basketball courts in the Warhill Sports Complex.



John H. Carnifax, Jr.

JHC/gb  
WSC-Easement\_mem

Attachments

## RESOLUTION

### WARHILL SPORTS COMPLEX EASEMENT

WHEREAS, funds have been approved in the County Capital budget to support lighting of basketball courts at the Warhill Sports Complex; and

WHEREAS, electrical service is currently not provided to site location; and

WHEREAS, easement granted to Dominion Virginia Power is necessary to establish new service in the location of the park.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby grants Dominion Virginia Power an easement as defined on the attached map to establish electrical service at the basketball courts within the Warhill Sports Complex.

\_\_\_\_\_  
John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

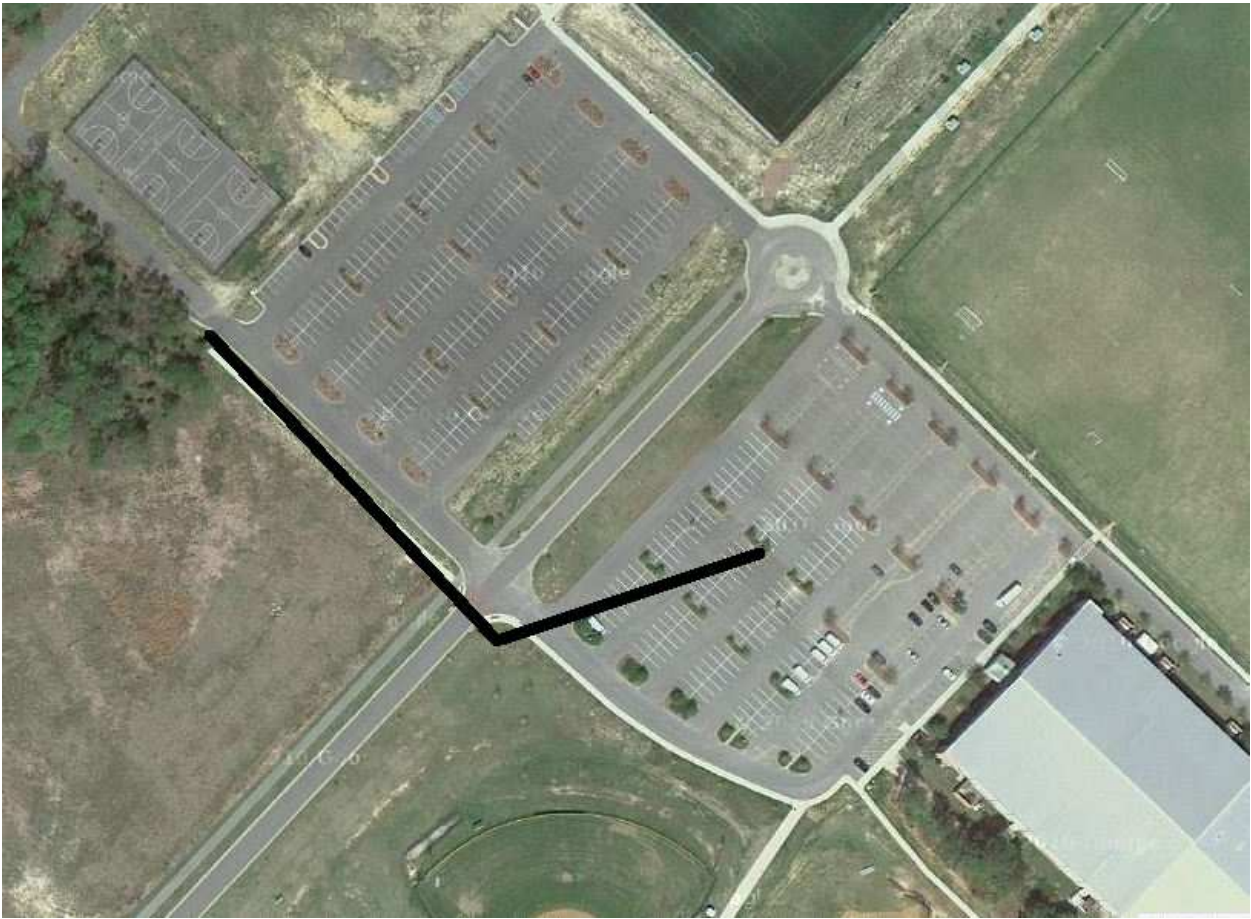
\_\_\_\_\_  
Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

WSC-Easement\_res





Easement follows black line and is 15' wide. Utility work underground.



## MEMORANDUM COVER

**Subject:** Case No. ZA-0006-2012. Williamsburg Pottery – Proffer Violation Appeal (Lights)

**Action Requested:** Shall the Board of Supervisors defer the appeal request to the December 11, 2012, meeting or uphold the Acting Zoning Administrator’s interpretation that the LED lights affixed to the building and entrance features at the Williamsburg Pottery are in violation of the recorded proffers?

**Summary:** At its meeting on October 23, 2012, the Board of Supervisors deferred action on Case No. ZA-0006-2012, Williamsburg Pottery Proffer Violation Appeal, with the condition that the LED lights be turned off during the hours of darkness with the exception of November 23-25, 2012, when the LED lights can remain on at nighttime. This deferral was to allow the applicant additional time to investigate and demonstrate whether or not a diffuser cap over the LED lights would adequately shield the light source from view. On November 8, 2012, Ms. Gloria Freye with McGuire Woods on behalf of the Williamsburg Pottery requested an additional deferral of this case to the December 11, 2012 meeting. Ms. Freye states that the Williamsburg Pottery “is in dispute with its contractor on the project with responsibility for the lights and will not be in a position to commit to any solution until after a formal mediation which is scheduled for November 29, 2012.” The dispute between the Williamsburg Pottery and its contractor is a private matter and staff does not support the deferral request. Staff has not received any additional information on the proposed diffuser cap solution nor any alternative solution since the October 23, 2012, Board of Supervisors meeting.

Staff recommends that the proffer interpretation be upheld and that the Board of Supervisors deny the violation appeal request.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution
3. Deferral Request

**Agenda Item No.: I-1**

**Date:** November 27, 2012

## M E M O R A N D U M

DATE: November 27, 2012

TO: The Board of Supervisors

FROM: Christy H. Parrish, Acting Zoning Administrator

SUBJECT: Case No. ZA-0006-2012. Williamsburg Pottery – Proffer Violation Appeal (Lights)

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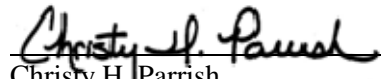
At its meeting on October 23, 2012, the Board of Supervisors deferred action on Case No. ZA-0006-2012, Williamsburg Pottery Proffer Violation Appeal with the condition that the LED lights be turned off during the hours of darkness with the exception of November 23-25, 2012, when the LED lights can remain on at nighttime. This deferral was to allow the applicant additional time to investigate and demonstrate whether or not a diffuser cap over the LED lights would adequately shield the light source from view.

On November 8, 2012, Ms. Gloria Freye with McGuireWoods on behalf of the Williamsburg Pottery requested an additional deferral of this case to the December 11, 2012, meeting. Ms. Freye states that the Williamsburg Pottery “is in dispute with its contractor on the project with responsibility for the lights and will not be in a position to commit to any solution until after a formal mediation which is scheduled for November 29, 2012.”

The dispute between the Williamsburg Pottery and its contractor is a private matter and staff does not support the deferral request. Staff has not received any additional information on the proposed diffuser cap solution nor any alternative solution since the October 23, 2012, Board of Supervisors meeting.

The LED lights were affixed to the building and entrance features and illuminated in April 2012. Staff met with the Williamsburg Pottery staff on May 9, 2012, noting that the LED lights were in violation of the recorded proffers and discussed potential remedies which would abate the violation. Following the meeting, a violation letter was issued on July 2, 2012, since no solution had been offered. On August 9, 2012, an appeal of my decision to the Board of Supervisors was submitted. Legal counsel for the Williamsburg Pottery has requested deferral of this case four times since the appeal was filed. Two requests were processed administratively, one request was granted by the Board of Supervisors on October 23, 2012, and the latest request is pending action.

It continues to be my determination that the LED lights affixed to the building and entrance features are in violation of the recorded proffers. If a solution to shield the light source is not found, permanently disabling or removal of the LED lights is necessary to abate the violation. This proposed 60-day time period to provide an acceptable solution and a timeline to abate the violation should provide adequate and reasonable time for the owner to address the violation and it would set a firm deadline to abate the violation. However, should the Board wish to grant the deferral request, staff recommends deferring this appeal to the January 8, 2012, meeting to allow adequate time for staff to review and report any progress.

  
Christy H. Parrish

CONCUR:

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Allen J. Murphy, Jr.

CHP/nb  
ZA06-12Pottery\_mem

Attachments:

1. Deferral Request
2. Resolution

## **RESOLUTION**

**CASE NO. ZA-0006-2012. WILLIAMSBURG POTTERY –**

### **PROFFER VIOLATION APPEAL (LIGHTS)**

WHEREAS, Mr. Vernon Geddy and Mr. Thomas K. Norment, Jr., on behalf of the property owners (the “Appellant”, have appealed the Zoning Administrator’s decision of the accepted proffers for the Williamsburg Pottery development to the Board of Supervisors; and

WHEREAS, the Board of Supervisors at its meetings on October 23, 2012, and November 27, 2012, held a public hearing and considered the statements made by the public and also reviewed and considered the materials and testimony offered by the Zoning Administrator and the Appellant; and

WHEREAS, the Board of Supervisors is of the opinion that the decision of the Zoning Administrator is correct and that the Appellant’s appeal should be denied.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby uphold the Zoning Administrator’s decision that the LED lighting affixed to the buildings and entrance features and illuminated at the Williamsburg Pottery located at 6992 Richmond Road (the “Property”) is in violation of the recorded proffers and in consideration of such decision, the Board of Supervisors makes the following specific findings of fact:

1. Section 15.2-2299 of the *Code of Virginia*, 1950, as amended (the “Virginia Code”), authorizes the Zoning Administrator to administer and enforce proffers attached to a rezoning. Sections 15.2-2301 of the Virginia Code directs the Board of Supervisors to consider any appeal from a decision rendered pursuant to Section 15.2-2299 of the Virginia Code; accordingly, the Board of Supervisors has jurisdiction to hear this appeal.
2. The Board of Supervisors must give deference to the Zoning Administrator’s determination.
3. The Board of Supervisors approved Rezoning Case No. Z-0002-2010 by resolution on March 22, 2011, rezoning 18.78 acres from M-I, Limited Business/Industrial, to M-1, Limited Business/Industrial, and accepted amended voluntary proffers.
4. Proffer No. 4 states that “all external lights on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No glare defined as 0.1 footcandle or higher shall extend outside the property lines of the Property unless otherwise approved by the Planning Director. Owner shall submit a lighting plan to the Director of Planning for review and approval for consistency with the Proffer prior to final site plan approval.”



5. The Board of Supervisors finds that the LED lighting on the building façade and entrance feature installed and illuminated on the Property is in violation of Proffer No. 4.
6. A solution to shield the LED lighting as described in Proffer No. 4 and timeline to abate the proffer violation shall be approved by the Planning Director and Zoning Administrator within 60 days of approval of this resolution or the LED lighting shall be permanently disabled or removed from the building facade and entrance feature within 90 days of approval of this resolution.
7. The LED lighting shall remain off until a solution and timeline to abate the proffer violation is approve as prescribed in Condition No. 6.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

ZA06-12Pottery\_res

November 8, 2012

**VIA E-MAIL (Leo.Rogers@jamescityva.gov)**

Leo Rogers, Esquire  
County Attorney's Office  
101-D Mounts Bay Rd.  
Williamsburg, VA 23185

Williamsburg Pottery

Dear Leo:

On behalf of the Williamsburg Pottery (the "Pottery") we are requesting a two week deferral of the hearing on Case No. ZA-0006-2012 from the November 27, 2012 Board of Supervisors meeting to the Board's December 11, 2012 meeting. The Pottery recognizes and appreciates that the County Administration and Board have already deferred this matter to allow time to find a solution that would bring the LED lighting system into compliance with the zoning proffer.

The Pottery has made some progress with possible solutions and is taking steps to actually test those options. However, the Pottery is in a dispute with its contractor on the project with responsibility for the lights and will not be in a position to commit to any solution until after a formal mediation which is scheduled for November 29, 2012. Unfortunately, the mediation is two days past the currently scheduled Board hearing date. The LED lights are a major component of the issues to be mediated. The Pottery would very much like to keep all the options available to the mediator in reaching a resolution of the construction issues. The two week deferral would facilitate that goal and enable the Pottery to determine what commitments it can make to the County to bring the LED lighting system into compliance with the zoning proffer.

The Pottery agrees to not use the lights in any form or fashion, except for the period permitted by the Board from November 23, 2012 through November 25, 2012 and confirms its prior agreement to waive any right to assert that the County failed to comply with the provisions of Section 24-19 of the County Code requiring that the Board of Supervisors hear the appeal within 45 days of the date of filing.

November 8, 2012

Page 2

We are glad to provide any additional information needed.

With sincere appreciation for consideration of the requested deferral I am,

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Gloria".

Gloria L. Freye

GLF/rcm

cc: Kimberly Maloney  
Peter Kao  
Thomas K. Norment, Jr.  
Vernon M. Geddy, III

V43383158.1

## MEMORANDUM COVER

**Subject:**

Case Nos. ZO-0007-2011 and ZO-0009-2011. Residential Districts and Cluster Overlay District.  
Case No. ZO-0010-2012. Affordable and Workforce Housing Terminology – Amendments to the Definitions Section and the Residential and Multiple Use Districts

**Action Requested:** Shall the Board approve the proposed cluster overlay ordinance and residential and multiple use district ordinance amendments, as well as the Residential Redevelopment and Workforce Housing Opportunities policies?

**Summary:** Staff has developed the final revised ordinance language and policies based on Board feedback during its review of the residential and multiple use districts on September 11, 2012. Highlights of the proposed changes are listed in the attached memorandum.

At its November 7, 2012, meeting, the Planning Commission recommended approval of the Housing Opportunities Policy, the Cluster Overlay District, and the Residential Redevelopment Policy by a vote of 6-0. The Planning Commission also recommended approval of the amendments to the Definitions section; R-1, Limited Residential; R-2, General Residential; R-3, Residential Redevelopment; R-5, Multifamily Residential; PUD, Planned Unit Development; and MU, Mixed Use Districts by a vote of 6-0.

