

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS County Government Center Board Room July 8, 2014

7:00 P.M.

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE -

E. PRESENTATIONS

1. Courthouse Roof – pg.1
2. Recycling Update
3. Davenport, LLC

F. PUBLIC COMMENT

G. BOARD REQUESTS AND DIRECTIVES

H. CONSENT CALENDAR

1. Minutes –
 - a. June 24, 2014, Regular Meeting – pg. 5
2. Refunding of Outstanding County Bonds – pg. 15

I. PUBLIC HEARINGS

1. Case Nos. Z-0003-2013/MP-0001-2013. Rezoning and Master Plan Amendment for Kingsmill, Land Bay 8 – pg. 39
2. Ordinance to Amend and Reordain Chapter 3, Animal Laws – pg. 47
3. Case No. SUP 0004-2014. Windsor Meade Marketplace Wendy's (New Town, Section 11) – pg. 67
4. Case No. SUP 0005-2014. Creative Kids Child Development Center – pg. 79
5. Case No. SUP 0006-2014. 2604 John Tyler Highway Sewer Connection – pg. 111

J. BOARD CONSIDERATION

K. PUBLIC COMMENT

L. REPORTS OF THE COUNTY ADMINISTRATOR

M. BOARD REQUESTS AND DIRECTIVES

N. CLOSED SESSION

O. ADJOURNMENT – until 4 p.m. on July 22, 2014, for the Work Session

M E M O R A N D U M

DATE: July 8, 2014

TO: The Board of Supervisors

FROM: John T. P. Horne, General Services Director

SUBJECT: Courthouse Roof

The intent of the memorandum is to document my findings as to the circumstances that have led to the failures of the roof at the Williamsburg-James City County Courthouse. In addition, the memorandum discusses options for roof replacement. For several weeks I have consulted with the following:

- Centennial Contracting and Roof Evaluation and Design Consultants, Inc. - Producers of the roof evaluation and replacement alternatives study
- Moseley Architects - Co-architects of the Courthouse
- Bernie Farmer - Project Manager for construction of the Courthouse
- College of William and Mary representatives - Have considerable experience with slate roofs
- Oyster Point Construction Company - General Contractor for the Courthouse
- JD Miles and Sons - Roofing subcontractor who installed the slate roof
- Evergreen Roof - Slate manufacturer
- Martin Fireproofing Corporation - Roof deck manufacturer
- Courthouse and City Representatives

After the research above, I believe the roof failure is the result of ineffective installation of the slate shingles. The concrete roof panels used for the project, into which the slate was to be nailed, were an unusual/nonstandard product. Fastening specifications and procedures needed to be different from those used on most projects, which typically would use a plywood roof deck. Both the specifications and the procedures used did not take into account the specific aspects of this roof system. In general for a project of this type, however, all products are required by contract to be installed to manufacturer's specifications, no matter what the overall project specifications state.

The two main installation problems were:

1. **Fasteners** - The nails used did not allow for adequate penetration of the concrete panels without overly tight fastening. The nail length did not meet the concrete panel manufacturer's installation specifications and were driven home too tightly. Other slate tiles were not nailed at all due to metal bands on the panels. The result was that some nails did not hold and others broke slate tiles during installation or after weathering.
2. **Slate Laps and Spacing** - Some slate tiles were installed without appropriate laps or without actually covering the substrate. This has allowed water penetration even where tiles have not loosened.

It should also be noted that some of the slate failure now seen on the roof is also the result of damage during several attempts to repair roof leaks. Slate roofs are not designed to withstand significant foot traffic and some slate shingles were broken by foot traffic.

During the construction process there were procedures to require appropriate submittals to document materials and methods. In fact, mock-ups were built on-site to demonstrate installation proficiency by the contractor. During installation of the slate tiles, however, there was no independent, qualified roofing inspection process to

monitor the final installation. Many third-party inspections were performed on other aspects of the overall project, but not on the slate roof.

The General Services Department does now have in place contract requirements, third-party inspections procedures, and specifications that address the need for clear oversight of roof construction on capital projects. Recent roof projects have been metal, membrane, or asphalt shingles for which industry standards are more easily verified. The Department intends to continue to increase our vigilance on this issue.

Staff authorized the consultant to undertake some limited analysis of the concrete panels to see if they will be adequate for installation of a new roof system. At the same time they did limited repairs of the roof to limit active leaks, where possible. The Courthouse is experiencing only limited leaks to the interior spaces at this time and very little permanent damage has yet occurred. By all indications, however, it is very unlikely that the existing roof can be effectively repaired or salvaged.

The Board has been previously informed that installation and design warranties have expired and no recourse is available through the warranty process.

ROOF REPLACEMENT AND CUPOLA REPAIR

The consultant has provided budget level options for various roof replacement options. Several parties I have consulted with have confirmed that effective repair of the existing slate roof is very difficult and would not likely be reliable. Significant damage to existing slate shingles would occur in the repair process and would cause continuous problems in the future. Upcoming failures may also be hidden at this time. The cost of all options is affected by the need to erect scaffolding from ground level due to the height of the building. The cost estimates are broad budget estimates and detailed design and bidding will be necessary before firm costs are known. Options under consideration are:


- 50 Year Premium Grade Architectural Asphalt Shingles - \$550,000
This option is recommended by the consultant as the most cost effective. This type of commercial grade shingle can be procured with a 50-year limited warranty. Appearance of the roof would continue to be of high quality. Installation is not as complex as other options and the shingles can withstand foot traffic if repairs are ever needed. Repairs are also not complex.
- Synthetic Slate Shingles - \$1,100,000
This option would have the closest appearance to the existing roof and, if installed correctly, would also have a very long life. The existing roof deck would need to be overlaid with plywood to accept this product, leading to higher costs and a longer installation time.

Either of the above roof types would meet the design guidelines in place for the courthouse area of New Town.

At the time of replacement of the roof, limited cupola repairs will be necessary at an estimated cost of \$60,000.

Funding for the repairs is available from two general sources. Some funds are available from the Courthouse Maintenance Fund, which is funded from court fees and administered by the City on behalf of the Courthouse. The remainder of the project cost would be funded jointly by the City and County. The relative shares of the two jurisdictions have not been negotiated at this time. The approved County Capital Improvements Program (CIP) has allocated \$500,000 for the project, which appears to be adequate of the County's share.

Staff would welcome any Board comments. Unless directed otherwise, I recommend proceeding with the design of a project using the architectural asphalt shingles described above.


John T. P. Horne

JTPH/gb
CrtHouseRoof-mem

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 24TH DAY OF JUNE 2014, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

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

M. Douglas Powell, Acting County Administrator
Leo P. Rogers, County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Joshua Brittle, a rising 4th-grade student at Matoaka Elementary School and a resident of the Berkeley District, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATIONS

1. 2014 Historical Preservation Awards

Mr. Lafayette Jones, Chairman of the Historical Commission, addressed the Board and citizens and presented the 2014 Historical Preservation Awards to Troop 103, Boy Scouts of America, Mr. Richard Costello, and the Colonial Williamsburg Foundation and Preservation Virginia.

2. CSX Shipment of Bakken Crude Oil

Deputy Fire Chief Ryan Ashe addressed the Board giving a presentation on the transportation of Bakken Crude Oil through the County on the CSX rail lines and what steps are being taken to prepare and protect the community in the event of a derailment.

Mr. McGlennon expressed his concerns regarding the transport of the Bakken Crude Oil through the County and stated that there are a lot of citizens that live close to the railways that run through the County.