Staff recommends approval of the above referenced material as proposed.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

9 Attachments

**Agenda Item No.: I-2**

**Date: November 27, 2012**

**MEMORANDUM**

DATE: November 27, 2012

TO: The Board of Supervisors

FROM: Ellen Cook, Senior Planner III  
Jose Ribeiro, Planner II

SUBJECT: Case Nos. ZO-0007-2011 and ZO-0009-2011. Residential Districts and Cluster Overlay District.  
Case No. ZO-0010-2012. Affordable and Workforce Housing Terminology – Amendments to the Definitions Section and the Residential and Multiple Use Districts

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On July 11, 2012, the Planning Commission considered and recommended approval of the Residential districts, including the Workforce Housing Opportunities Policy, the Multiple Use districts, and the Definitions section. These Ordinances then proceeded to the Board of Supervisors' September 11, 2012, meeting. At that meeting, the Board discussed the workforce housing policy and expressed concern about whether the policy sufficiently addressed the lower end of the targeted Area Median Income (AMI) range. The Board deferred the policy, along with two other items (the Cluster Overlay District, and the R-3 Redevelopment Policy) which it considered would be most affected by any changes to the terminology or substance of the workforce housing policy. The Board adopted the other Residential districts and Multiple Use districts, as well as the Definitions section (with the definition of "workforce" removed).

Subsequently, staff made revisions to the Workforce Housing Opportunities Policy (see Attachment No. 5) in the following respects:

- Split the term "workforce" back into two terms: "affordable" and "workforce" (which correspond to percentages of AMI);
- Added a third row to the tables in Sections 2 and 5 to split out and specify a target for the 30 – 60 percent of AMI category; and
- Adjusted the corresponding percentages of expected units within a development to focus on the affordable portion of the spectrum.

The Board considered these revisions at its September 25, 2012, work session and concurred with the changes. These changes were then brought to the October 11, 2012, Policy Committee meeting. The Policy Committee recommended approval of the Policy with two items to be changed: clarification of the method for determining the lot costs in Item No. 5 and revision to a sentence in Item No. 5 to make it gender-neutral.

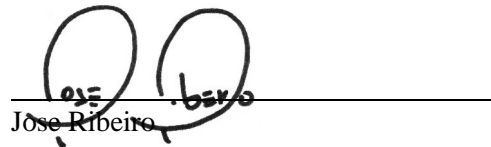
Staff also shared with the Board at its September 25, 2012, work session and with the Policy Committee at its October 11, 2012, meeting, that the return to the use of both the term "affordable" and "workforce" would have an effect throughout the Residential and Multiple Use districts and in the Definitions section. In the Residential and Multiple Use districts (and associated policies, such as the Residential Redevelopment Policy), staff noted that changes would be brought forward to include both terms where only "workforce" was currently included. Since the Board adopted the other Residential and Multiple Use districts, the terminology changes in those districts are being brought forward as amendments to the adopted Ordinances (see Attachment No. 8). Similarly, in the adopted Definitions section, the previous definition of "workforce" would be amended and a new definition of "affordable" would be added (see Attachment No. 8). Since the Board deferred the Cluster Overlay District and the Residential Redevelopment Policy, those two documents have been included for Board re-consideration as a whole (see Attachment Nos. 6 and 7).

**RECOMMENDATION:**

At its November 7, 2012, meeting, the Planning Commission recommended approval of the Housing Opportunities Policy, the Cluster Overlay District, and the Residential Redevelopment Policy by a vote of 6-0. The Planning Commission also recommended approval of the amendments to the Definitions section; R-1, Limited Residential; R-2, General Residential; R-3, Residential Redevelopment; R-5, Multifamily Residential; PUD, Planned Unit Development; and MU, Mixed Use Districts by a vote of 6-0.

Staff recommends approval of the above referenced material as proposed.

  
Ellen Cook

  
Jose Ribeiro

CONCUR:

\_\_\_\_\_  
Allen J. Murphy, Jr.

EC/nb  
ZO-07-09-10\_mem

Attachments

1. Minutes of the September 11, 2012, Board of Supervisors Meeting
2. Minutes of the September 25, 2012, Board of Supervisors Work Session
3. Minutes of the October 11, 2012, Policy Committee
4. Minutes of the November 7, 2012, Planning Commission
5. Housing Opportunities Policy Resolution
6. Cluster Overlay District Ordinance
7. Residential Redevelopment Policy Resolution
8. Ordinance Amending the Definitions Section and the Residential and Multiple Use Districts
9. Clean Copy of the Cluster Overlay District and Other Ordinance Amendments (in Reading File)

## **Minutes of the September 11, 2012 Board of Supervisors Meeting**

Case No. ZO-0002-12. Definitions

Case No. ZO-0005-2011. Endorsement of Green Building Incentives

Case Nos. ZO-0007-2011 and ZO-0009-2011. Residential Districts, Cluster Overlay, Residential Redevelopment Policy and Workforce Housing Opportunities Policy

Case No. ZO-0008-2011. Multiple Use Districts and Mixed Use Construction Phasing Policy

Mr. McGlennon stated that the Board was going to treat all these cases as one Public Hearing and go through the ordinances one-by-one.

Ms. Tammy Rosario, Principal Planner, addressed the Board and stated that the next four cases represent a compilation of efforts to update the Zoning Ordinance regarding definitions, green building issues, multiple uses, and the residential districts. As part of the Zoning Ordinance update process, these items have proceeded through Stages 1 and 2 of the process and come before the Board for consideration with final language as part of Stage 3.

Ms. Rosario stated that in particular the items include:

Definitions Ordinance: Most of these items have been presented individually as part of the review of a specific district and come together under a collective section. There are also miscellaneous changes to address broader issues that arose during the general review, such as the deletion of obsolete terms and the addition of illustrations.

Green Building Incentives Resolution: As discussed at the last work session, the focus of the green building initiatives is a list of incentives included in a resolution, supplemented by density bonuses in various residential and multiple use districts.

Residential Ordinances and the Workforce Housing Opportunities Policy: These include changes to R-1, R-2, R-5, and Cluster Overlay districts, the creation of the R-3 district and an associated Residential Redevelopment Policy, and the development of the Workforce Housing Opportunities Policy.

Multiple Use Ordinances and Mixed Use Construction Phasing Policy: These include changes to the R-4, MU, and Planned Unit Development (PUD) districts, as well as the creation of the construction phasing policy.

Ms. Rosario noted that at the request of the Planning Commission, a change was made to the PUD ordinance to allow setback reductions for commercial/industrial development when the PUD property was adjacent to land already zoned for commercial/industrial development. This language is similar to other language in the PUD ordinance that allowed setback reductions for residential uses.

Ms. Rosario stated that at its July 11, 2012, meeting, the Planning Commission voted 7-0 to recommend approval of all of the ordinances changes, policies, incentives, and guidelines, with the change noted previously.

Ms. Rosario stated that staff recommends the Board approve these ordinances, resolutions, and policies, and for clarity and record-keeping purposes, do so case-by-case.

Case No. ZO-2-11 – the Definitions section ordinance

Mr. Jose Riberio, Planner II, stated that the definition of Affordable Housing and Workforce Housing is used interchangeably. He stated that the Affordable Housing definition has been deleted and the Workforce Housing definition has been added.

Mr. McGlennon stated that by deleting the one definition he is concerned that they have eliminated the definition of the one group that the market has the hardest time providing housing. He stated that by clumping this group in with the Workforce Housing definition, he is concerned that emphasis is lost on the group that falls in the lower end of the income spectrum and where the market has the hardest time meeting the needs.

Ms. Jones stated that if Mr. McGlennon is stating that the definitions of Workforce Housing and Affordable Housing need to be separated, then she would definitely support that. She stated that there are very specific federal definitions of these two types of housing and believes that they should be kept separate.

Mr. Icenhour stated that he would be supportive of separating the two definitions.

Mr. Kale stated that it is important that no one believe that the Board is diminishing the Affordable Housing and that it should be separated.

Mr. McGlennon opened the Public Hearing.

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

Mr. Icenhour made a motion to approve the Definitions Ordinance with the exception of removing the Workforce Housing Definition, which would be reconsidered after revisions are made.

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

Case No. ZO-5-11 – the Endorsement of Green Building Incentives Resolution

Mr. McGlennon opened the Public Hearing.

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

Mr. Icenhour commented that he was disappointed in the resolution. He stated that he does not see a lot of incentive in the resolution, but he would support it.

Ms. Jones made a motion to approve the resolution.

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

**RESOLUTION**

**CASE NO. ZO-0005-2011. ENDORSEMENT OF GREEN BUILDING INCENTIVES**

WHEREAS, the 2009 Comprehensive Plan cites use of green building practices in a development project as an example of public benefit; and



WHEREAS, the Green Building Design Roundtable Forum, which met from March 2009 to June 2010, compiled a report and set of green building recommendations known as the James City County Green Building Design Roundtable Report (“Report”) dated June 2010; and

WHEREAS, on July 27, 2010, the Board of Supervisors adopted a resolution that supports implementation of the general recommendations found within the Report; and

WHEREAS, consideration of a green building policy was part of the Zoning Ordinance update methodology adopted by the Board of Supervisors in May 2010; and

WHEREAS, at its January 24, 2012, work session, the Board of Supervisors directed staff to set forth incentives to be provided for projects that pursue green building certification; and

WHEREAS, the Board of Supervisors encourages all types of development in James City County to pursue green building practices for new construction and major renovations or expansions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby endorse the following green building incentives:

In support of projects considering program certification (at a minimum, “Certified” level or equivalent), James City County commits to the following:

1. Technical consultations and assistance, including the following components:
  - a. County-organized workshops and training sessions that will cover green building topics; and
  - b. As-needed opportunities to sit down with knowledgeable County staff to discuss questions about certification standards and processes and to evaluate options.

In support of projects that do make the commitment<sup>1</sup> to achieve green building certification through Leadership in Energy and Environmental Design (LEED), Earthcraft, or another equivalent certification program, James City County offers the following package of incentives:

1. To help defray the costs of certification program registration and certification, the County will refund 25 percent of the Planning Division site or subdivision construction plan review fees upon the project achieving certification.
2. On-going technical consultations and assistance, including the following components:

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<sup>1</sup> Commitment shall entail providing a copy of relevant documents showing that the project has been registered with the certification program, and submission of an initial draft certification checklist indicating the likely items to be pursued.

- a. Invitations to no cost or low cost planned County-organized workshops and training sessions that will cover green building topics.
  - b. Opportunities to work with County staff:
    - i. Pre-application meeting to go through the certification program checklist to identify opportunities to coordinate certification points with County requirements.
    - ii. Plan review project participation within Development Management by staff members familiar with green building certification programs. Staff will be available to review and discuss the elements of the project proposed to meet the certification points on an as-needed basis.
3. Recognition of the commitment through the following, at a minimum:
- a. A “Future James City County Green [Business/Institution/Community]” site sign on location during construction.
  - b. Upon certification, a profile on the County website and on TV Channel 48.
  - c. Upon certification, inclusion in the Planning Commission’s Annual Report and recognition at a Board of Supervisors meeting.

Case No. ZO-7-11 – the Cluster Overlay District ordinance

Case No. ZO-9-11 – the R-1, R-2, R-3, and R-5 district ordinances, the Residential Redevelopment Policy, and the Workforce Housing Opportunities Policy

Mr. Icenhour stated that he wanted to commend staff for doing a great job of simplifying what is a very complicated issue. He stated that he was confused about the density bonus in the R-5 district ordinance. He stated that if a property was to be re-zoned R-5, it would have to come before the Board, so he believes that the density bonuses in R-5 districts should be at the discretion of the Board not the Planning Commission.

Ms. Cook stated that that section was old language and a carryover from when density bonuses were done administratively. She stated that the ordinance could be amended to state that the density bonuses in R-5 districts would come before the Board.

Mr. Icenhour stated that in the R-4 district table of uses, that assisted living facilities require an SUP. He stated that this is different than the other districts. He stated that this should be amended to be consistent across all the districts.

Mr. Purse stated that staff would be fine with that change.

Mr. Icenhour questioned why there is no density bonus in the R-4 districts like there are in most of the other districts.

Mr. Purse stated that staff made the conscience decision to leave the density bonuses out of the R-

4 districts, because there are many R-4 districts already in place.

Mr. McGlennon opened the Public Hearing.

As no one wished to speak to these cases, Mr. McGlennon closed the Public Hearing.

Mr. Icenhour made a motion to approve the R-1 District Ordinance.

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

Mr. Icenhour made a motion to approve the R-2 District Ordinance.

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

Mr. Icenhour made a motion to approve the R-3 District Ordinance.

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

Mr. Icenhour made a motion to approve the R-5 District Ordinance.

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

Mr. Icenhour made a motion to defer the Residential Redevelopment Policy, Cluster Overlay Districts, and the Workforce Housing Opportunities Policy until the November 27, 2012, meeting.

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

Case ZO-8-11 – the R-4, Mixed Use, and PUD district ordinances, and the Multiple Use Districts and Mixed-use Construction Phasing Policy.

Mr. Purse stated that Mr. Icenhour's question about the R-4 district had already been addressed.

Mr. Icenhour made a motion to adopt the R-4 ordinance with the correction stated earlier.

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

Mr. Icenhour made a motion to adopt the PUD Ordinance, the Mixed Use Ordinance, and the Multiple Use Districts and Mixed-use Construction Phasing Policy.

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

## **RESOLUTION**

CASE NOS. ZO-0008-2011. MULTIPLE USE DISTRICTS AND MIXED USE

## CONSTRUCTION PHASING POLICY

WHEREAS, the task of updating the Mixed Use Zoning District was undertaken as a part of the Board of Supervisors adopted methodology for the zoning ordinance update in May 2010; and

WHEREAS, the 2009 Comprehensive Plan referenced the importance of construction phasing to ensure residential development did not take place before a majority of commercial/industrial development was completed; and

WHEREAS, after meeting with the Policy Committee, the Planning Commission, and the Board of Supervisors, the following policy is recommended for all Mixed Use area development.

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

Construction within Mixed Use developments shall be sequenced in accordance with a project build-out schedule submitted for review as a part of the initial application and approved by the Board of Supervisors. As a guideline, project proposals that adhere to the following sequencing requirements will be considered consistent with the objectives of the phasing plan:

- (1) Building permits for up to 10 percent of the residential units may be issued prior to commencing any commercial construction; and
- (2) Certificates of Occupancy (CO) must be issued for at least 25 percent of the commercial square footage as shown on the master plan prior to building permits being issued for any residential unit above 50 percent of the total proposed units as shown on the master plan; and
- (3) Prior to issuance of building permits for construction of the final 20 percent of the residential units, CO must be issued for at least 80 percent of the commercial square footage as shown on the master plan.
- (4) If no residential development is proposed, the construction phasing shall still make assurances that all infrastructure is installed in coordination with the planned build-out of the development.

## **Minutes of the September 25, 2012 Board of Supervisors Work Session**

### Housing Opportunities Resolution

Ms. Cook summarized the changes to the Housing Opportunities resolution that was included in the Work Session Agenda Packet.

Mr. Rosario stated that staff is looking for direction from the Board that the Board wants staff to go.

Mr. McGlennon stated that at the previous Board meeting, the Board was concerned with the combining of the definitions of Workforce and Affordable Housing. He stated that the concern of the Board was that by combining those definitions, it would allow a developer to focus more on the Workforce housing, which the market already provides while ignoring the Affordable housing.

Mr. Icenhour stated that he is very pleased with the revisions and that it puts the focus back where it needs to be, which is on Affordable housing.

Mr. Icenhour stated that the only concern he had was the mechanics of the “cash in lieu of” section.

Mr. Rogers stated that the “cash in lieu of” proffers would be something that the developer would have to propose, but ultimately the Board would have the ultimate decision as to whether or not to accept the proffers.

Mr. McGlennon asked the members of the Board if they were satisfied with the revisions made to the policy. Each member stated yes.

Mr. McGlennon stated that he hoped this clarified the direction from the Board that the Planning Division was looking for.

## **UNAPPROVED MINUTES OF THE OCTOBER 10, 2012 POLICY COMMITTEE MEETING**

### **Updates to the Housing Opportunities Policy and resulting implications for Residential and Multiple Use districts and Definitions**

Ms. Ellen Cook stated the Board had reviewed the policy at their September work session and wanted changes, with a concentration on the term 'affordable.' The Board wanted 'affordable' split from 'workforce housing' to keep an emphasis on that part of the Area Median Income (AMI) range. They specified a target for the 30 to 60% portion of the range, to prevent developers from clustering on the high end. The Board also wanted to adjust the percentage of expected units down the scale to the lower end.

Mr. Woods asked staff to explain the 30% - 60% and 80% - 120% in today's dollars.

Ms. Cook stated the range comes from the Comprehensive Plan, which separates affordable and workforce housing.

Ms. Rosario stated those are based on Housing and Urban Development (HUD) guidelines.

Ms. Cook stated the Board wanted to emphasize the 30%-60% AMI category, thinking that was in the greatest unaddressed need in the community. Thirty-percentage of AMI equals a family income of \$20,000, with a target house price of \$61,000. Sixty-percentage of AMI would be a family making \$40,000, with a target house price of \$120,000.

Ms. Rosario stated at the lowest end, we are typically talking about rental units.

Ms. Cook stated the policy covers rental and home ownership.

Mr. Woods asked if a developer in the program would get reduced development costs.

Ms. Rosario stated there is that potential in the policy, but this also states an overall expectation for any residential development. The County would be requesting 8% of the units be in the 30%-60% range, 7% in the 60%-80% range, and 5% in the 80%-120% range.

Mr. Woods stated he thought it was an incentive program.

Ms. Rosario stated it is an expectation, with incentives, including cash proffer reductions. She stated there is also an in lieu option.

Ms. Cook stated in lieu funds could be used to subsidize rents or as matching money to help construct buildings in that range.

Mr. Woods asked if he was developing a high-value property, could County force him to include affordable housing in his offer.

Mr. Krapf stated that all proffers are voluntary, but they increase costs.

Mr. O'Connor stated this was a policy, not an ordinance. He stated if you have a neighborhood with an average home price of \$800,000, and you add 15% of units that are not compatible, you are creating a dysfunctional neighborhood.

Mr. Krapf stated high-end neighborhoods would probably use the in lieu option. He stated the County wants to encourage affordable housing, and one way to do it is to set expectations with the developers that they address work force housing. If they do not, the cash contribution helps those types of units be constructed.

Mr. Woods stated that in principle, he thought the County was going to employ incentives to encourage behaviors, not penalties. Incentives would allow developers to reduce their costs relative to the market.

Mr. O'Connor stated density was incentivized.

Ms. Rosario asked if we view all proffers as penalties or if, instead, as ways of mitigating impacts.

Mr. O'Connor stated the County says applications must have a certain number of proffers, but for some of the developments to work, you can only come up with a smaller percentage of affordable lots. He stated if the County wants to encourage affordable housing, it should waive proffers.

Ms. Cook stated the policy allows a full reduction of cash proffers in exchange for offering units in the 30%-60% range. She stated it could be more than a \$20,000 tradeoff.

Ms. Rosario stated that coming out of the Comprehensive Plan, this policy was designed to give more guidance to developers.

Mr. Krapf asked if staff got feedback from the development community.

Ms. Rosario stated that representatives of the realtor community had expressed support as had groups like the Williamsburg Area Chamber of Commerce, and that staff had not heard any expressions of concern regarding the Policy. She stated the County decided to step up its game with the Comprehensive Plan, but did not go to inclusionary zoning.

Mr. Woods stated the combination of incentives for affordable housing and density should be economically powerful.

Ms. Cook stated there were incentives in the form of proffer reductions before, but there had never been a consistently policy to guide staff or developers. She stated this Policy provides clarity but maintains some flexibility and room for Commission and Board discretion.

Mr. Krapf stated the policy is not ironclad because it uses the wording 'should' not 'must.' He stated it reads as a very strong encouragement.

Mr. O'Connor stated he was derailed by the language 'should be' and staff describing the policy as an 'expectation.' He stated the term 'subject development' in Item 5 should be defined.

Ms. Cook stated staff would go back and review the term.

Ms. Rosario stated to further that line of thinking, when talking about the average square foot cost to construct units, there should be a comparable measurement.

Mr. O'Connor stated there are neighborhoods with a minimum square footage where it would not work. He stated in a Kingsmill, a 30%-60% AMI paying a high HOA fee would be unrealistic. Forcing someone to join an HOA is a burden. These policies, with Chesapeake Bay and green space requirements, are creating HOAs. At the same time, the County encourages affordable and workforce housing. In some of these cases they are incompatible.

Ms. Bledsoe stated the inclusiveness philosophy has been building for many years. She stated that the County having this option is progress. It is about encouraging inclusiveness in schools and resources, and is not just about what the developer wants. The policy is reasonable, with fluidity for negotiating room. There is a stigma associated with workforce and affordable housing, but people living in these communities realize that nothing changes.

Mr. Krapf stated he looks at workforce housing as an enhancement to the community. He stated County police living in the community add an extra sense of security. It benefits everyone in the process. This policy echoes the Comprehensive Plan and provides a range of alternatives and incentives. Developers can ignore it and explain their reasons to the Board.

Mr. Woods stated this is direction the County should be headed and the outcome it wants to achieve. He stated he just had questions about the method.

Mr. O'Connor stated the County should ensure there are lots of good incentives in place. He stated he is concerned with elevating the prices for people living in those neighborhoods.

Mr. Woods stated a large project can take a section and put the affordable housing in one little area.

Ms. Bledsoe stated that the affordable and workforce units are all over New Town and it looks nice. She stated they are across the street from her home. They were sometimes smaller, but not less attractive.

Mr. O'Connor stated it works in New Town because it is urban. He stated there are other subdivisions where affordable housing creates a disparity.

Mr. Krapf stated in the sentence '...in lieu of a contribution to the housing fund...' to change the language from the 'the director, at his sole discretion' to 'the planning director may consult' to remove the gender.

Mr. O'Connor moved to recommend approval of the Housing Opportunities Policy with amendments to the definition of 'subject development' and to the planning director gender language.

In a unanimous voice vote, the Committee recommended approval (3-0; Absent: Bledsoe).



## **Unapproved Minutes of the November 7, 2012 Planning Commission Meeting**

### Updates to the Housing Opportunities Policy and amendments for the Residential and Multiple Use Districts and Definitions

- i. ZO-0007-2012 and ZO-0009-2011, Residential Districts and Cluster Overlay District
- ii. ZO-0010-2012, Affordable and Workforce Housing Terminology – amendments to the Definitions Section and the Residential and Multiple Use Districts

Ms. Ellen Cook stated that this grouping of material all relates to the Housing Opportunities Policy and to the language that relates to this Policy in the residential and multiple use districts. She stated that the material before the Commission tonight is the result of changes requested by BOS at their September 11, 2012 meeting. She stated the requested changes were to emphasize the affordable portion of the target income range (which translates to the 30 to 60 percent of Area Median Income) in the Policy language and standards. She stated staff has since made those changes and has brought them to the Policy Committee, which also requested some adjustments noted in the memo.

Ms. Cook stated staff recommends that the Planning Commission recommend approval of the Housing Opportunities Policy, the Cluster Overlay District, and the Residential Redevelopment Policy. She stated staff also recommends that the Planning Commission recommend approval of the amendments to the Definitions section; R-1, Limited Residential; R-2, General Residential; R-3, Residential Redevelopment; R-5, Multifamily Residential; PUD, Planned Unit Development; and MU, Mixed Use Districts.

Mr. O'Connor opened the public comment.

There being none, Mr. O'Connor closed the public comment.

Mr. O'Connor stated that he received a call from Ms. Susan Gaston with the Williamsburg Area Realtors Association and they are supportive of the Workforce and Affordable Housing initiatives seen here.

Ms. Bledsoe moved for approval of the Housing Opportunities Policy and amendments for the Residential and Multiple Use Districts and Definitions.

In a unanimous voice vote, the report was approved (6-0: Absent: Woods).

## RESOLUTION

### HOUSING OPPORTUNITIES POLICY

WHEREAS, the 2009 Comprehensive Plan recognizes the importance of providing housing opportunities which are affordable for homeowners and renters with particular emphasis on households earning 30 to 120 percent of James City County's Area Median Income (AMI); and

WHEREAS, consideration of measures to promote affordable and workforce housing was included as part of the Zoning Ordinance update methodology adopted by the Board of Supervisors in May 2010; and

WHEREAS, the Policy Committee recommended approval of the Housing Opportunities Policy to the Planning Commission on October 11, 2011; and

WHEREAS, the James City County Planning Commission, after a public hearing, recommended approval of the Housing Opportunities Policy on November 7, 2012, by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes the following Housing Opportunities Policy in order to identify criteria whereby the provision of workforce housing in residential and multiple-use rezoning cases is done in a consistent manner:

The Housing Section of the 2009 Comprehensive Plan sets the following goal for housing opportunities in the County: *"Achieve high quality in design and construction of all residential development and neighborhood design, and provide a wide range of choices in housing type, density, price range, and accessibility."* In order to address the objectives of this goal, this policy is designed to increase the range of housing choices in the County through the provision of affordable and workforce housing in all rezoning applications that include a residential component.

This policy identifies criteria whereby the provision of affordable and workforce housing (rental and ownership) in residential rezoning cases is consistent yet flexible. Provision of housing at different price ranges is a strategy to achieve the greater housing diversity goal described in the 2009 Comprehensive Plan.

#### 1. Definitions

- a. Affordable Housing. Housing available at a sales price or rental amount that does not exceed 30 percent of the total monthly income of households earning between 30 percent and 80 percent of the area median income as determined by the U.S. Department of Housing and Urban Development (HUD).
- b. Workforce Housing. Housing available at a sales price or rental amount that does not exceed 30 percent of the total monthly income of households earning between greater than 80 percent and 120 percent of the area median income as determined by the U.S. Department of Housing and Urban Development (HUD).

2. Provision and Integration of Housing Opportunity Dwelling Units

- a. At least 20 percent of a development's proposed dwelling units should be offered for sale or made available for rent at prices that are targeted at households earning 30 to 120 percent of Area Median Income (AMI). Of that 20 percent, the units should be targeted at the AMI ranges specified below:

Units targeted to (percent of AMI):	Percent of the development's proposed dwelling units expected
30 percent – 60 percent	8 percent
Over 60 percent – 80 percent	7 percent
Over 80 percent – 120 percent	5 percent

- b. These units should be fully integrated in the development with regard to location, architectural detailing, quality of exterior materials, and general appearance.

3. Applicability of Cash Proffers for Housing Opportunity Dwelling Units

- a. Units targeted at household meeting 30 to 120 percent of AMI will have reduced expectations for cash proffers in accordance with the amounts set forth in the Cash Proffer Policy for Schools adopted by the Board of Supervisors on July of 2007, as amended, other cash proffers related for water and sewer improvements (typically proffered to the James City Service Authority), and other public facility and infrastructure capital improvement program items. The reductions in the expected proffer amounts would be as follows:

Units targeted to (percent of AMI):	Percent cash proffer reduction:
30 percent – 60 percent	100 percent
Over 60 percent – 80 percent	60 percent
Over 80 percent – 120 percent	30 percent

4. Retention of Housing Opportunity Units Over Time

- a. Rental units must be made available at the targeted rents for a period of at least 30 years.
- b. Sales of all targeted for-sale units as specified in paragraph one shall include a soft second mortgage payable to the benefit of James City County or third party approved by the Office of Housing and Community Development and the County Attorney's Office. The term of the soft second mortgage shall be at least 50 years. In addition, a provision shall be included in the deed that establishes a County right of first refusal in the event that the owner desires to sell the unit.

5. In-lieu Contribution to the Housing Fund

Applicants may choose to offer cash contributions in-lieu of the provision of the percentages of affordable and workforce housing units specified above. Such cash contributions shall be payable to the James City County Housing Fund. The Housing Fund will be used to increase the supply and availability of units targeted at households earning 30 to 120 percent of AMI in the County. If applicants choose to offer a cash contribution in-lieu of construction of the units, the guideline minimum amount per unit shall be:

Units targeted to (percent of AMI):	Cash in-lieu amount
30 percent – 60 percent	The cost to construct a 1,200 square-foot dwelling as determined below
Over 60 percent – 80 percent	The cost to construct a 1,200 square-foot dwelling as determined below
Over 80 percent – 120 percent	The cost to construct a 1,400 square-foot dwelling as determined below

Beginning in February 2013, and continuing in every subsequent February, the Housing and Community Development Director shall establish the average square foot cost to construct an affordable/workforce dwelling unit, which will be added to the median cost of a lot in the proposed subject development. The dwelling unit construction cost shall be determined based on the cost information provided by at least three builders of affordable/workforce dwellings in James City County. If no costs are available from James City County builders, the Director may consult builders from nearby localities. The anticipated median cost of a lot in the proposed development shall be documented and submitted by the developer; in the case of a proposed all-apartment development, the developer shall work with the Housing and Community Development Director to reach an acceptable estimate based on land and infrastructure costs.