F. PUBLIC COMMENTS

1. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board regarding the most recent Community Participation Team (CPT) meeting held in Toano.

2. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board regarding the recent ordinance allowing chicken-keeping.

3. Mr. Randy O'Neill, 109 Sheffield Road, addressed the Board regarding the health and wellness of school-aged children in the County.

4. Ms. Petra Nadel, 106 Indian Circle, addressed the Board regarding the recent ordinance allowing chicken-keeping.

5. Mr. Ed Oyer, 139 Indian Circle, addressed the Board regarding a bike trail being proposed on Croaker Road.

6. Ms. Rosanne Reddin, 4700 President's Court, addressed the Board regarding the recent CPT meeting held in Toano.

7. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board regarding private meetings with no publicly available reports or minutes.

G. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon congratulated the graduates of the local schools and stated that he attended the graduation ceremonies of the local high schools. He stated that he attended all three of the CPT meetings that were held in the community last week and that they were well attended. He stated that he appreciated the citizens bringing attention to the award he received from the Virginia Transit Association. He stated that he has served as the Chairman of the Transit Service Delivery Advisory Committee of the Virginia Department of Rail and Public Transit for the past year. He stated that he has reported on the work of that body on occasion during these meetings. He stated that the work of that body was to determine an allocation formula for additional funds for public transportation that the State was receiving. He stated that he is happy to report that \$600,000 in additional funding will be received by Williamsburg Area Transit Authority (WATA) to support public transportation in James City County, the City of Williamsburg, and parts of York County. He stated that recordings of the meetings are available online through the Virginia Department of Rail and Public Transit, as well as minutes of those meetings.

Mr. Onizuk stated that he attended a meeting at the Greater Williamsburg Chamber and Tourism Alliance this morning. He stated that the focus of the meeting was marketing for sports tourism in our region. He stated that the feasibility of a Field House and/or an Aquatic Center was discussed. He stated that representatives from the local jurisdictions and destinations were in attendance. He stated that it was an initial meeting to generally determine interest level. He stated that regional cooperation will be key in order to keep costs down, but there does appear to be regional interest. He stated that if the process moves forward, the next step would be to contact Councilman Hunsaker, the company that provided the Feasibility Study to see what the next steps would be should there be the decision to move forward.

Mr. Onizuk congratulated Go-Karts Plus for its 25th Anniversary as a member of the business community.

Ms. Jones stated congratulated Go-Karts Plus as well. She stated that she and Mr. Onizuk attended the ribbon cutting ceremony for New Concepts in Settlers Market. She congratulated all the high school graduates and wished them the best of luck in the future. She stated that she attended the Hampton Roads Planning District Commission (HRPDC)/Hampton Roads Transportation Planning Organization (HRTPO) meeting last week and one of the agenda items was the 2040 Long Range Transportation Plan which includes

improvements to Route 60 and other road improvements throughout the County. She stated that she had the opportunity to welcome the Virginia Association of Rural Letter Carriers who was holding its Annual Convention at the Fort Magruder Hotel and Conference Center.

H. CONSENT CALENDAR

Ms. Jones stated that for clarification for the public, the Petty Cash Fund is in reference to Parks and Recreation in the amount of \$300.

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

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

1. Minutes –
 - a. June 10, 2014, Regular Meeting
2. Appropriation of Transfer from Williamsburg-James City County (WJCC) and Contract Award – Shelter Generator, Abram Frink Jr. Community Center and James River Elementary School

RESOLUTION

APPROPRIATION OF TRANSFER FROM WILLIAMSBURG-JAMES CITY COUNTY (WJCC) **AND CONTRACT AWARD – SHELTER GENERATOR, ABRAM FRINK JR.** **COMMUNITY CENTER AND JAMES RIVER ELEMENTARY SCHOOL**

WHEREAS, the James City County Fire Department Emergency Management Division was previously awarded a Hazard Mitigation Grant Program (HMGP) grant in the amount of \$98,000 to purchase and install a shelter generator at the Abram Frink Jr. Community Center and the Board appropriated the grant on July 23, 2013; and

WHEREAS, the Abram Frink Jr. Community Center and James River Elementary School share a physical plant and electrical systems; and

WHEREAS, Williamsburg-James City County (WJCC) Public Schools and the County have identified the opportunity to re-size the generator to both provide a local shelter alternative with emergency power capabilities at the southern end of the County and provide backup power for the school during non-emergency power outages; and

WHEREAS, the WJCC School Board transferred \$250,000 to the project on February 18, 2014; and

WHEREAS, cooperative procurement action is authorized by Chapter 1, Section 5 of the James City County Purchasing Policy and the Virginia Public Procurement Act, and the National Joint Powers Alliance (NJPA) issued a cooperative purchasing contract to Carter Machinery Company that was competitively solicited and awarded; and

WHEREAS, County staff determined equipment available under this contract meet the required technical specifications and negotiated a price of \$166,326.07 for purchase of a generator, automatic transfer switch, and fuel tank.

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

Revenue:

Transfer from WJCC	<u>\$250,000</u>
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Expenditure:

HMGP Grant – Shelter Generator	<u>\$250,000</u>
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BE IT FURTHER RESOLVED that the Board of Supervisors hereby authorizes the issuance of a contract to Carter Machinery Company for a generator, automatic transfer switch, and fuel tank in the amount of \$166,326.07.

3. Establishment of a Petty Cash Fund

RESOLUTION

ESTABLISHMENT OF A PETTY CASH FUND

WHEREAS, the Department of Parks and Recreation continues to explore all opportunities to generate revenue through users fees; and

WHEREAS, it is necessary to accept cash and provide change to the users at special events that require an admission or parking fee; and

WHEREAS, this collection of fees and cash management process must be consistent with James City County adopted policies and procedures.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the Treasurer to establish a \$300 petty cash fund to be used by County staff at special events sponsored by the Parks and Recreation Department.

4. Local Governing Body Concurrence with School Division Electing to Pay the Virginia Retirement System (VRS) Board-Certified Rate

RESOLUTION

LOCAL GOVERNING BODY CONCURRENCE WITH SCHOOL DIVISION

ELECTING TO PAY THE VIRGINIA RETIREMENT SYSTEM (VRS)

BOARD-CERTIFIED RATE

WHEREAS, the Williamsburg-James City County (WJCC) School Board has elected to pay the Employer Contribution Rate certified by the Virginia Retirement System (VRS) Board of Trustees for its Non-Professional Account; and

WHEREAS, in accordance with the 2014 Appropriation Act Item 468 (H), the local governing body must concur with the local public school division's election of the VRS-Certified Employer Contribution Rate; and

WHEREAS, the Board of Supervisors concurs with the WJCC School Board's election to pay the Certified Employer Contribution Rate; and

WHEREAS, the WJCC adopted budget reflects payment at the rate of 7.22 percent.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, (55147) hereby acknowledges that the Williamsburg-James City County School Division has made the election for its contribution rate to be based on the Employer Contribution Rates certified by the VRS Board of Trustees pursuant to Virginia Code §51.1-145(1) resulting from the June 30, 2013, actuarial value of assets and liabilities (the "Certified Rate").

BE IT FURTHER RESOLVED that James City County (55147) does hereby certify to the VRS Board of Trustees that it concurs with the election of the Williamsburg-James City County School Division to pay the Certified Rate, as required by Item 468(H) of the 2014 Appropriations Act.

BE IT FURTHER RESOLVED that the officers of James City County (55147) are hereby authorized and directed in the name of James City County to execute any required contract to carry out the provisions of this resolution. In execution of any such contract which may be required, the seal of James City County, as appropriate, shall be affixed and attested by the Clerk.

I. PUBLIC HEARING

1. Ordinance to Amend and Reordain Chapter 13, Motor Vehicles and Traffic, Article I, In General, Section 13-7, Adoption of State Law; and Article II, Driving Automobiles, Etc. While Intoxicated or Under the Influence of Any Drug, Section 13-28, Adoption of State Law, Generally

Mr. Rogers introduced Ms. Leah Dubuisson, Summer Law Clerk.

Ms. Dubuisson addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Mr. McGlennon asked Ms. Dubuisson to explain why the Board is going through this process for a date change.

Ms. Dubuisson explained that the General Assembly adopted a code section that allows localities to incorporate the changes by reference instead of having to go through and update every single ordinance every year.

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

1. Mr. Randy O'Neill, 109 Sheffield Road, addressed the Board in opposition to the fees that are collected from these ordinances.

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

Mr. Kennedy stated that the fees and fines are dictated to the localities by the General Assembly and the reason they are high is as a deterrent. He stated that he understands the hardship for all involved, but the alternative is worse.

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

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

J. BOARD CONSIDERATION

1. Case No. ZO-0001-2014. Initiation of a Zoning Ordinance Amendment to Consider the Keeping of Chickens in R-2, General Residential, and R-3, Residential Redevelopment Zoned Areas of the County and the Special Regulations Related Thereto

Mr. Scott Whyte, Planner III, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Ms. Jones asked how many citizens have applied for a permit to keep chickens in R-1 since the ordinance was passed on June 10, 2014.

Mr. Whyte stated that he had received one call from a citizen inquiring about obtaining a permit. He stated that staff is in the process of drafting the permit application.

Ms. Jones stated that she supports this Initiating Resolution. She stated that she would like the Planning Commission to look at surrounding localities that have adopted similar ordinances and see if they have had any issues in other residential districts. She reiterated that if citizens live in a homeowners association (HOA) community that does not permit chickens, then those citizens will not be allowed to have them. She stated that there are many citizens that live on R-2 and R-3 zoned property that is quite rural and she believes that they should have the option to keep chickens as well.

Ms. Jones made a motion to approve the Initiating Resolution included in the Agenda Packet.

Mr. McGlennon stated that he was under the impression, from the last meeting, that other types of fowl were to be included in this initiating resolution.

Ms. Jones stated that was neither her request nor the direction that she intended for the possible expansion of the ordinance to go. She stated that Mr. Kennedy mentioned about other types of fowl being included. She stated that she would prefer that the focus remain on chickens and would not support including roosters.

Mr. Kennedy stated that he has spoken to members of the Planning Commission and they have asked for clarification on what the Board specifically wants.

Ms. Jones stated that she believes she was very clear in her previous statement. She asked the Planning Commission representative, Ms. Robin Bledsoe, if that direction was what the Planning Commission was looking for.

Ms. Bledsoe came forward and addressed the Board stating that staff provided the Planning Commission and the Policy Committee numerous ordinances from surrounding localities.

Mr. Hipple stated that these considerations are for citizens that live in areas that are not under an HOA. He stated that many areas are more out of the way and have more space and those are the areas the Board is focusing on.

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

RESOLUTION

CASE NO. ZO-0001-2014. INITIATION OF A ZONING ORDINANCE AMENDMENT TO CONSIDER THE KEEPING OF CHICKENS IN R-2, GENERAL RESIDENTIAL, AND R-3, RESIDENTIAL REDEVELOPMENT ZONED AREAS OF THE COUNTY AND THE SPECIAL REGULATIONS RELATED THERETO

WHEREAS, in order to make the Zoning Ordinance more conducive to proper development, public review and comment of draft amendments is required pursuant to Virginia Code §15.2-2286; and

WHEREAS, the Board of Supervisors is of the opinion that the public necessity, convenience, general welfare, or good zoning practice warrant the consideration of amendments.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate review of the Zoning Ordinance and amending the language of Article II Special Regulations, by adding provisions and procedures relating to the raising of chickens in residential areas of James City County, and amending the language of Article V, Districts to add the keeping of chickens as a matter of right in the R-2, General Residential, and/or the R-3, Residential Redevelopment zoning districts.

The Board of Supervisors shall hold at least one public hearing on the consideration of amendments of said ordinance.

K. PUBLIC COMMENTS

1. Ms. Petra Nadel, 106 Indian Circle, addressed the Board regarding the recent CPT meeting held in Grove.
2. Mr. Ed Oyer, 139 Indian Circle, addressed the Board regarding the education system in the County.
3. Ms. Rosanne Reddin, 4700 President's Court, addressed the Board regarding the passing of the Purchase of Development Rights (PDR) reimbursement grant at the last meeting.
4. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in opposition to new bike paths in the community.
5. Mr. Randy O'Neill, 109 Sheffield Road, addressed the Board regarding Economic Development in the County.

L. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Powell stated James City County will be participating in a public safety training drill involving several area jurisdictions this Tuesday and Wednesday, June 24 and 25. The drill will be held at the site of the former Williamsburg Outlet Mall at Richmond and Centerville Roads in Lightfoot. Drivers and residents can expect to see multiple local and State emergency and police vehicles, plus a large number of public safety personnel near that area. Traffic delays or congestion is likely. County officials urge local drivers and residents to be aware of the training drill and not to be alarmed during the simulated event.

Mr. Powell stated that residents and businesses can still play a part in the future of the James City County community. The Community Participation Team (CPT) and the Planning Division are hosting a Virtual Community Workshop that can be viewed on demand at jamescitycountyva.gov/comprehensiveplan. The Virtual Community Workshop includes information about the upper, central, and lower parts of the County and focuses on the topics of economic development, transportation, and land use. Virtual Community Workshop participants can complete the accompanying online questionnaire and have an impact on the goals set for our future and the actions the County undertakes. In order to be included in the CPT's public input summary, input should be received by June 30, 2014.

M. BOARD REQUESTS AND DIRECTIVES

1. Consideration of a Personnel Matter, the Appointment of Individuals to County Boards and/or Commissions Pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
 - a. Colonial Group Home Commission
 - b. Board of Building Adjustments and Appeals
 - c. Williamsburg Area Arts Commission
 - d. Economic Development Authority
 - e. Historical Commission
 - f. Stormwater Program Advisory Commission

Ms. Jones stated that during the Work Session this afternoon, the following appointments were made: Mr. Anthony Conyers reappointed to a new four-year term on the Colonial Group Home Commission; Mr. Timothy Mills reappointed to a new five-year term on the Board of Building Adjustments and Appeals; Mr.

Greg Lilly and Ms. Karlene Jennings reappointed to new three-year terms on the Williamsburg Area Arts Commission; Mr. Stephen Montgomery and Mr. Marshall Warner reappointed to new four-year terms on the Economic Development Authority; Mr. Allen Ayers, Mr. Roger Schmidt, and Mr. Richard Strenkowski reappointed to new four-year terms on the Stormwater Program Advisory Commission; Mr. Michael Carter appointed to a new three-year term on the Historical Commission; Ms. Karlene Jennings and Mr. Peter Gushue reappointed to new one-year terms on the Historical Commission; Mr. John Labanish and Mr. Alain Outlaw reappointed to new two-year terms on the Historical Commission; and Mr. Lafayette Jones reappointed to a new three-year term on the Historical Commission.