6. Procedures

- a. For rental units, the developer shall provide assurances in a form acceptable to the County Attorney that the development will provide a statement of rental prices, demonstrating that they are within the specified affordable and workforce housing income range, for the proffered units for each year of the 30-year term.
- b. For for-sale units, the developer shall offer units at prices that fit within the affordable and workforce housing price range as stated in the definitions<sup>1</sup>, which shall be calculated and made available on an annual basis by the County.
  - i. With regard to the soft-second mortgages, the James City County Office of Housing and Community Development (“OHCD”) shall be named beneficiary of a second deed of trust for an amount equal to the sales price of the market rate unit and the sales price of the proffered unit. The soft second shall be a forgivable loan, upon the terms specified in Section 5 above, in a form approved by OHCD and the County Attorney. The soft second deed of trust, the deed of trust note, and the settlement statement shall be subject to the approval of the County Attorney and Housing and Community Development Director prior to closing. The original note and deed of trust and a copy of the settlement statement identifying the net sales price shall be delivered by the closing agent of the OHCD after the deed of trust is recorded and no later than 45 days after closing. If down-payment assistance loans are authorized by OHCD, the lien on the deed of trust for the soft second may be recorded in third priority.
  - ii. Owner shall consult with and accept referrals of, and sell to qualified buyers from the OHCD on a noncommission basis.

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<sup>1</sup> The prices shall be established based on payment of 30 percent of household income toward housing cost.

- iii. Prior to closing, OHCD shall be provided with copies of the HUD deed and the original deed of trust and note for the soft second.

ATTEST:	<hr/> John J. McGlennon Chairman, Board of Supervisors			
	VOTES			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	
	MCGLENNON	_____	_____	_____
	JONES	_____	_____	_____
	KENNEDY	_____	_____	_____
<hr/> Robert C. Middaugh Clerk to the Board	ICENHOUR	_____	_____	_____
	KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

ZO-07-09-10\_res2

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE VI, OVERLAY DISTRICTS, DIVISION 1, RESIDENTIAL CLUSTER DEVELOPMENT, BY AMENDING SECTION 24-538, STATEMENT OF INTENT; SECTION 24-540, WHERE PERMITTED; SECTION 24-541, MINIMUM SITE SIZE; SECTION 24-542, PERMITTED USES; SECTION 24-544, BUFFER REQUIREMENTS; AND SECTION 24-545, SETBACK REQUIREMENTS; BY AMENDING AND RENAMING SECTION 24-547, YARD REGULATIONS WITH NEW NAME YARD REQUIREMENTS; BY AMENDING SECTION 24-548, DENSITY; AND SECTION 24-549, DENSITY STANDARDS; BY RENUMBERING SECTION 24-550, BMP REQUIREMENTS TO NEW NUMBER 24-553; BY RENUMBERING SECTION 24-551, PERFORMANCE ASSURANCE TO NEW NUMBER 24-554; BY ADDING NEW SECTION 24-551, OPEN SPACE DEVELOPMENT DESIGN ELEMENTS; BY AMENDING, RENUMBERING AND RENAMING SECTION 24-552, AMOUNT OF OPEN SPACE REQUIRED TO NEW NUMBER AND NAME SECTION 24-550, OPEN SPACE; BY AMENDING, RENUMBERING AND RENAMING SECTION 24-553, OWNERSHIP OF OPEN SPACE TO NEW NUMBER AND NAME SECTION 24-552, ESTABLISHMENT OF HOMEOWNERS ASSOCIATION; BY AMENDING AND RENUMBERING SECTION 24-554, REVIEW AND APPROVAL PROCESS TO NEW NUMBER SECTION 24-556, AND BY ADDING NEW SECTION 24-555, PEDESTRIAN ACCOMODATIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article VI, Overlay Districts, Division 1, Cluster Overlay District, by amending Section 24-538, Statement of intent; Section 24-540, Where permitted; Section 24-541, Minimum site size; Section 24-542, Permitted uses; Section 24-544, Buffer requirements; Section 24-545, Setback requirements; Section 24-547, Yard requirements; Section 24-548, Density; Section 24-549, Density standards; Section 24-550, Open space; Section 24-551, Open space development design elements;

Section 24-552, Establishment of homeowners association; Section 24-553, BMP requirements; Section 24-554, Performance assurance; Section 24-255, Pedestrian accommodations; and Section 24-256 Review and approval process.

## **Chapter 24**

### **ARTICLE VI. OVERLAY DISTRICTS**

#### **DIVISION 1. RESIDENTIAL CLUSTER DEVELOPMENT**

##### **Sec. 24-538. Statement of intent.**

The purpose and intent of this article is to achieve innovative and quality designs of residential developments above one dwelling unit per acre that provide avenues for affordable *and workforce* housing, minimize environmental impacts, provide for usable and meaningful open space, and provide recreation amenities within a more practical and efficient development. Recognizing that greater variety and affordability are more obtainable with higher densities, developers have the flexibility to provide this product and still provide reasonable amenities within variously priced residential cluster communities. Hand in hand with the opportunities offered in higher density development is the expectation that the development will provide certain benefits to the community. As stated in the comprehensive plan, examples of these benefits include mixed-cost housing, affordable *and workforce* housing, unusual environmental protection or development that adheres to the principles of open space development design. Such design may include maintaining open fields; preserving scenic vistas; protecting wildlife habitats and corridors; retaining natural vegetative buffers around water bodies, wetlands, and along roads; preserving historic sites; creating adequate recreational areas; designing efficient pedestrian circulation to include trail systems; and ensuring that common land adjoins protected open space on adjacent parcels.

##### **Sec. 24-539. Residential cluster development defined.**

A "residential cluster development," for purposes of this article, shall be a planned development of land consisting of predominantly residential uses together with its recreational facilities, supporting roads, utilities and other public facilities.

##### **Sec. 24-540. Where permitted.**

A residential cluster development is permitted in the R-1, *and* R-2, ~~and R-5~~ zoning districts *inside the primary service area*. The requirements of this article shall govern where there is a conflict with the requirements of the underlying district.

**Sec. 24-541. Minimum site size.**

The minimum site size for a residential cluster development is five acres, except that extensions to an existing cluster development may be less than five acres. The planning director may waive the minimum site size requirements for residential cluster developments which provide affordable *and workforce* housing set forth in section 24-549 below. However, in no case shall such development be less than two acres. Such a waiver may be considered upon the applicant providing a written request to the planning director to waive the minimum acreage requirement demonstrating to the satisfaction of the planning director that:

- (1) The proposed development is consistent with the comprehensive plan; ~~and~~
- (2) Verification of affordable *and workforce* housing is provided; and
- (3) Evidence that the property can be subdivided as proposed.

Upon receipt of the request, the planning director shall, within thirty days of the request, either grant or deny the waiver with reasons to that effect.

**Sec. 24-542. Permitted uses.**

Uses permitted in a residential cluster development shall be the same as those permitted in the zoning district in which the residential cluster development is located. In the event that the individual units within attached dwellings are proposed to be sold as separate living units, the attached dwelling may be divided to permit separate deed descriptions for conveyance purposes. A limited amount of commercial development may be allowed within residential clusters as permitted in the zoning district in which the development is located. Commercial uses shall be shown on the master plan and be consistent with the Comprehensive Plan *land use description and development standards*.

**Sec. 24-543. Utilities.**

Lots in a residential cluster development shall be served by a public sewage disposal system and a public water system.

**Sec. 24-544. Buffer requirements.**

(a) *Right-of-way buffer.* Within any ~~major subdivision~~ *residential cluster* approved under this ~~article~~ *division*, there shall be planned and maintained buffers along all external existing and planned arterial road rights-of-way, as follows:

- (1) The minimum right-of-way buffer on Community Character Corridor roads as defined in the Comprehensive Plan shall be 150 feet, except when the average lot depth of the parent parcel is less than 600 feet. In those cases, the required buffer shall be at a depth of 25 percent of the average lot depth.



- (2) The minimum right-of-way buffer on all non-Community Character Corridor roads shall be 75 feet, except when the average lot depth of the parent parcel is less than 300 feet. In those cases, the required buffer shall be at a depth of 25 percent of the average lot depth.
- (3) ~~If the buffer is non-wooded as defined for the purpose of this article as having no mature trees, then a minimum of two trees per 400 square feet of area shall be planted with a minimum 50 percent of said trees being evergreen. Otherwise, the buffer shall remain undisturbed or supplemented with additional plantings to achieve the planting ratio stated above.~~ *The right-of-way buffer shall be planted in accordance with section 24-96, General landscape area standards. Buffers along community character corridor roads shall also adhere to the community character corridor buffer treatment guidelines and map.*

(b) *Perimeter buffers.* Within any ~~major subdivision~~ *residential cluster* approved under this ~~article~~ *division*, there shall be planned and maintained a perimeter buffer along the perimeter property lines of the development, except for areas adjacent to road rights-of-way. The minimum perimeter buffer shall be 35 feet. Landscaping guidelines for perimeter buffers shall follow the requirements in section 24-94(a)96 of this chapter.

(c) *Waiver provisions.* In instances where properties have more than a 300-foot average depth and are located along a Community Character Corridor, or in all instances of perimeter buffers, the planning ~~commission~~ *director* may reduce the buffer depth requirements *specified in (a) and (b)* of this section for residential developments when:

- (1) The development is less than five acres and a majority of the development's units are dedicated to affordable *and workforce* housing; or
- (2) The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development as effectively as a full buffer; or
- (3) The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.

In no case shall the right-of-way buffer be reduced by a waiver provision to less than 75 feet. The perimeter buffer shall not be reduced by a waiver provision to less than 20 feet. The planning ~~commission~~ *director* may also, in the event of granting a waiver, require additional landscaping as determined on a case by case basis.

(d) *Modifications to the landscape requirements.* The planning ~~commission~~ *director* may modify, permit substitutions, or permit transfer of required landscaping in accordance with the provisions set forth in article II, division 4 of this chapter.

(e) *Requirements for buffers.* All required buffers shall be exclusive of lots, remain free of structures and parking, and remain undisturbed, except for additional plantings and selective clearing approved by the ~~director of planning~~ *director* or his designee. Soil stockpiles and staging areas shall not be permitted within

any buffer, except that temporary soil stockpiles may be allowed upon approval by the planning ~~commission~~ *director* under the following circumstances:

- (1) The buffer in which the temporary stockpile is to occur is non-wooded, defined as having no mature trees.
- (2) The stockpile ~~should~~ *shall* not be visible from a Community Character Corridor or Community Character Area, unless the soil stockpiling is needed for approved berming in that buffer.
- (3) Stockpiles shall not exceed 35 feet in height.
- (4) Stockpiles shall be temporary, with a time limit of six months.
- (5) Once the use of the temporary soil stockpiles is completed, the ground must be adequately prepared for planting and revegetated in a manner that meets or exceeds the amount and quality of vegetation on the site previously.
- (6) *Stockpiling shall conform with any applicable requirements of the Virginia erosion and sediment control regulations, the Virginia Erosion and Sediment Control Handbook and county erosion and sediment control program policies.*
- (f) *Limitations on buffers.* ~~Wet ponds, dry detention basins, and other s~~ Structural BMPs ~~such as wet and dry ponds~~ shall not generally be permitted in the buffers, except that the planning ~~commission~~ *director* may approve them under the following circumstances:
  - (1) The need is necessitated by site conditions rather than economic factors; and
  - (2) The screening/buffering effect of the buffer has been retained by the design of the BMP and any degradation has been mitigated with additional plantings or berms as necessary.
- (g) *Improvements allowable within buffers.* An entrance road, community and directional signage, bicycle and/or pedestrian paths, and utility connections and drainage improvements shall be permitted within the buffer with approval of the planning ~~commission~~ *director*. Permitted utilities and constructed drainage conveyance systems shall cross the buffer at or near a perpendicular angle to the property line, with clearing kept to a minimum necessary to accommodate the utilities, except that minor improvements to natural drainage channels may be permitted at *a* different angle to the property line upon ~~the recommendation of the environmental director and the approval of the planning commission~~ *director*.
- (h) *Roads within buffers.* Entrance roads through these buffers shall be built to the narrowest cross-section possible. Roads and open space shall be located and designed in a manner that minimizes views of structures within the development from the adjoining primary or secondary road as determined by the planning ~~commission~~ *director*.

(i) *Appeals. In the event the planning director disapproves the items specified in (c), (d), (e), (f), (g), and (h) in this section or recommends conditions or modifications that are unacceptable to the applicant, the applicant may appeal the decision of the planning director to the development review committee which shall forward a recommendation to the planning commission. Any appeal shall be in writing and may be subject to fees as specified in Article I of this chapter.*

**Sec. 24-545. Setback requirements.**

The minimum setback from the right-of-way shall be shown on the plan of development and on the recorded subdivision plat. The minimum setback from external streets shall be the same as that required by the zoning district in which the lot is located, except as superceded by section 24-544. The minimum setback from internal streets may be reduced to zero, provided that no building in a residential cluster shall be closer than ~~35~~ 25 feet to the internal edge of perimeter buffers. Off-street parking shall not be permitted within the required setbacks, except that parking spaces for single-family and two-family dwellings may be located within the required setback.

**Sec. 24-546. Minimum lot width and area requirements.**

There are no lot width or area requirements.

**Sec. 24-547. Yard ~~regulations~~ requirements.**

~~The rear and side yards may be reduced to zero, provided that easements or covenants establish the rights of two abutting properties where main buildings are to be constructed on or within five feet of a property line. Such easements or covenants shall establish the rights of each affected owner to gain access to each owner's building for purposes of essential maintenance and service. Reductions of rear or side yards made under this provision shall also be~~ *feet* subject to the following conditions:

- (a) The minimum distance between any two buildings within the residential cluster development shall be governed by the ~~State of Virginia~~ *Uniform Statewide* Building Code.
- (b) No building in a residential cluster development shall be closer than ~~35~~ 25 feet to the internal edge of perimeter buffers.
- (c) *Easements or covenants establish the rights of two abutting properties where main buildings are to be constructed on or within five feet of a property line. Such easements or covenants shall establish the rights of each affected owner to gain access to each owner's building for purposes of essential maintenance and service. Documents establishing such easements or covenants shall be satisfactory to the county attorney and submitted prior to approval of the development plan.*

**Sec. 24-548. Density.**

~~In a residential cluster development, the minimum and maximum number of dwelling units per acre of gross acreage as calculated below shall be as follows:~~

<i>Comprehensive Plan Designation</i>	<i>Minimum</i>	<i>Maximum</i>
Low Density Residential	—0	—4.0
Moderate Density Residential	4.0	12.0

~~For the purpose of calculating gross density, gross acreage shall be calculated as shown below:~~

<i>Gross Acreage</i>	
<i>Percentage of Nondevelopable Area</i>	<i>Gross Acreage Shall Equal:</i>
Less than 35	Total area of parcel
35 or more	Developable land plus 35% of the parcel's land

~~Developable area shall consist of the total land area of the site minus stream beds, areas subject to flooding under the 100-year storm event, wetlands and areas with slopes exceeding 25 percent gradient. If the cluster development lies in more than one Comprehensive Plan Land Use Designation, the number of dwelling units shall be calculated separately for each designation.~~

*The density of a proposed subdivision shall be calculated as the number of units divided by the gross acreage. For the purposes of this section, the gross acreage shall be calculated as follows:*

<i>Percent non-developable</i>	<i>Percent of gross acreage added to the developable land</i>
0 – 20 percent	Use total parcel acreage
21 – 40 percent	20
41 – 70 percent	15
71 – 100 percent	10

*Illustration of Gross Acreage Calculation*

*(a) If a 50-acre parcel has seven acres of non-developable land, then the non-developable area of the site is 14 percent. Because 14 percent is less than 20 percent, the total area of the parcel is used to calculate allowed density.*

*(b) If a 50-acre parcel has 14 acres of non-developable land, then the non-developable area of the site is 28 percent. Because 28 percent is between 21 percent and 40 percent, the total developable area of the parcel (36 acres) and 20 percent of the total parcel acreage (ten acres) are added together to obtain the total acreage used to calculate allowed density (46 acres).*

*In this example, if an applicant sought a density of two dwelling units per acre, they would yield a maximum of 100 units in (a) and 92 units in (b).*

**Sec. 24-549. Density Standards.**

~~(a) Low density residential cluster development. Within any low density residential cluster development, the following standards shall apply:~~

~~(1) Residential cluster developments of one unit per acre or less may be permitted in areas designated low density residential on the comprehensive plan land use map upon the approval of a master plan by the planning commission in accordance with section 24-553.~~

~~(2) Residential cluster developments of more than one unit per acre, but of no more than two units per acre may be permitted in areas designated low density residential on the comprehensive plan land use map upon the issuance of a special use permit from the board of supervisors and upon the approval of a master plan by the planning commission in accordance with section 24-553. In order to achieve this density, the developer shall make assurances in a master plan or otherwise for the following:~~

~~a. Implementation of Streetscape Guidelines as defined in the Streetscape Guidelines Policy.~~

~~b. Implementation of the county's Archaeological Policy.~~

~~c. Provision of sidewalks on at least one side of all internal streets in the development, including the entrance road. This requirement may be waived by the planning commission if the development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property. In addition, a sidewalk shall be provided as required in section 24-35.~~

~~d. Provision of recreation facilities as recommended in the county's Comprehensive Parks and Recreation Master Recreation Plan. Upon application for an exception, the Board of Supervisors may approve alternate facilities or allow cash contributions in lieu of constructing a percentage of the facilities, provided that the alternate facilities or cash contributions are consistent with the recommendations and contributions per unit presented in the master plan.~~

~~e. Implementation of the county's Natural Resources Policy.~~

~~(3) Residential cluster developments of more than two units per acre, but of no more than three units per acre may be permitted in areas designated low density residential on the comprehensive plan land use map upon the issuance of a special use permit by the board of supervisors and upon the approval of a master plan by the planning commission in accordance with section 24-553. In addition to items (2)(a) through (e) above, the developer shall make assurances in a master plan or otherwise for the following:~~

~~a. Provision of pedestrian and/or bicycle trails, where topographically feasible, which connect cul-de-sacs throughout the development to each other and to the recreation area; or provision of~~

~~sidewalks on both sides of all internal streets in the development, including the entrance road; or a combination of trails and sidewalks as stated above. This requirement may be waived by the planning commission if the development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property.~~

~~b. Construction of curb and gutter design on all streets within the development. This requirement may be waived or modified by the planning commission under the following circumstances:~~

~~1. The development is infill development of less than 20 units where curb and gutter does not exist or is not planned on adjacent property, or~~

~~2. Along those segments of road, including the entrance road, where structures are not planned.~~

~~(4) At its discretion, the board of supervisors may award density bonuses to a gross allowable base density of two dwelling units per acre for the following items, provided that no total density exceeds four dwelling units per acre in areas designated low density residential on the comprehensive plan land use map. In addition, the board of supervisors may waive one or more of the requirements for standards (3)(a) and (b) above in approving these density bonuses; however, standards (2)(a) through (e) shall remain as requirements of the developments.~~

~~a. An additional 0.5 dwelling unit per acre may be awarded for every ten percent of the total number of dwelling units dedicated to affordable housing. The applicant must provide the planning director confirmation of the initial sale price for the affordable units prior to the issuance of building permits. The applicant shall also enter into an agreement with the county, approved by the county attorney, which restricts the initial sales prices of the designated affordable units to an actual sales price at or below the allowable sales price limit set for the year in which the unit is built for a period of five years, and which controls the project phases in which such units are built. Such units shall be generally dispersed throughout the proposed development and not concentrated in one area of the development.~~

~~b. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates environmentally sensitive natural design features such as preservation of scenic vistas, preservation of natural areas as suggested by the Natural Areas Inventory, protection of wildlife habitat corridors, and the creation of buffer areas around RMA wetlands, and sustainable building practices as referenced in *The Sustainable Building Sourcebook* from the City of Austin's Green Building Program, or the *Sustainable Building Technical Manual* by the United States Department of Energy.~~

~~c. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates community design features such as interconnecting streets, multiple entrance/exit points to the development, a mixture of unit types and/or unit prices, and group or shared parking. Such layout and design elements shall appear on any residential cluster plan submitted for a special use permit.~~

~~No density bonus shall be awarded for any improvement, design, or action otherwise required by county, state, or federal law.~~

~~(b) *Moderate density residential cluster development.* Within any moderate density residential cluster development, the following standards shall apply:~~

~~(1) Residential cluster developments of four units per acre but less than nine units per acre may be permitted in areas designated moderate density residential on the comprehensive plan land use map and zoned R-5 upon the approval of a master plan by the planning commission in accordance with section 24-553. In order to achieve this density, the developer shall make assurances in a master plan or otherwise for the following:~~

~~a. Implementation of Streetscape Guidelines as defined in the Streetscape Guidelines Policy.~~

~~b. Implementation of the county's Archaeological Policy.~~

~~c. Provision of sidewalks on both sides of all internal streets and drive aisles in the development, including the entrance road. This requirement may be waived or modified by the planning commission under the following circumstances:~~

~~1. The development is infill development of less than 20 units where sidewalks do not exist or are not planned on adjacent property, or~~

~~2. The planning director agrees with the applicant that there will be no practical destination point or route connected to the segment of sidewalk now or in the future.~~

~~d. Provision of recreation facilities as recommended in the county's Comprehensive Parks and Recreation Master Recreation Plan. Upon application for an exception, the board of supervisors may approve alternate facilities or allow cash contributions in lieu of constructing a percentage of the facilities, provided that the alternate facilities or cash contributions are consistent with the recommendations and contributions per unit presented in the master plan.~~

~~e. Construction of curb and gutter design on all streets within the development. This requirement may be waived or modified by the planning commission under the following circumstances:~~

~~1. The development is infill development of less than 20 units where curb and gutter does not exist or is not planned on adjacent property, or~~

~~2. Along those segments of road, including the entrance road, where structures are not planned.~~

~~f. Implementation of the county's Natural Resources Policy.~~

~~(2) At its discretion, the planning commission may award density bonuses to a gross allowable base density of nine dwelling units per acre for the following items, provided that no total density exceeds 12 dwelling units per acre in areas designated moderate density residential on the comprehensive plan land use map. Standards (1)(a) through (f) shall remain as requirements of the developments.~~

~~a. An additional 0.5 dwelling unit per acre for every ten percent of the total number of dwelling units dedicated to affordable housing. The applicant must provide the planning director confirmation of the initial sale price for the affordable units prior to the issuance of building~~

~~permits. The applicant shall also enter into an agreement with the county, approved by the county attorney, which restricts the initial sales prices of the designated affordable units to an actual sales price at or below the allowable sales price limit set for the year in which the unit is built for a period of five years, and which controls the project phases in which such units are built. Such units shall be generally dispersed throughout the proposed development and not concentrated in one area of the development.~~

- ~~b. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates environmentally sensitive natural design features such as preservation of scenic vistas, preservation of natural areas as suggested by the Natural Areas Inventory, and the creation of buffer areas around RMA wetlands, and sustainable building practices as referenced in *The Sustainable Building Sourcebook* from the City of Austin's Green Building Program, or *The Sustainable Building Technical Manual* by the United States Department of Energy.~~
- ~~c. An additional 0.5 dwelling unit per acre for superior layout and quality design which incorporates community design features such as interconnecting streets, multiple entrance/exit points to the development, a mixture of unit types and/or unit prices, and group or shared parking. Such layout and design elements shall appear on any residential cluster plan submitted for a special use permit.~~
- ~~d. An additional one dwelling unit per acre for land dedicated and accepted by the county for a public use site. The site shall be suitable for the proposed use, and shall be a minimum of five acres.~~

~~No density bonus shall be awarded for any improvement, design, or action otherwise required by county, state, or federal law.~~

*No project shall have a density (including bonuses) of more than four units per acre. In order to achieve the densities listed below, the developer shall provide at least the minimum amount of open space, and shall make assurances in a master plan, proffers, or other document approved by the county attorney, for the density bonus items. The approval process for cluster development shall be as stated in section 24-556.*

<i>Density</i>	<i>Percent of developable acreage as open space</i>	<i>Required density bonus points from list below</i>
<i>Up to 1</i>	<i>25 percent</i>	<i>None</i>
<i>More than 1, but no more than 2</i>	<i>25 percent</i>	<i>2</i>
<i>More than 2, but no more than 3</i>	<i>30 percent</i>	<i>4</i>
<i>More than 3, but no more than 4</i>	<i>35 percent</i>	<i>6</i>

	<i>Bonus Item Options</i>	<i>Bonus Points</i>
<i>A.</i>	<i>For every 10 percent of the units committed to provision of affordable and workforce housing (starting above the threshold set in the county's housing opportunities policy, as amended)</i>	<i>2, up to a max of 4</i>



B.	<i>Designing a stormwater management plan that meets Chesapeake Bay Preservation Ordinance standards and requirements through extensive use of better site design/low impact development techniques, as approved by the engineering and resource protection division</i>	1.5
C.	<i>Undertaking or funding a stream restoration project or stormwater management facility retrofit within the same sub-watershed, as identified by an approved watershed management plan or by the engineering and resource protection division</i>	1.5
D.	<i>Meeting a majority of items (a) – (d) listed in section 24-551, Open space development design elements, as determined by the planning director</i>	1.5
E.	<i>Achieving green building certification using EarthCraft, LEED or equivalent program for all units</i>	1
F.	<i>Dedicating to the county a public use site, the developable portion of which is suitable for a public facility, as determined by the county administrator or designee</i>	1
G.	<i>Constructing a greenway trail and dedicating a public use easement in a location indicated by the approved greenway master plan, the Virginia outdoors plan, or such other useful and logical location as approved by the parks and recreation director or designee</i>	1
H.	<i>Preserving a single area of healthy, mature, mixed hardwood forestland at least two acres in size, within the developable portion of the site. The planning director may request that the developer provide confirmation, prepared by a certified horticulturalist, that these qualities are present</i>	1
I.	<i>Retaining a single area of agricultural land designated on the United States Department of Agriculture (USDA) maps to be of prime or statewide importance that is at least five acres in size</i>	1
J.	<p><i>Preserving one of the following underlined environmentally-related conservation features. The underlined item must constitute at least five percent of the developable area of the site.</i></p> <ol style="list-style-type: none"> <li><i>1. <u>100 foot buffers</u> around non-RPA wetland features (isolated wetlands), intermittent streams, or from floodplain zones A or AE (where not already part of the RPA), or from the edge of the RPA buffer;</i></li> <li><i>2. <u>Soils in hydrologic groups A and B, as defined by the USDA, and as verified on-site by a licensed geotechnical engineer</u> (retain at least 50 percent of these soils on site);</i></li> <li><i>3. <u>Conservation area as identified by an approved watershed management plan;</u> or</i></li> <li><i>4. <u>Wildlife habitat corridors</u> that:</i> <ol style="list-style-type: none"> <li><i>a. Protect a corridor at least 100 feet in width from one protected area (on or off the cluster property) to another protected area, and</i></li> <li><i>b. Consist of mature forestland</i></li> </ol> </li> </ol>	1
K.	<i>Providing pedestrian accommodations on one side of all internal roadways, where this would exceed the requirements in set forth in section 24-35 of this chapter</i>	1
L.	<i>Developing binding design guidelines for the development that include superior architectural and design standards. Elements that the guidelines shall address include, but need not be limited to, provision of rear or side loading garages; use of universal design concepts; and attention to the quality of, and variation in, elements of the units such as facade materials and colors; windows, roof pitches, porches and entryways; and heights and setbacks from the right-of-way. Design guidelines shall be submitted concurrent with the master plan, and shall be reviewed and approved by the planning director</i>	0.5

M.	<i>Providing a 100-foot buffer from the internal edge of a right-of-way buffer and/or perimeter buffer (must constitute at least five percent of the developable area of the site)</i>	0.5
N.	<i>Preserving and rehabilitating an on-site structure identified in the document entitled Historical Structures Survey, prepared by Virginia Department of Historic Resources, and dated May 2008. The structure may be re-used as a community clubhouse or private residence with appropriate deed restrictions. If the proposed cluster is within a community character area (CCA) designated by the comprehensive plan, this bonus would also be available for rehabilitation and legal preservation of a structure elsewhere within that CCA</i>	0.5