Ms. Jones stated that she attended the Hampton Roads Military and Federal Facilities Alliance (HRMFFA) meeting last Thursday. She stated that Secretary John Harvey spoke regarding concerns at VA Hospitals. He stated that he will be visiting all of the VA Hospitals in Virginia and will be doing an assessment on the needs here in Virginia.

Mr. Onizuk requested an update on the Curbside Recycling Program at the next meeting. He stated that he has received several calls regarding the new program and the new bins.

Mr. McGlennon requested that the information regarding Parks and Recreation's plans, for alleviating the inconvenience of having the James River Community Center closed, be posted on the County website.

Mr. McGlennon made a motion to amend the Board's calendar to add a meeting on July 1, 2014, at 4 p.m. for the purpose of convening a Closed Session.

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

N. CONTINUATION – until 4 p.m. on July 1, 2014, for a Closed Session.

At 8:52 p.m., Ms. Jones recessed the Board.

M. Douglas Powell
Clerk to the Board

MEMORANDUM


DATE: July 8, 2014
TO: The Board of Supervisors
FROM: John E. McDonald, Director, Financial and Management Services
SUBJECT: Refunding of Outstanding County Bonds

Staff has been working with representatives of Davenport & Company, the County's financial advisors, and Lisa Williams of McGuire Woods LLC, bond counsel, on two possible refunds (refinancings) of outstanding County debt. Interest rates have dropped to the point where the County can refinance existing borrowings and reduce the annual debt service payments. No additional debt is incurred since these new bond proceeds will be used to retire existing debt.

The 2005 Lease Revenue Bonds have a balance of \$14,660,000. Savings in debt service spending from the refunding are estimated to be \$1,150,000 through 2026, or an average annual savings of approximately \$100,000.

The 2005 General Obligation Bonds have a refundable balance of \$22,480,000. Savings in debt service spending from this refunding are estimated at approximately \$2,800,000 through 2028 with the annual average savings of approximately \$200,000.

Staff recommends approval of the attached resolutions prepared by our bond counsel.


John E. McDonald

JEM/tlc
BondRefund14-mem

Attachments

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

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

annual appropriation, sufficient to pay the principal of, premium, if any, and interest on the Bonds; and

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

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

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

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

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

certificates, and to do and perform such things and acts and to take such further action, as they shall deem necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Bonds or the Basic Documents, or both.

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

6. Disclosure Documents. (a) The Authorized Representatives and such other officers and agents either Authorized Representative may designate are hereby authorized and directed to prepare, execute, if required, and deliver an appropriate notice of sale, Preliminary Official Statement and final official statement (the "Official Statement") or such other offering or disclosure documents as may be necessary to expedite the sale of the Bonds, including such documentation as may be necessary to provide for the submission of electronic bids for the Bonds if electronic bidding is determined by such officer or officers to be advantageous. Any such notice of sale, Preliminary Official Statement, Official Statement or other documents shall be published in such publications and distributed in such manner, including by electronic distribution, and at such times as the Authorized Representatives shall determine. The Authorized Representatives and such other officer or agent either Authorized Representative may designate, are hereby authorized to deem the Preliminary Official Statement "final" for purposes of Securities Exchange Commission Rule 15c2-12.
 - (b) The Official Statement and its use and distribution is authorized and approved. The Official Statement shall be in substantially the form of the Preliminary Official Statement on file with the County Administrator, which is hereby approved, with such completions, omissions, insertions and changes as may be approved by the Authorized Officers, whose execution thereof shall constitute conclusive evidence of their approval of such form, terms and conditions.
7. Costs and Expenses. All costs and expenses in connection with the undertaking of the refinancing of the County's obligations under the 2005 Financing Lease, the refunding of the Refunded Bonds and the issuance of the Bonds, including the Authority's fees and expenses and the fees and expenses of bond counsel and counsel for the Authority, shall be paid from the proceeds of the Bonds, or other legally available funds of the County. If for any reason the Bonds are not issued, it is understood that all such expenses shall be paid by the County from its legally available funds and that the Authority shall have no responsibility therefor.
8. Nature of Obligations. Nothing in this Resolution, the Bonds, or the Basic Documents shall constitute a debt of the County, and the Authority shall not be obligated to make any payments under the Bonds or the Basic Documents except from payments made by or on behalf of the County under the Financing Lease. The County Administrator is hereby directed to submit for each fiscal year a request to the Board for an appropriation to the Authority for an amount equal to the rental payments coming due under the Financing Lease for the next fiscal year. The County's obligations to make payments to the Authority pursuant to this Resolution shall be subject to and dependent upon annual appropriations being made from time to time by the Board for such purpose. Nothing in this Resolution, the Bonds or the Financing Lease shall constitute a pledge of the full faith and credit of the County.
9. Tax Covenants. The Authorized Representatives are hereby authorized and directed to execute and deliver simultaneously with the issuance of any series of Bonds the interest on which is intended to be excludable from gross income for federal income tax purposes a tax certificate or agreement, or both (collectively, the "Tax Agreement") setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to comply with the provisions

of the Internal Revenue Code of 1986, as amended (the "Tax Code"), including the provisions of Section 148 of the Tax Code and applicable regulations relating to "arbitrage bonds." The proceeds from the issuance and sale of any such series of the Bonds will be invested and expended as set forth in the Tax Agreement and that the County will comply with the other covenants and representations contained in it.

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

Clerk (with respect to authorizations granted to the Clerk of the Board of Supervisors),
in the absence of the primary officer.

13. Effective Date. This Resolution shall take effect immediately.

ATTEST: <hr style="width: 250px; margin-left: 0;"/> Adam R. Kinsman Deputy Clerk to the Board	<hr style="width: 250px; margin-left: 0;"/> Mary K. Jones Chairman, Board of Supervisors	<u>AYE</u> _____ _____ _____ _____ _____	<u>NAY</u> _____ _____ _____ _____ _____	<u>ABSTAIN</u> _____ _____ _____ _____ _____
	KENNEDY JONES MCGLENNON ONIZUK HIPPLE			

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July,
2014.

Refnd2005LeaseBnd-res

CERTIFICATION

The undersigned Deputy Clerk of the Board of Supervisors of James City County, Virginia hereby certifies that the foregoing constitutes a true, correct and complete copy of a resolution duly adopted by the Board of Supervisors of James City County, Virginia, at a meeting duly called and held on July 8, 2014, during which a quorum was present and acting throughout, by the vote set forth below, and that such resolution has not been repealed, revoked, rescinded, or amended:

<u>Board Member</u>	<u>Present/Absent</u>	<u>Vote</u>
Mary K. Jones, Chair		
Michael J. Hipple, Vice Chair		
James G. Kennedyr		
Kevin D. Onizuk		
John J. McGlennon		

WITNESS my signature as Deputy Clerk of the Board of Supervisors of James City County, Virginia, this _____ day of July, 2014.

Deputy Clerk, Board of Supervisors
James City County, Virginia

(SEAL)

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

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

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

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

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

conclusively by the execution and delivery of such documentation evidencing the sale of the Bonds. The approval of the Authorized Representatives shall be evidenced conclusively by the execution and delivery of such documentation evidencing the sale of the Bonds.