**Sec. 24-5520. Amount of open space required ~~Open space.~~**

~~(a) Within every residential cluster development approved under this article, there shall be planned and set aside permanently an amount of open space to be maintained exclusively for conservation and recreation purposes. It is recommended that the open space be protected by establishing a permanent conservation easement. The amount of such open space shall include not less than 40 percent of the net developable area of the site in low density residential areas and 35 percent of the net developable area in moderate density residential areas. These amounts may be reduced to the following percentages at the discretion of the planning commission if the proposed development dedicates the following percentage of its total units to affordable housing:~~

<b>Percentage of Total Units Dedicated to Affordable Housing</b>	<b>Percentage of Open Space Required in Low Density Residential</b>	<b>Percentage of Open Space Required in Moderate Density Residential</b>
10 to 55	30	25
More than 55 to 100	25	20

~~Golf courses may be counted as open space for the purpose of meeting this requirement to a maximum of 30 percent of the required open space. The developable area of right of way buffers and perimeter buffers may be counted as open space for the purpose of meeting this requirement to a maximum of 50 percent of the required open space.~~

~~(b) In addition, all nondevelopable areas consisting of all stream beds, areas subject to flooding under the 100-year storm event, and wetlands shall be maintained as open space. Areas with slopes of 25 percent or more which are contiguous to the above-mentioned areas may be incorporated into individual lots provided that the sloped areas are placed in conservation easements approved by the county attorney.~~

~~(c) Before accepting the open space as meeting the requirements of paragraph (a) of this section, the planning commission shall find that:~~

- ~~(1) No land lying within a proposed or existing road right-of-way, utility easement or drainage facility is counted toward the minimum open space requirement; and~~
- ~~(2) The land is suitable in its size, shape and location for the conservation and recreational purposes for which it is intended, with adequate access for the entire development and served with adequate facilities for such purpose; and~~
- ~~(3) No part of a private yard or area determined by the planning commission to be a part thereof, with the exception of easements for streetscapes, shall be counted as meeting the open space requirements of this chapter; and~~

~~(d) Evidence shall be given that satisfactory arrangements will be made for the perpetual maintenance of designated open space areas to relieve the county of future maintenance.~~

*Within every residential cluster development approved under this division, there shall be planned and set aside permanently an amount of open space to be maintained exclusively for conservation and recreation purposes.*

*(a) Non-developable areas shall be maintained as open space and shall not be included on any private lot, and should be protected though a conservation easement dedicated to the county or other legal entity approved by the county attorney.*

*(b) In addition, a percentage of the developable area shall also be set aside as open space, as specified in section 24-549. The developable area open space may include, but is not limited to:*

- (1) Areas on site necessary to meet county policies pertaining to natural resources, archaeology, and parks and recreation;*
- (2) Areas on site used to achieve density bonus points in accordance with section 24-549;*
- (3) The following areas, up to the percent specified:*
  - a. Golf courses cannot exceed 30 percent of the developable open space required*
  - b. Required right-of-way and perimeter buffers cannot exceed 50 percent of the developable open space required, and*

c. Stormwater management facilities cannot exceed 20 percent of the developable open space required (this limitation applies to structural best management practices such as wet and dry ponds, but does not apply to bioretention or other low impact design measures).

(c) For the purpose of meeting the developable open space requirements specified in (b), open space area may not include:

(1) Area on any individual private lots, or in the case of condominiums, within 15 feet of the units, or

(2) Land within public road rights-of-way and utility or drainage easements.

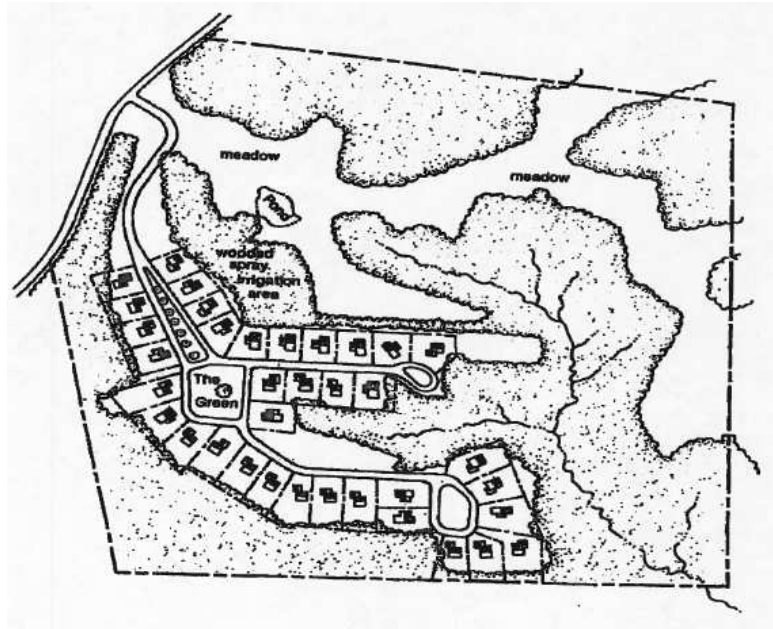
(d) Conceptual and/or master plans shall include a table with the open space information as follows:

<b>Open space</b>	
<b>Nondevelopable open space, as defined</b>	<b>Acreage</b>
<b>Developable open space required</b>	<b>Acreage</b>
<b>Developable open space provided</b>	<b>Acreage</b>
• Area(s) used to meet county policies pertaining to natural resources, archaeology, and parks and recreation (provide subtotals if applicable)	
• Area(s) on site used to achieve density bonus points in accordance with section 24-549	
• Area of golf courses	
• Area in required right-of-way and perimeter buffers	
• Area in stormwater management facilities	
• Other qualifying open space area	
<b>Total nondevelopable and developable open space</b>	

(e) Open space shall be arranged on the site in a manner that coordinates with section 24-551, Open space development design elements. While every site is different, the applicant, as part of the conceptual and/or master plan review process, shall demonstrate through a narrative document or exhibits that the following were considered in designing the open space.

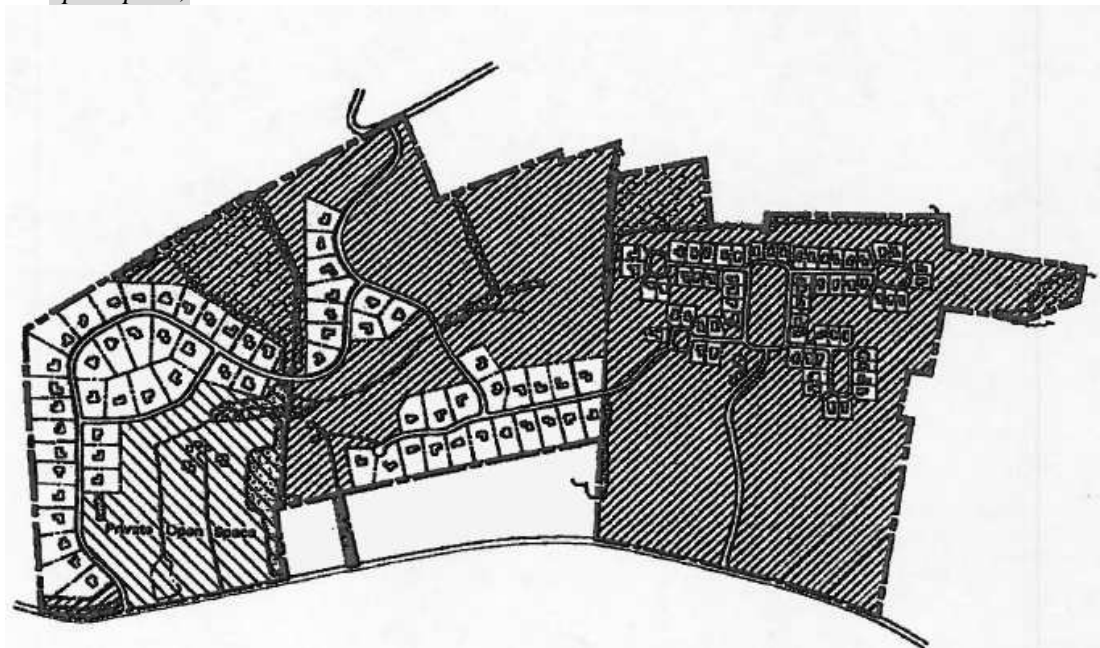
(1) Conservation/general open space:

a. Located to preserve existing significant natural and historic features and scenic viewsheds such as ponds and views to open water, particularly those than can be seen from public roads;



*Figure 1*  
(Graphic provided by Natural Lands Trust with permission)

- b. Located to adjoin any neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future protected open space;



*Figure 2*  
(Graphic provided by Natural Lands Trust with permission)

- c. *Located to be interconnected and contiguous to the extent possible, and located to benefit and be accessible to the maximum number of units; and*
- d. *Prominently located within the development (for example, at the terminus of key views along roads, at the intersection of arterial or collector streets, at topographic high points or centrally located within the residential area).*

(2) *Recreation*

- a. *Cluster developments shall adhere to the parks and recreation master plan proffer guidelines. Any additional land intended for recreation shall be useable for the purpose intended, and also follow the design specifications in the parks and recreation master plan proffer guidelines.*

**Sec. 24-551. Open space development design elements.**

*While every site is different, the applicant, as part of the conceptual and/or master plan review process, shall demonstrate through a narrative document or exhibits that the following were considered in designing the development. These considerations shall be coordinated with the open space design.*

- (a) *The design should take advantage of the compact design by clustering development into a walkable scale neighborhood and preserving significant open space and natural features;*
- (b) *The development should be designed to complement existing topography and minimize the need for alteration of the landscape;*
- (c) *The development should use a mixture of diverse unit types, lot sizes, and/or unit prices; and*
- (d) *The design should use a creative layout. Examples include:*
  - (1) *Fronting on open space;*
  - (2) *Constructed with one side exterior wall along the side property line to allow side or rear yard garages;*
  - (3) *Detached or attached homes on loop lanes;*
  - (4) *Use of better site design techniques such as group or shared parking, and shared driveways; and*
  - (5) *Clear access from the units to the open space by abutting it, or via sidewalks or trails.*

**Sec. 24-5532. Ownership of open space. Establishment of homeowners association.**

~~Within any residential cluster development approved under this article on which a tract is intended to be used in common for recreational or other public or semipublic purposes, no lot shall be approved, recorded, sold or used within the development until a declaration of covenants and restrictions or other documents necessary to establishing a permanent homeowners organization has been approved by the county attorney and has been executed. Such documents shall set forth the following:~~

- ~~(1) The nature of the permanent organization under which common ownership is to be established, including its purpose; how it shall be governed and administered; the provisions made for permanent care and maintenance of the common property including necessary bonds when required by the county; and the method of assessing the individual property for its share of the cost of adequately administering and maintaining and replacing such common property.~~
- ~~(2) The extent of common interest held by the owner of each individual parcel in the tract held in common.~~

*A homeowners association shall be established in accordance with chapter 19 of the county code. The homeowners association documents shall set forth the nature (recreation or conservation) and location of the open space(s) either through illustration or through incorporation by reference of the development's master plan. The documents shall generally describe the use and maintenance standards necessary to adhere to the nature of the open space(s) as shown on the development's master plan.*

**Sec. 24-5503. BMP requirements.**

To assure an appearance and condition which is consistent with the purpose of the residential cluster development overlay district, structural BMPs serving the properties within the district shall comply with the landscaping regulations in article II, division 4 of this chapter.

**Sec. 24-5514. Performance assurance.**

For all improvements proposed by the applicant pursuant to section 24-549, assurances shall be provided, satisfactory to the county attorney, that such improvements will be constructed and completed for use by project residents within a specific, reasonable period of time.

**Sec. 24-555. Pedestrian accommodations.**

*Pedestrian accommodations shall be provided in accordance with section 24-35.*

**Sec. 24-5546. Review and approval process.**

~~(a) Review required. A master plan for a residential cluster development proposed under this article shall be filed with the planning director, who shall submit it to the planning commission and board of supervisors in~~

~~instances where a special use permit is required or to the development review committee in cases where a special use permit is not required. The planning director shall recommend action on the plan to the planning commission, and to the board of supervisors in instances where a special use permit is required. The planning commission and board of supervisors, where applicable, shall approve the master plan upon finding that:~~

- ~~(1) Such cluster development will preserve the environmental integrity of the site by protecting features such as wetlands, steep slopes, stream valleys, or natural vegetation; and~~
- ~~(2) The cluster development will not impair the character of the area or create unacceptable adverse off-site infrastructure impacts; and~~
- ~~(3) The proposed project is in accordance with the Comprehensive Plan of James City County; and~~
- ~~(4) The structures within the residential cluster development are sited in a way that preserves prominent open space features which are within or adjoin the site, such as open fields or farmland, scenic vistas, sight lines to historic areas or structures, and archaeological sites.~~

~~(b) *Master plan.* The master plan shall identify proposed areas and uses of open space including the nondevelopable areas. The master plan shall be prepared by a licensed surveyor, engineer, architect, landscape architect or a planner. A scale shall be used so that the entire parcel can be shown on one piece of paper no larger than 36 inches by 48 inches. It shall include:~~

- ~~(1) An inset map at a scale of not less than one inch to one mile, showing the property in relation to surrounding roads, subdivisions or landmarks.~~
- ~~(2) A north arrow.~~
- ~~(3) The location of existing property lines, existing above and below ground utility easements, scenic easements, watercourses or lakes, wooded areas and existing woods which are within or adjoin the property.~~
- ~~(4) The boundaries of each section, topography and approximate location of proposed streets, proposed areas and uses of open space, proposed parking areas, proposed recreation areas, proposed lots and/or buildings, and phasing of development.~~
- ~~(5) Marginal data which shows the gross acreage of the site, the net developable area, the proposed facilities qualifying for density bonuses or required per the density standards, the total number of dwelling units and/or lots, the number of bonus units and/or lots, the minimum amount of open space required by section 24-551(a) and the total amount of open space.~~
- ~~(6) Master water, sewer and drainage plans and schematic plans.~~
- ~~(7) All required setbacks, right-of-way buffers and perimeter buffers; all preserved tree areas, preserved slopes, open space areas and proposed bicycle/pedestrian access thereto; and proposed storm water management facilities.~~



~~(c) *Status of master plan.* The approval of the master plan under this section shall not be considered an approved preliminary plat as defined in the subdivision ordinance.~~

~~—(d) *Administrative consistency review.* The planning director may determine certain minor changes to a development plan are consistent with the master plan. A conceptual plan may be submitted to the planning director for this purpose in a form sufficient to illustrate the proposed deviations. For the purpose of this section, minor determinations of consistency include changes that meet all of the following:~~

- ~~(1) Do not significantly affect the general location or classification of housing units or buildings as shown on the master plan.~~
- ~~(2) Do not significantly alter the distribution of recreation or open space areas on the master plan.~~
- ~~(3) Do not significantly affect the road layout as shown on the master plan.~~
- ~~(4) Do not significantly alter the character of land uses or other features or conflict with any binding conditions placed on the corresponding legislatively approved case associated with the master plan.~~

~~—The planning director shall notify the chair of the development review committee when minor determinations of consistency are approved. Determinations of consistency that do not meet the criteria listed above shall follow the procedures for development plan review as outlined in section 24-554 (e) of the zoning ordinance.~~

~~—(e) *Development plan review.* Development plans shall be submitted and reviewed in accordance with article III of this chapter or with the county's subdivision ordinance, which ever is applicable. Development plans may be submitted for review after approval of a master plan by the board of supervisors. All development plans shall be consistent with the master plan. Development plans may deviate from the master plan if the planning commission concludes, after reviewing written comments from the planning director, that the plan does not significantly alter the character of land uses or other features or conflict with any binding conditions placed on the approval of rezoning. A conceptual plan may be submitted to the planning commission for this purpose in a form sufficient to illustrate the proposed deviations. If the planning commission determines that a proposed change would significantly deviate from the approved master plan, the applicant may submit alternative proposed development plans or proceed with amendment of a master plan in accordance with section 24-13.~~

~~(f) *Master plan review fees.* Submittal of a master plan shall be accompanied by the fee charged for master plan review in accordance with section 24-7 of this chapter.~~

~~(g) *Master plan Agreement.* Prior to final approval of the first sectional plan, an agreement shall be executed between the developer and the county which shall be binding upon the developer, his successors, assigns or heirs to the effect that the approved master plan shall govern the development of the total residential cluster development. This provision does not preclude the adjustment of the plan in accordance with section 24-553(d).~~

~~(h) *Sectional plans Action.* Sectional plans submitted in accordance with subsection (d) shall be reviewed in accordance with and shall meet the requirements of, article III of this chapter or the county's subdivision~~

~~ordinance, whichever is appropriate. However, all sectional plans submitted for moderate density cluster development shall be reviewed in accordance with and meet the requirements of article III of this chapter.~~

*(a) Conceptual plan and master plan. Any conceptual plan or master plan for a residential cluster development proposed under this division shall include the elements listed below. For master plans, these elements shall be in addition to meeting the requirements of section 24-23.*

- (1) Depiction and/or documentation of the items that the applicant plans to pursue when a bonus density above the base density is sought;*
- (2) Conceptual development design, including required setbacks and buffers, and illustration of the features listed above in the open space and open space development design sections;*
- (3) Marginal data and depiction which shows the gross acreage of the site, the nondevelopable area, the total number of dwelling units and/or lots, and, in the table format specified in section 24-550, the amount of open space required and the amount of open space provided; and*
- (4) Conceptual stormwater design, illustrating use of better site design and low impact development techniques, where possible.*

*(b) Approval process.*

*(1) In instances where a special use permit is not required by the residential district, a master plan shall be filed with the planning director who shall recommend action on the plan to the development review committee, which shall forward a recommendation to the planning commission. The planning commission shall approve the master plan upon finding that the proposed cluster development meets the requirements of this ordinance and is in accordance with the applicable residential designation description of the Comprehensive Plan.*

*(2) In instances where a special use permit is required by the residential district:*

*a. Prior to submission of a master plan for legislative action, the applicant is strongly encouraged to file a conceptual plan for review by the development review committee. The development review committee shall provide a recommendation on the conceptual plan based upon its findings regarding the extent that the proposed cluster development meets the requirements of this ordinance and is in accordance with the applicable residential designation description of the comprehensive plan.*

*b. A master plan in accordance with section 24-23 shall be submitted and shall follow the process established in that section. The recommendations and findings of the development review committee on any conceptual plan shall be presented to the planning commission.*

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November,  
2012.

ZO-07-09-10\_ord2

## RESOLUTION

### RESIDENTIAL REDEVELOPMENT POLICY

WHEREAS, the task of creating the Residential Redevelopment District, R-3, was included as a part of the adopted methodology for the zoning ordinance update adopted by the Board of Supervisors in May 2010; and

WHEREAS, the 2009 Comprehensive Plan referenced the importance of supporting efforts to improve the condition and variety of the County's housing stock; and

WHEREAS, after receiving feedback from the Policy Committee, the Planning Commission, and the Board of Supervisors, the following policy is recommended for all Residential Redevelopment projects.

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

Projects seeking rezoning to the R-3, Residential Redevelopment District, should meet or exceed the following expectations:

1. Be located inside the Primary Service Area;
2. Bring existing non-conforming parcels into conformance with the requirements of this district;
3. Provide or improve public infrastructure (including but not necessarily limited to public streets, water and/or sewer service, and stormwater facilities); and
4. Provide affordable and workforce housing units, where at least 50 percent of all proposed housing units are targeted to families earning 30-120 percent of Area Median Income (AMI), with a minimum of 25 percent of all proposed housing units targeted to families earning 30-80 percent of AMI.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-2, DEFINITIONS; ARTICLE V, DISTRICTS, DIVISION 3, LIMITED RESIDENTIAL DISTRICT, R-1, SECTION 24-245, BUFFER REQUIREMENTS; DIVISION 4, GENERAL RESIDENTIAL DISTRICT, R-2, SECTION 24-266, BUFFER REQUIREMENTS; DIVISION 4.1, RESIDENTIAL REDEVELOPMENT DISTRICT, R-3, SECTION 24-273.7, OVERALL DENSITY WITHIN SUBDIVISIONS; DIVISION 6, MULTIFAMILY RESIDENTIAL DISTRICT, R-5, SECTION 24-311, BUFFER AND SETBACK REQUIREMENTS; DIVISION 14, PLANNED UNIT DEVELOPMENT DISTRICT, PUD, SECTION 24-287, DENSITY; SECTION 24-492, SETBACK AND/OR BUFFER REQUIREMENTS AND YARD REGULATIONS; AND DIVISION 15, MIXED USE, MU, SECTION 24-519, DENSITY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article I, In General, Section 24-2, Definitions; Article V, Districts, Division 3, Limited Residential District, R-1, Section 24-245, Buffer requirements; Division 4, General Residential District, R-2, Section 24-266, Buffer requirements; Division 4.1, Residential Redevelopment District, R-3, Section 24-273.7, Overall density within subdivisions; Division 6, Multifamily Residential District, R-5, Section 24-311, Buffer and setback requirements; Division 14, Planned Unit Development Districts, PUD, Section 24-287, Density; Section 24-492, Setback and/or buffer requirements and yard regulations; and Division 15, Mixed Use District, MU, Section 24-519, Density.

## **Chapter 24. Zoning**

### **Article I. In General**

#### **Sec. 24-2. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

*Affordable housing. Housing available at a sales price or rental amount that does not exceed 30 percent of the total monthly income of households earning between 30 percent and 80 percent of the area median income as determined by the U.S. Department of Housing and Urban Development (HUD).*

*Workforce housing. Housing available at a sales price or rental amount that does not exceed 30 percent of the total monthly income of households earning between greater than 80 percent and 120 percent of the area median income as determined by the U.S. Department of Housing and Urban Development (HUD).*

### **Article V. Districts**

#### **Division 3. Limited Residential District, R-1**

#### **Sec. 24-245. Buffer requirements.**

(c) *Waiver provisions.* In instances where properties have more than a 300-foot average depth and are located along a Community Character Corridor, or in all instances of perimeter buffers, the planning director may reduce the buffer depth requirements specified in (a) and (b) of this section for residential developments when:

- (1) The development is less than five acres and a majority of the development's units are dedicated to *affordable and* workforce housing; or
- (2) The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development as effectively as a full buffer; or
- (3) The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.

In no case shall the right-of-way buffer be reduced by a waiver provision to less than 75 feet. The perimeter buffer shall not be reduced by a waiver provision to less than 20 feet. The planning director may also, in the event of granting a waiver, require additional landscaping as determined on a case by case basis.

## Division 4. General Residential District, R-2

### Sec. 24-266. Buffer requirements.

(c) *Waiver provisions.* In instances where properties have more than a 300-foot average depth and are located along a Community Character Corridor, or in all instances of perimeter buffers, the planning director may reduce the buffer depth requirements specified in (a) and (b) of this section for residential developments when:

- (1) The development is less than five acres and a majority of the development's units are dedicated to *affordable and* workforce housing; or
- (2) The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development as effectively as a full buffer; or
- (3) The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.

In no case shall the right-of-way buffer be reduced by a waiver provision to less than 75 feet. The perimeter buffer shall not be reduced by a waiver provision to less than 20 feet. The planning director may also, in the event of granting a waiver, require additional landscaping as determined on a case by case basis.

## Division 4.1 Residential Redevelopment District, R-3

### Sec. 24-273.7. Overall density within subdivisions.

No project shall have a density (including bonuses) of more than four units per acre. In order to achieve the densities listed below, the developer shall make assurances in a master plan, proffers, or other document approved by the county attorney, for the density bonus items.

Density	Required density bonus points from list below
Up to 2.5	None required
More than 2.5, but no more than 3	3
More than 3, but no more than 3.5	4
More than 3.5, but no more than 4	5

	Bonus Item Options	Bonus Points
A.	For every 15 percent of the total units that meet the definition of <i>affordable and</i> workforce housing (starting above the threshold set forth in the Residential Redevelopment Policy, as amended).	2, up to a max of 4

## **Division 6. Multifamily Residential District, R-5**

### **Sec. 24-311. Buffers and setback requirements**

(c) Waiver provisions. In instances where properties have more than a 300-foot average depth and are located along a Community Character Corridor, or in all instances of perimeter buffers, the planning director may reduce the buffer depth requirements of this section for residential developments when:

- (1) The development is less than five acres and a majority of the development's units are dedicated to *affordable and* workforce housing; or
- (2) The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development as effectively as a full buffer; or
- (3) The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.

In no case shall the right-of-way buffer be reduced by a waiver provision to less than 75 feet. The perimeter buffer shall not be reduced by a waiver provision to less than 20 feet. The planning director may also, in the event of granting a waiver, require additional landscaping as determined on a case by case basis.

## **Division 15. Mixed Use, MU**

### **Sec. 24-519. Density.**

(c) In addition to the base density standards from section 24-519 (a) a density bonus can be achieved with the provision of options as detailed below. In order to achieve the densities listed below, the developer shall make assurances in a master plan or otherwise for the density bonus items.

Bonus increase from base density	Required density bonus points from list below
Up to the base density	0
Greater than the base density, up to and including 33 percent above the base density	2
Greater than 33 percent above the base density, up to and including 66 percent above the base density	4
Greater than 66 percent above the base density, up to and including 100 percent above the base density	6



	Bonus Item Options	Bonus Points
A.	For every 10 percent of the units committed to provision of <i>affordable and</i> workforce housing (starting above the threshold set in the county's <del>workforce</del> housing opportunities policy)	2, up to a max of 4

#### **Division 14. Planned Unit Development Districts, PUD**

##### **Sec. 24-487. Density.**

(c) In addition to the base density standards from section 24-487 (a), a density bonus can be achieved with the provision of options as detailed below. In order to achieve the densities listed below, the developer shall make assurances in a master plan, proffers, or other documents approved by the county attorney for the density bonus items.

Bonus Increase from Base Density	Required Density Bonus Points from List Below
Up to the base density	0
Greater than the base density, up to and including 33 percent above the base density	2
Greater than 33 percent above the base density, up to and including 66 percent above the base density	4
Greater than 66 percent above the base density, up to and including 100 percent above the base density	6

	Bonus Item Options	Bonus Points
A.	For every 10 percent of the units committed to provision of <i>affordable and</i> workforce housing (starting above the threshold set in the county's <del>workforce</del> housing opportunities policy)	2, up to a max of 4

##### **Sec. 24-492. Setback and/or buffer requirements and yard regulations.**

c. *Waiver provisions.* In instances where properties have more than a 300-foot average depth and are located along a Community Character Corridor, the planning director may reduce the buffer depth requirements specified in (1) a and b of this section for residential developments when:

1. The development is less than five acres and a majority of the development's units are dedicated to *affordable and* workforce housing; or

2. The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development as effectively as a full buffer; or
3. The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.

In no case shall the right-of-way buffer be reduced by a waiver provision to less than 75 feet. The planning director may also, in the event of granting a waiver, require additional landscaping as determined on a case by case basis.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

ZO-07-09-10\_ord1

## MEMORANDUM COVER

**Subject:** Zoning Ordinance Transition

**Action Requested:** Shall the Board approve the resolution that sets forth provisions for vesting of rights in relation to the amendment of the cluster overlay zoning district?

**Summary:** Developments which completely meet the criteria listed in the resolution would be vested under the old ordinances prior to the adoption of Case No. ZO-0007-11, Cluster Overlay District. The purpose of the transition resolution is to make clear through local governing body action, as well as the existing provisions in the Code of Virginia, the status of vested rights in relation to the changes to this district. This is particularly important for districts which relate to density and overall development patterns.

Staff recommends adoption of the attached resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution
3. Minutes of the November 7, 2012, Planning Commission

**Agenda Item No.:** J-1

**Date:** November 27, 2012

**MEMORANDUM**

DATE: November 27, 2012

TO: The Board of Supervisors

FROM: Ellen Cook, Senior Planner III

SUBJECT: Zoning Ordinance Transition

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This item is brought forward in conjunction with Case No. ZO-0007-2011, Cluster Overlay District, which was earlier on the Board's agenda. The Code of Virginia sets forth provisions for vesting of rights in relation to the amendment of zoning ordinances in Section 15.2-2307. The proposed transition resolution mirrors the provisions in the Code of Virginia, with a minor adjustment to Items 3b and 3c to reference master plans since these are customarily part of the rezoning and special use permit process in James City County. The purpose of the transition resolution is to codify the Code of Virginia provisions at the local level, thus making clear in a local ordinance the status of vested rights in relation to the changes in the Cluster Overlay District. This is particularly important for districts which relate to density and overall development patterns.

Developments which completely meet the criteria listed in the resolution would be vested under the old ordinances prior to the adoption of Case No. ZO-0007-2011, Cluster Overlay District. In the past the Commission and Board have followed this same procedure when significant updates to the Zoning Ordinance are adopted.