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

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

4. Redemption of Bonds. The Bonds may be subject to optional redemption, make-whole, or noncallable on such terms as the Authorized Representatives may approve. The Bonds may also be subject to mandatory sinking fund redemption on such terms as the Authorized Representatives may approve.
5. Form of Bonds. The Bonds shall be in substantially the form attached to this Resolution as Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution or subsequent resolution of the Board. There may be endorsed on the Bonds such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.
6. Book-Entry-Only Form. (a) The Bonds shall be issued in book-entry-only form. The Bonds shall be issued in fully-registered form and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC") as registered owner of the Bonds, and immobilized in the custody of DTC. One fully registered Bond in typewritten or printed form for the principal amount of each maturity of the Bonds shall be registered to Cede & Co. Beneficial owners of the Bonds shall not receive physical delivery of the Bonds. Principal, premium, if any, and interest payments on the Bonds shall be made to DTC or its nominee as registered owner of the Bonds on the applicable payment date.

(b) Transfer of ownership interest in the Bonds shall be made by DTC and its participants (the "Participants"), acting as nominees of the beneficial owners of

the Bonds in accordance with rules specified by DTC and its Participants. The County shall notify DTC of any notice required to be given pursuant to this Resolution or the Bonds not less than 15 calendar days prior to the date upon which such notice is required to be given. The County shall also comply with the agreements set forth in the County's Letter of Representations to DTC.

- (c) Replacement Bonds (the "Replacement Bonds") shall be issued directly to beneficial owners of the Bonds rather than to DTC or its nominee but only in the event that:
 - (i) DTC determines not to continue to act as securities depository for the Bonds;
 - (ii) the County has advised DTC of its determination not to use DTC as a securities depository; or
 - (iii) the County has determined that it is in the best interest of the beneficial owners of the Bonds or the County not to continue the book-entry system of transfer.

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

- 7. Appointment of Bond Registrar and Paying Agent. (a) The Director of Financial and Management Services and such officer or agent the Director of Financial and Management Services designates is hereby authorized and directed to appoint a Bond Registrar and Paying Agent for the Bonds.
 - (b) The Director of Financial and Management Services and such officer or agent the Director of Financial and Management Services designates may appoint a subsequent bond registrar and/or one or more paying agents for the Bonds upon giving written notice to the owners of the Bonds specifying the name and location of the principal office of any such bond registrar or paying agent.
- 8. Execution of Bonds. The County Administrator is hereby authorized and directed to execute on behalf of the County the Bonds. The Clerk of the Board of Supervisors is hereby authorized and directed to affix or to cause to be affixed the seal of the County to the Bonds and to attest such seal. The County Administrator is hereby authorized and directed to deliver the Bonds to the purchaser or purchasers thereof upon payment

of the applicable purchase price. The manner of execution and affixation of the seal may be by facsimile, provided, however, that if the signatures of the County Administrator and the Clerk of the Board of Supervisors are both by facsimile, the Bonds shall not be valid until signed at the foot thereof by the manual signature of the Bond Registrar.

9. CUSIP Numbers. The Bonds shall have CUSIP identification numbers printed thereon. No such number shall constitute a part of the contract evidenced by the Bond on which it is imprinted and no liability shall attach to the County, or any of its officers or agents by reason of such numbers or any use made of such numbers, including any use by the County and any officer or agent of the County, by reason of any inaccuracy, error or omission with respect to such numbers.
10. Registration, Transfer and Exchange. (a) Upon surrender for transfer or exchange of any Bond at the principal office of the Bond Registrar, the County shall execute and deliver and the Bond Registrar shall authenticate in the name of the transferee or transferees a new Bond or Bonds of any authorized denomination in an aggregate principal amount equal to the Bond surrendered and of the same form and maturity and bearing interest at the same rate as the Bond surrendered, subject in each case to such reasonable regulations as the County and the Bond Registrar may prescribe. All Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the County and the Bond Registrar, duly executed by the registered owner or by his or her duly authorized attorney-in-fact or legal representative. No Bond shall be registered to bearer.
 - (b) New Bonds delivered upon any transfer or exchange shall be valid obligations of the County, evidencing the same debt as the Bonds surrendered, shall be secured by this Resolution and entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.
11. Charges for Exchange or Transfer. No charge shall be made for any exchange or transfer of Bonds, but the County may require payment by the registered owner of any Bond of a sum sufficient to cover any tax or other governmental charge which may be imposed with respect to the transfer or exchange of such Bond.
12. Tax Covenants. The Authorized Representatives are hereby authorized and directed to execute and deliver simultaneously with the issuance of any series of Bonds the interest on which is intended to be excludable from gross income for federal income tax purposes a tax certificate or agreement, or both (collectively, the "Tax Agreement") setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"), including the provisions of Section 148 of the Tax Code and applicable regulations relating to "arbitrage bonds." The proceeds from the issuance and sale of any such series of the Bonds will be invested and expended as set forth in the Tax Agreement and that the County will comply with the other covenants and representations contained in it.

13. Refunding and Escrow Agreement. (a) The Authorized Representatives are hereby authorized and directed to select the Prior Bonds to be refunded (the "Refunded Bonds") and to cause the refunding of the Refunded Bonds pursuant to the terms of the Prior Bonds.

 (b) The Authorized Representatives are hereby authorized to cause to be prepared and directed to execute and deliver one or more escrow agreements, between the County and an escrow agent to be selected by the Authorized Representatives, providing for the deposit and investment of a portion of the proceeds of the Refunding Bonds to be applied to the redemption or payment of the Refunded Bonds on the earliest practicable date.
14. Disclosure Documents. The Authorized Representatives and such other officers and agents either Authorized Representative may designate are hereby authorized and directed to prepare, execute, if required, and deliver one or more appropriate notices of sale, preliminary official statements, official statements and such other offering or disclosure documents as may be necessary to expedite the sale of the Bonds, including such documentation as may be necessary to provide for the submission of electronic bids for the Bonds if electronic bidding is determined by such officer or officers to be advantageous. Any such notice of sale, preliminary official statement, official statement or other documents shall be published in such publications and distributed in such manner, including by electronic distribution, and at such times as the Authorized Representatives shall determine. The Authorized Representatives and such other officer or agent either Authorized Representative may designate, are hereby authorized to deem the Preliminary Official Statement "final" for purposes of Securities Exchange Commission Rule 15c2-12.
15. Continuing Disclosure. The Authorized Representatives are hereby authorized and directed to enter into a continuing disclosure agreement for the benefit of the owners of the Bonds to assist the underwriter for the Bonds in complying with the provisions of Section (b)(5) of Securities and Exchange Commission Rule 15c2-12.
16. Further Actions. (a) The Authorized Representatives and such other officers and agents either Authorized Representative may designate are hereby authorized and directed to take further action as each deems necessary or appropriate regarding the issuance, credit enhancement and sale of the Bonds and the refunding of the Refunded Bonds, including, without limitation, (i) purchasing of one or more credit enhancements for any series of Bonds if market or other conditions so warrant, (ii) entering into supply arrangements relating to the investment of the proceeds of any series of Bonds, (iii) applying for CUSIP identification numbers and the execution and delivery of replacement bonds in connection with any partial refunding of Prior Bonds and (iv) selecting a verification agent and escrow agent in connection with any series of Bonds.

 (b) The Authorized Representatives and such other officers and agents either Authorized Representative may designate are also authorized and directed to execute and deliver on behalf of the County such instruments, documents or certificates, and to do and perform such things and acts and to take such further

action, as they shall deem necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Bonds.

- (c) All actions taken by officers and agents of the County in connection with the issuance and sale of the Bonds are hereby ratified and confirmed. The officers and agents of the County are hereby authorized and directed to take such further actions as each deems necessary regarding the issuance and sale of any series of Bonds and all actions taken by such officers and agents in connection with the issuance and sale of any series of Bonds are hereby ratified and confirmed.

17. SNAP Investment Authorization. The County has heretofore received and reviewed the Information Statement describing the State Non-Arbitrage Program of the Commonwealth of Virginia ("SNAP") and the Contract Creating the State Non-Arbitrage Program Pool I (the "SNAP Contract"), and the County has determined to authorize the Authorized Representatives to utilize SNAP in connection with the investment of the proceeds of the Bonds, if the Authorized Representatives determine that the utilization of SNAP is in the best interest of the County. The County acknowledges the Treasury Board of the Commonwealth of Virginia is not, and shall not be, in any way liable to the County in connection with SNAP, except as otherwise provided in the SNAP Contract.
18. Exercise of Discretion and Authorizations. Any authorization of an officer of the County under this Resolution entitles such officer to exercise his or her discretion in taking action on behalf of the County, unless expressly provided otherwise. For any authorization of the Authorized Representatives, it shall be sufficient that either Authorized Representative act in order to bind the County. The authorizations granted in this Resolution to the County Administrator, the Director of Financial and Management Services or the Clerk of the Board of Supervisors, or any combination of the foregoing, may be carried out by any Acting or Assistant County Administrator (with respect to authorizations granted to the County Administrator), Acting or Assistant Director of Financial Management Services (with respect to authorizations granted to the Director of Financial Management Services) and any Deputy or Assistant Clerk (with respect to authorizations granted to the Clerk of the Board of Supervisors), in the absence of the primary officer.
19. Filing of Resolution. The County Attorney, or such party as the County Attorney designates, is hereby authorized and directed to file or cause to be filed a certified copy of this Resolution with the Circuit Court of the City of Williamsburg and the County of James City pursuant to Sections 15.2-2607 and 15.2-2641 of the Code of Virginia of 1950, as amended.
20. Effective Date. This Resolution shall take effect immediately.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Adam R. Kinsman
Deputy Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	_____	_____	_____
JONES	_____	_____	_____
MCGLENNON	_____	_____	_____
ONIZUK	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2014.

GOBndSchRefnd-res

CERTIFICATION

The undersigned Deputy Clerk of the Board of Supervisors of James City County, Virginia hereby certifies that the foregoing constitutes a true, correct and complete copy of a resolution duly adopted by the Board of Supervisors of James City County, Virginia, at a meeting duly called and held on July 8, 2014, during which a quorum was present and acting throughout, by the vote set forth below, and that such resolution has not been repealed, revoked, rescinded, or amended:

<u>Board Member</u>	<u>Present/Absent</u>	<u>Vote</u>
Mary K. Jones, Chair		
Michael J. Hipple, Vice Chair		
James G. Kennedyr		
Kevin D. Onizuk		
John J. McGlennon		

WITNESS my signature as Deputy Clerk of the Board of Supervisors of James City County, Virginia, this _____ day of July, 2014.

Deputy Clerk, Board of Supervisors
James City County, Virginia

(SEAL)

EXHIBIT A**Form of Bond****REGISTERED****No. R-**

\$ _____

**UNITED STATES OF AMERICA
COMMONWEALTH OF VIRGINIA****COUNTY OF JAMES CITY****GENERAL OBLIGATION SCHOOL REFUNDING BOND
SERIES 2014[___]**

MATURITY DATE

DATED DATE

INTEREST RATE

CUSIP BASE: 470293

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

COUNTY OF JAMES CITY, VIRGINIA (the "County"), for value received, acknowledges itself indebted and promises to pay to the registered owner of this Bond or legal representative, the principal amount stated above on the maturity date set forth above and to pay interest on the principal amount of this Bond at the rate specified above per annum, payable semiannually on _____ and _____ beginning on _____, 20__.

This Bond shall bear interest (a) from [the Dated Date / _____, 20__], if this Bond is authenticated before _____, 20__ or (b) otherwise from the _____ or _____ that is, or immediately precedes the date on which this Bond is authenticated; provided that, if at the time of authentication of this Bond, interest on this Bond is in default, this Bond shall bear interest from the date to which interest has been paid. Both principal of and interest on this Bond are payable in lawful money of the United States of America. The principal of this Bond is payable upon presentation and surrender hereof at the office of the [Director of Financial and Management Services], as Bond Registrar and Paying Agent ("Bond Registrar"). Interest on this Bond is payable by check or draft mailed to the registered owner hereof at its address as it appears on the registration books maintained by the Bond Registrar without presentation of this Bond; provided that as long as Cede & Co. is the registered owner of this Bond, interest shall be paid by wire transfer. All interest payments shall be made to the registered owner as it appears on the registration books kept by the Bond Registrar on the [first day of the month in which each interest payment date occurs] [fifteenth day of the month preceding each interest payment date].

This Bond has been duly authorized by the Board of Supervisors of the County and is issued for the purpose of: [(i) financing the costs of various public improvements for the County,

(ii) refunding certain of the County's outstanding bonds]; and (iii) paying the costs of issuance of the Bonds. The full faith and credit of the County are irrevocably pledged for the payment of the principal of, premium, if any, and interest on this Bond in accordance with its terms.

This Bond is one of a series of \$_____ General Obligation School Refunding Bonds, Series 20__ of the County, ("Bonds") of like date and tenor, except as to number, denomination, rate of interest and maturity, issued under the authority of and in full compliance with the Constitution and statutes of the Commonwealth of Virginia, and, more particularly, issued pursuant to the Public Finance Act of 1991, Chapter 26 of Title 15.2 of the Code of Virginia of 1950, as amended[, the majority vote of the qualified voters of the County voting at elections held on _____, 20__ and _____, 20__, respectively, and a resolution adopted by the Board of Supervisors on _____, 2014 (the "Resolution").

The Bonds maturing on or before _____, 20__, are not subject to redemption before maturity. Bonds maturing on or after _____, 20__, are subject to optional redemption before maturity on or after _____, 20__, at the direction of the County, in whole or part in installments of \$5,000 at any time, in such order as may be determined by the Director of Financial and Management Services (except that if at any time less than all of the Bonds of any maturity are called for redemption, the particular Bonds of such maturity or portions thereof to be redeemed shall be selected by lot) upon payment of the principal amount to be redeemed together with the interest accrued thereon to the date fixed for redemption.

[Sinking Fund Provisions, If Applicable]

If any of the Bonds or portions thereof are called for redemption, the Bond Registrar shall send notice of the call for redemption identifying the Bonds by serial or CUSIP numbers, and in the case of partial redemption, identifying the principal amount to be redeemed, and identifying the redemption date and price and the place where Bonds are to be surrendered for payment, by first class mail, electronic transmission, or overnight delivery service not less than 30 nor more than 60 days before the redemption date to the registered owner of each Bond to be redeemed at such owner's address as it appears on the registration books maintained by the Bond Registrar, but failure to mail such notice shall not affect the validity of the proceedings for redemption. Provided funds for their redemption are on deposit at the place of payment on the redemption date, all Bonds or portions thereof so called for redemption shall cease to bear interest on such date, shall no longer be secured by the Resolution and shall not be deemed to be outstanding. If a portion of this Bond shall be called for redemption, a new Bond in principal amount equal to the unredeemed portion hereof will be issued to the registered owner upon the surrender of this Bond.