Recommendation

At its November 7, 2012, meeting the Planning Commission voted 6-0 to recommend approval of this item.

Staff recommends that the Board approve the attached transition resolution.

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Ellen Cook

CONCUR:

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Allen J. Murphy, Jr.

EC/nb  
ZOTransitn\_mem

Attachment

## **RESOLUTION**

### **ZONING ORDINANCE TRANSITION**

WHEREAS, the Board of Supervisors is considering revisions and amendments to sections of Chapter 24, Zoning, of the Code of the County of James City, Virginia, as described in Case No. ZO-0007-2011; and

WHEREAS, the orderly transition from the existing zoning regulations to revised regulations requires a transition resolution to affect changes in law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia hereby grandfathers proposed developments which meet the criteria identified below under the regulations in effect prior to the November 27, 2012, adoption of revisions to the James City County Zoning Ordinance, as described in Case No. ZO-0007-2011, if all of the following conditions were fully and completely met on or before November 27, 2012:

1. The landowner had obtained or was the beneficiary of a “significant affirmative governmental act” (as defined herein) which remains in effect allowing development of a specific project; and
2. Relied in good faith on the significant affirmative governmental act; and
3. Incurred extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

Each of the following are deemed to be a “significant affirmative governmental act”:

- a) The Board of Supervisors has accepted proffers or proffered conditions which specify use related to a zoning amendment;
- b) The Board of Supervisors has approved an application for a rezoning, with master plan, for specific use(s) or density;
- c) The Board of Supervisors or Board of Zoning Appeals has granted a special exception or use permit, with master plan, with conditions;
- d) The Board of Zoning Appeals has approved a variance;
- e) The Board of Supervisors or its designated agent has approved a preliminary subdivision plat, site plan, or plan of development for the landowner’s property and the landowner diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;
- f) The Board of Supervisors or its designated agent has approved a final subdivision plat, site plan, or plan of development for the landowner’s property; or

- g) The zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification, or reversal under subsection C of Section 15.2-2311 of the Code of Virginia, 1950, as amended.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	___	___	___
JONES	___	___	___
KENNEDY	___	___	___
ICENHOUR	___	___	___
KALE	___	___	___

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

ZOTransitn\_res

## **Unapproved Minutes of the November 7, 2012 Planning Commission Meeting**

### **Zoning Ordinance Transition Resolution**

Ms. Cook stated that this item is brought forward in conjunction with Case No. ZO-0007-2011, Cluster Overlay District. She stated this proposed transition resolution is for the purpose of vesting or grandfathering those development projects that meet the criteria listed in the resolution. She stated vesting or grandfathering would mean that the proposed changes to the cluster overlay district would not affect those developments as they moved forward. She stated the criteria for vesting listed in the resolution mirrors the provisions of the Code of Virginia.

Ms. Cook stated staff recommends that the Planning Commission recommend approval of the attached transition resolution to the BOS.

Mr. O'Connor opened the public comment.

There being none, Mr. O'Connor closed the public comment.

Mr. Krapf moved for approval of the Zoning Ordinance Transition Resolution.

In a unanimous voice vote, the report was approved (6-0: Absent: Woods).

## MEMORANDUM COVER

**Subject:** Initiation of a Rezoning of 225 Meadowcrest Trail

**Action Requested:** Shall the Board approve a resolution that initiates the rezoning of the property located at 225 Meadowcrest Trail?

**Summary:** James City County owns a parcel located at 225 Meadowcrest Trail and identified as James City County Real Estate Tax Map No. 1330100016 (the "Property"). NVR, Inc. (Ryan Homes) has indicated a desire to purchase the property and incorporate it into the Windsor Ridge development. The current PL, Public Lands, zoning does not allow for a single-family residential development. The attached resolution initiates the rezoning of the Property to achieve a single-family residential density similar to that currently existing in the adjacent Windsor Ridge development.

Staff recommends approval of the attached resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution
3. Map

**Agenda Item No.: J-2**

**Date:** November 27, 2012



**MEMORANDUM**

DATE: November 27, 2012

TO: The Board of Supervisors

FROM: Adam R. Kinsman, Deputy County Attorney

SUBJECT: Initiation of Zoning Changes to 225 Meadowcrest Trail

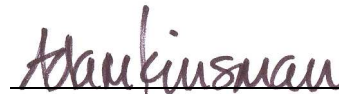
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Attached is a resolution initiating a rezoning of the parcel located at 225 Meadowcrest Trail adjacent to the Wellington subdivision and further identified as James City County Real Estate Tax Map No. 1330100016 (the "Property"). The Property is 15 acres and is currently zoned PL, Public Lands. The County was given the Property as part of the Wellington development agreement and it has remained unused since then. Staff has polled County departments and there are no proposed uses for the Property.

Representatives from NVR, Inc. (Ryan Homes) have indicated a desire to purchase the Property and to develop it as a part of the single-family development known as "Windsor Ridge." By agreement between Ryan Homes and the Wellington Homeowners Association (HOA), Windsor Ridge will be a part of the Wellington HOA. Staff has discussed this proposal with the Board of Directors of the Wellington HOA and it has indicated its support, provided that it is able to review the proposed development plans for the Property.

The current zoning designation of the Property does not allow for a single-family residential development. Rezoning the Property will allow it to be developed at a density similar to the adjacent Wellington and Windsor Ridge neighborhoods, both of which are zoned R-1, Limited Residential. Because the permissible density in the R-1 district has been decreased since development of Wellington, other zoning changes may also be necessary to achieve density similar to that in the adjacent Windsor Ridge neighborhood. While a County-initiated rezoning for a residential development is rare, staff is confident that this additional control will provide the County with the greatest flexibility to ensure that the Property is developed in harmony with the adjacent neighborhoods and in a manner acceptable to all parties.

Staff recommends adoption of the attached resolution to initiate a rezoning of 225 Meadowcrest Trail.



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Adam R. Kinsman

CONCUR:

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Leo P. Rogers

ARK/nb  
225Meadowcrest\_mem

Attachment

## RESOLUTION

### INITIATION OF ZONING CHANGES TO 225 MEADOWCREST TRAIL

WHEREAS, the County is the owner of certain real property located at 225 Meadowcrest Trail and further identified as Parcel No. 1330100016 on the James City County Real Estate Tax Map (the "Property"); and

WHEREAS, NVR, Inc. (Ryan Homes) desires to purchase the Property so that it may be incorporated into the Windsor Ridge neighborhood; and

WHEREAS, the Property may not be used for residential development unless and until the current PL, Public Lands, zoning designation is changed; and

WHEREAS, the Board of Supervisors of James City County is of the opinion that it is in the public interest to rezone the Property for use as a residential development.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia does hereby initiate the rezoning of the Property from PL, Public Lands to R-1, Limited Residential with any other zoning changes (including, but not limited to a special use permit) necessary to achieve a density on the Property similar to that in the adjacent Windsor Ridge neighborhood. The Planning Commission shall hold at least one public hearing on the proposed rezoning and Special Use Permit and shall forward its recommendation thereon to the Board of Supervisors in accordance with the law.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

225Meadowcrest\_res

## MEMORANDUM COVER

**Subject:** Resolution of the Board of Supervisors of James City County, Virginia, Declaring Its Intention to Reimburse Itself from the Proceeds of One or More Financings for Certain Costs of Capital Improvements

**Action Requested:** Should the Board of Supervisors authorize the reimbursement of project spending incurred before bonds are actually sold to finance the projects?

**Summary:** Bonds may be sold to finance some or all of the \$14 million in borrowing authority approved by referendum in November of 2005 for the acquisition of greenspace or conservation easements.

If the Board adopts this resolution, any spending on these projects, before the bond issue(s) are executed, can be reimbursed from bond proceeds.

The resolution was drafted by bond counsel.

Staff recommends adoption of the attached resolution.

**Fiscal Impact:** It would provide a fiscal option that would not otherwise exist.

**FMS Approval, if Applicable:** Yes ☒ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.:**J-3

**Date:** November 27, 2012

**MEMORANDUM**

DATE: November 27, 2012

TO: The Board of Supervisors

FROM: John E. McDonald, Director, Financial and Management Services

SUBJECT: Resolution of the Board of Supervisors of James City County, Virginia, Declaring Its Intention to Reimburse Itself from the Proceeds of One or More Financings for Certain Costs of Capital Improvements

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The Board of Supervisors is considering the expenditure of funds to acquire green space and/or conservation easements in the form of property development rights. By adopting the attached resolution the Board will be retaining the ability to enter into General Obligation financing(s) to reimburse itself, under Federal Treasury regulations, for any spending incurred before the bond issue(s) are sold.

This resolution does not obligate the Board in any way. It is permissive and allows a reimbursement but does not require that any future indebtedness be incurred.

Staff recommends approval of the attached resolution.

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John E. McDonald

JEM/nb  
IndebtReimbur\_mem

Attachment

## **RESOLUTION**

### **RESOLUTION OF THE BOARD OF SUPERVISORS OF JAMES CITY COUNTY, VIRGINIA,**

#### **DECLARING ITS INTENTION TO REIMBURSE ITSELF**

#### **FROM THE PROCEEDS OF ONE OR MORE FINANCINGS**

#### **FOR CERTAIN COSTS OF CAPITAL IMPROVEMENTS**

WHEREAS, voters in James City County have approved a bond referendum to issue general obligation bonds in a principal amount not to exceed \$20 million pursuant to the Public Finance Act of 1991, as amended, for the purpose of financing a portion of the cost of the acquisition of land and voluntary land conservation agreements that will serve as greenspace for the County and preserve agricultural, forestal, or environmentally sensitive lands in the County; and

WHEREAS, \$14 million of that borrowing authority currently remains and discussions with landowners have proceeded to the point where some of that bond authority may be desirable in order to finance the acquisition of property.

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

1. The Board of Supervisors adopts this declaration of official intent under Treasury Regulations Section 1.150-2.
2. The Board of Supervisors reasonably expects to reimburse advances made or to be made by the County to pay the costs of the Project from the proceeds of one or more financings. The maximum amount of financing expected to be issued for the Project is \$14 million.
3. This resolution shall take effect immediately upon its adoption.

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John McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

## MEMORANDUM COVER

**Subject:** Compensation Initiatives

**Action Requested:** Should the Board of Supervisors consider one or more of the following compensation initiatives?

**Summary:** The Board action would be the follow-up or implementation of the various compensation options discussed by the Board in the November 27, 2012 Work Session.

**Fiscal Impact:** Identified above.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.:** J-4

**Date:** November 27, 2012

**MEMORANDUM**

DATE: November 27, 2012

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Compensation Initiatives

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The attached resolution serves as a placeholder. It identifies five compensation issues that will be discussed in the Board's work session beginning at 4 p.m. on this date. This resolution will serve as a template that the Board can amend based on the discussion and any conclusions tentatively agreed to in the work session.

The first two discussion points include a possible bonus for County employees in December and whether or not to extend that bonus to Constitutional Officers, the General Registrar, and the County Attorney. The resolution reflects what was adopted last year, \$1,000 for each qualified full-time employee and \$500 for qualified part-time employees, but the Board could choose to amend the resolution for different dollar figures or to identify different criteria for the bonus. An additional appropriation of the June 30, 2012, General Fund undesignated fund balance in the amount of \$600,000 to personnel contingency would be required to allow the County Administrator to distribute a one-time bonus this calendar year to full-time or part-time regular or limited-term employees who have completed their introductory period, received a minimum rating of "Meets Expectations" on their FY 2013 performance evaluation, and are employed as of December 1, 2012. Amendments, if any, will be based on the conclusions from the work session discussions by the Board.

The third item is the possible declaration of Monday, December 31, 2012, as a County holiday as a compensation option. Those County employees required to work would be paid an additional amount under the County's Holiday Pay policy, and others would receive an extra day off. An additional appropriation of the June 30, 2012, General Fund undesignated fund balance in the amount of \$25,000 to personnel contingency would be required to allow Monday, December 31, 2012, to be designated an additional Holiday for County employees, with the appropriate Holiday pay supplement paid to those employees, primarily public safety, who are required to work.

The fourth item is to ask the Board's permission to issue a Request for Proposal (RFP) for a Compensation study that would evaluate County job descriptions, pay, and benefits against market averages. Should the Board authorize an RFP, staff will bring the contract recommendation and a budget adjustment sufficient to pay for the study back to the Board for approval.

The fifth and final item is a Statement of Intent for the FY 2014 Operating Budget that endorses a permanent compensation increase for County employees as a budget priority and funding to allow a similar compensation increase for the Williamsburg-James City County Schools as an additional budget priority.

It is my recommendation that the Board adopt this resolution, or an amended version, as a necessary first step to return to a market-based compensation system for County employees.

---

Robert C. Middaugh

RCM/nb  
Compensatn\_mem

Attachment

## **RESOLUTION**

### **COMPENSATION INITIATIVES**

WHEREAS, the Board of Supervisors has participated in a special work session devoted to compensation initiatives in the five areas shown in the following resolution,

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

- (a) An additional appropriation of the June 30, 2012, General Fund undesignated fund balance in the amount of \$600,000 to personnel contingency to allow the County Administrator to distribute a one-time bonus this calendar year to full-time or part-time regular, or limited-term employees who have completed their introductory period, received a minimum rating of "*Meets Expectations*" on their FY 2013 performance evaluation and are employed as of December 1, 2012. The bonus, which will have no impact on base pay, shall be \$1,000 for each full-time position and \$500 for each part-time position; and
- (b) That the one-time bonus for qualified County employees be extended to the four Constitutional Officers who have agreed to participate in the County's pay and personnel policies, the County Registrar, and to the County Attorney; and
- (c) An additional appropriation of the June 30, 2012, General Fund undesignated fund balance in the amount of \$25,000 to personnel contingency to allow Monday, December 31, 2012, to be designated an additional Holiday for County employees, with the appropriate Holiday pay supplement paid to those employees, primarily public safety, who are required to work; and
- (d) That the Board authorize a Request for Proposal (RFP) for a compensation study that would review County job descriptions, pay, and benefits against market averages. The Board will be asked to transfer funds and approve a contract when the RFP proposal is completed and a recommendation is prepared that further identifies both the scope and the cost; and
- (e) That it is intended that one of the priorities for the FY 2014 operating budget is to fund a permanent salary increase as of July 1, 2013, for eligible County employees and to provide sufficient funds to allow the Williamsburg-James City County School Board to consider offering a similar permanent salary increase to its employees.



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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of November, 2012.

Compensatn\_res