Any notice of optional redemption of the Bonds may state that it is conditioned upon there being available an amount of money sufficient to pay the redemption price plus interest accrued and unpaid to the redemption date, and any conditional notice so given may be rescinded at any time before the payment of the redemption price of any such condition so specified is not satisfied. If a redemption does not occur after a conditional notice is given due to an insufficient amount of funds on deposit by the County, the corresponding notice of redemption shall be deemed to be revoked.

If the County gives an unconditional notice of redemption, then on the redemption date the Bonds called for redemption will become due and payable. If the County gives a conditional notice of redemption, and the amount of money to pay the redemption price of the affected Bonds shall have been set aside with an escrow agent or a depository (either, a "depository") for the purpose of paying such Bonds, then on the redemption date the Bonds will become due and payable. In either case, if on the redemption date the County holds money to pay the Bonds called for redemption, thereafter no interest will accrue on those Bonds, and a Bond owner's only right will be to receive payment of the redemption price upon surrender of those Bonds.

The Bonds are issuable as fully registered bonds in denominations of \$5,000 and integral multiples thereof. Any Bond may be exchanged for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations at the principal office of the Bond Registrar.

This Bond may be transferred only by an assignment duly executed by the registered owner hereof or such owner's attorney or legal representative in a form satisfactory to the Bond Registrar. Such transfer shall be made in the registration books kept by the Bond Registrar upon presentation and surrender hereof and the County shall execute, and the Bond Registrar shall authenticate and deliver in exchange, a new Bond or Bonds having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner hereof or such owner's attorney or legal representative. Any such exchange shall be at the expense of the County, except that the Bond Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The County may designate a successor Bond Registrar and/or paying agent, provided that written notice specifying the name and location of the principal office of any such successor shall be given to the registered owner of the Bonds. Upon registration of transfer of this Bond, the Bond Registrar shall furnish written notice to the transferee of the name and location of the principal office of the Bond Registrar and/or the paying agent.

The Bond Registrar shall treat the registered owner as the person exclusively entitled to payment of principal and interest and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person shown as the owner on the registration books on the first day of the month in which each interest payment date occurs.

This Bond shall not be valid or obligatory for any purpose unless and until authenticated at the foot hereof by the Bond Registrar.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to the issuance of this Bond have happened, exist or been performed in due time, form and manner as so required and that the indebtedness evidenced by this Bond is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Board of Supervisors of the County of James City, Virginia, has caused this Bond to be signed by the [original/facsimile] signature of the County Administrator, a[n] [original/facsimile] of its seal to be affixed and attested by the [original/facsimile] signature of its Clerk and this Bond to be dated as of its dated date set forth above.

JAMES CITY COUNTY, VIRGINIA

By: _____
County Administrator
County of James City, Virginia

[SEAL]

ATTEST:

Clerk
Board of Supervisors of the
County of James City, Virginia

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE OF ASSIGNEE)

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE: _____

the within Bond and does hereby irrevocably constitute and appoint

_____, attorney, to transfer said
Bond on the books kept for registration of said Bond, with full power of substitution in the
premises.

Dated: _____

Signature Guaranteed:

(NOTICE: Signature(s) must be guaranteed by
an Eligible Guarantor Institution such as a
Commercial Bank, Trust Company, Securities
Broker/Dealer, Credit Union or Savings
Association which is a member of a medallion
program approved by the Securities
Association, Inc.)

Registered Owner

(NOTICE: The signature above must
correspond with the name of the Registered
Owner as it appears on the books kept for
registration of this Bond in every particular,
without alteration or change.

CERTIFICATE OF AUTHENTICATION

The undersigned Bond Registrar hereby certifies that this is one of a series of Bonds of James City County, Virginia described in the within-mentioned Resolution.

Authentication Date:

By: _____
[Name of Registrar]

The undersigned Clerk of the Board of Supervisors of the County of James City, Virginia certifies that the foregoing constitutes a true, complete and correct copy of the Resolution adopted at a meeting of the Board of Supervisors of the County of James City, Virginia held on July 8, 2014.

M. Douglas Powell
Clerk, Board of Supervisors of the County
of James City, Virginia

AGENDA ITEM NO. I-1

REZONING-0003-2013/MASTER PLAN-0001-2013. Kingsmill Rezoning and Master Plan Amendment, Land Bay Area 8
Staff Report for the July 8, 2014, Board of Supervisors Public Hearing

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

PUBLIC HEARINGS

Planning Commission:	March 5, 2014, 7:00 p.m. (deferred)
Planning Commission	April 2, 2014, 7:00 p.m. (deferred)
Planning Commission:	May 7, 2014, 7:00 p.m.
Board of Supervisors:	June 10, 2014, 7:00 p.m. (deferred)
Board of Supervisors:	July 8, 2014, 2014, 7:00 p.m.

Building F Board Room; County Government Complex**SUMMARY FACTS**

Applicant:	Mr. Vernon Geddy, III, of Geddy, Harris, Franck & Hickman, L.L.P.
Land Owner:	Xanterra Kingsmill, LLC
Proposal:	The application requests a rezoning of this property from R-4, Residential Planned Community, to R-4, with proffers, and to amend the master plan land use designation for the 18 dwelling units (The Cottages on the James) from "resort" to "residential B" within the resort area.
Location:	1010 Kingsmill Road
Tax Map/Parcel No.:	5040100010
Parcel Size:	Acreage ±3.00 acres
Existing Zoning:	Acreage ±3.00 acres
Proposed Zoning:	R-4, Residential Planned Community, with proffers
Comprehensive Plan:	Low Density Residential
Primary Service Area:	Inside

STAFF RECOMMENDATION

Staff finds the proposal to be compatible with the Kingsmill Master Plan and consistent with the 2009 Comprehensive Plan Land Use Map and Zoning Ordinance. Staff notes that this proposal does not meet the Adequate Public School Facilities test adopted by the Board of Supervisors for both Berkeley Middle School and Jamestown High School. However, proffers have been submitted to mitigate expected impacts to the school system and to provide for diverse housing opportunities. Staff therefore recommends the Board of Supervisors approve this application with the conditions listed in the staff report and acceptance of the voluntary proffers.

Staff Contact:	Jose-Ricardo L. Ribeiro, Planner III	Phone: Phone: 253-6890
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PLANNING COMMISSION RECOMMENDATION

On May 7, 2014, the Planning Commission recommended approval of this application by a vote of 5-0-1 (Drummond, absent; O'Connor, abstain)

Proposed Changes Made Since Planning Commission Meeting

Proffers are signed and submitted in accordance with the James City County Proffer Policy.

Proffers: Are signed and submitted in accordance with the James City County Proffer Policy.

Cash Proffer Summary	
Use	Amount
Water	Not applicable*
Recreation	Not applicable**
School Facilities	\$19,528.22 per dwelling unit (single-family detached)
Library Facilities	\$61.00 per dwelling unit
Fire/EMS Facilities	\$71.00 per dwelling unit
Total Amount per Unit (in 2014 dollars)	\$19,660.22 per dwelling unit (single-family detached)
Total Amount (in 2014 dollars)	\$ 353,883.96

* Not applicable as the public drinking water infrastructure would be owned and operated by Newport News Water Works (NNWW). ** Not applicable as the rezoning/master plan amendment request is required only in order to change the ownership of the 18 dwelling units. The development of these units has been previously approved through the site plan review process.

Changes made since the June 10, 2014, Board of Supervisors meeting

No changes to the application. Since the June 10 meeting, the applicant has reiterated that the proposed master plan change to redesignate this area to residential "B," if approved, would allow these units to be sold fee simple, such that residents could live in these units year-around, if desired. It is also important to clarify that should the proposed master plan designation change be approved by the Board of Supervisors, these units could also still be rented for short-term periods. This is consistent with other units located in the resort area, which are also used as residential/short-term rentals (i.e., Padgett's Ordinary, Pelham's Ordinary, Graves Ordinary, Pettus Ordinary, Richmond's Ordinary, and Anderson's Ordinary.) This request is also consistent with previous amendments to the master plan for Kingsmill in the resort area. In 1986, the Board of Supervisors approved an amendment to include residential structures (labeled on the current master plan as "D") as part of the conference center facility. On December 14, 1981, the Board of Supervisors approved a master plan amendment to allow additional residential units (labeled on the current master plan as "C") in the resort designated area.

Master Plan

Staff notes that during the March 5, 2014, Planning Commission meeting, the applicant requested deferral of the original application which consisted of the rezoning of ±213 acres from R-4, Residential Planned Community, to R-4, with proffers, and a master plan amendment to allow up to 207 new dwelling units (land bay areas 1, 2, 5, 6, and 7 on the master plan) along with an amendment to designate 18 existing dwelling units (land bay area 8) from resort to residential-B. On March 18, 2014, the applicant withdrew the portions of this application dealing with land bay areas 1, 2, 5, 6, and 7. On May 7, 2014, the Planning Commission considered only the rezoning and master plan designation change for the 18 dwelling units (the Cottages on the James) in land bay 8 from "resort" to "residential B." A revised master plan and fiscal impact analysis for the 18 units have been submitted for review (Attachment Nos. 6 and 7). The applicant has also submitted proffers (Attachment No. 5) to comply with the Board of Supervisor's adopted Housing Opportunities Policy and the

School Cash Proffer Policy (Attachment Nos. 8 and 9). The applicant has stated they will resubmit applications for the other areas as part of a future request.

During the March 5, 2014, Planning Commission meeting, citizens expressed concern that language found within the recorded Declaration of Covenants for Kingsmill was in conflict with Xanterra's proposal to develop additional areas in Kingsmill. The County Attorney stated that these are private contractual issues that are not germane to the rezoning/master plan amendment applications that are subject to this public hearing.

Density

Staff notes that questions regarding Kingsmill's density limits were also raised during the March 5, 2014, Planning Commission meeting. The applicant previously indicated that the master plan for Kingsmill was approved with a maximum residential density of 4,600 dwelling units. The last amendment to the Kingsmill's master plan (MP-0001-1986) which was approved by the Board of Supervisors on May 5, 1986, did not place a residential density limit nor provided an approved number of dwelling units on Kingsmill. The maximum residential density of 4,600 dwelling units is based on a gross density calculation of two dwelling units per acre, as allowed under current R-4 zoning regulations, rather than on a binding approved master plan. As there are currently $\pm 2,354$ existing dwelling units in Kingsmill, staff finds it is not likely that the development will approach current ordinance-based density limits.

PROJECT DESCRIPTION

Mr. Vernon Geddy, III, has applied to rezone a ± 3 -acre parcel within Kingsmill from R-4, Residential Planned Community, to R-4, with proffers, and to amend the master plan land use designation of 18 dwelling units (The Cottages on the James) from "resort" to "residential B." Development of the property subject to this application was approved administratively on May 10, 2013, through the site plan review process, as development of the 18 units did not require legislative review as limited-term dwelling units under the control of the Kingsmill Resort. The change in the master plan designation, if approved, from "resort" to "residential" would allow these units to be sold fee-simple and would remove time restrictions in place for these units, which currently allows for a maximum of 60 days of occupancy. The rezoning of the property from R-4, Residential Planned Community, to R-4, with proffers, is necessary, as these units may be occupied by renters and permanent residents, therefore impacting the public school system and placing additional demands on other public facilities.

PUBLIC IMPACTS

Archaeological Impacts

Staff Comments: Development of the 18 dwelling units (five units have already received Temporary Certificates of Occupancy) was approved as James City County Site Plan No. SP-0096-2011. The site plan received final approval by the Planning Division and other agencies (Fire Department, Engineering and Resource Protection Division, James City Service Authority (JCSA), etc.) on May 10, 2013. As infrastructure (e.g., roads, utilities, etc.) has already been constructed and land disturbing, including grading for the majority of the subject property, has already taken place, and the property was previously developed for use as part of a par-3 golf course, staff finds that additional archaeological work would not be warranted.

Engineering and Resource Protection (ERP)

Watershed: College Creek

Staff Comments: ERP staff previously reviewed and approved the site plan for the 18 dwelling units. This rezoning/master plan application does not propose any physical changes or new construction to the layout nor does it request changes to the environmental protections incorporated into the approved site plan. Therefore no further evaluation from ERP staff is required.

Public Utilities

The property is served by public water and sewer.

Staff Comments: JCSA staff has previously reviewed and approved the site plan for the 18 dwelling units. This rezoning/master plan application does not propose any changes to the layout and/or water infrastructure of the approved site plan and therefore no further evaluation from JCSA staff is required.

Transportation

All 18 dwelling units are situated along the James River and vehicular access to the remaining areas of the subdivision/resort is through a private road (i.e., Mansfield Circle). The Zoning Ordinance requires a ratio of two parking spaces per each single-family unit. The approved site plan for the 18 dwelling units showed a total of 34 parking spaces. The previous site plan was approved with a shared parking agreement with the resort. The applicant has stated the shared parking agreement will remain in place. Staff finds that since the units have already been approved, a Traffic Impact Analysis is not warranted for the development of these units.

Fiscal

The applicant submitted a fiscal impact analysis for this project using the County's fiscal impact worksheet. The analysis indicates a positive fiscal impact of \$39,722 at build out. This positive fiscal impact conclusion is likely due to the high market value expected for the proposed dwelling units. According to the analysis, each of the 18 units is expected to be sold at an average price of \$900,000.

Staff Comments: The Director of Financial and Management Services reviewed the above fiscal impact analyses, concurred with its conclusions, and noted that the fiscal impact analysis may have overestimated public school enrollment and costs.

Schools and Housing

School Cash Proffer Policy. Staff notes that this application is subject to the Cash Proffer Policy for Schools adopted by the Board of Supervisors on 2007. The Policy is designed to mitigate the potential impacts of 18 new dwelling units (which are expected to generate approximately 7.2 new students) to the local school system. Below are the adjusted per single-family detached unit school proffer amounts for 2014:

- Single-Family Detached contribution: \$19,528.22

With 18 dwelling units proposed, the school cash proffer contribution for these units would total \$351,507.96. The applicant has proffered in compliance with the Cash Proffer Policy for Schools and therefore staff finds the proposal meets the Board's adopted policy.

Housing Opportunities Policy. Staff also notes this application is subject to the Housing Opportunities Policy, adopted by the Board of Supervisors on November 27, 2012. According to the policy at least 20 percent of a development's proposed new 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). The table below illustrates the policy's income ranges and percentages and how it relates to this application.

Units targeted to (percent of AMI)	Price range (Minimum- Maximum-2013)	Minimum percent of the development's proposed dwelling units expected (%)	Number of units subject to policy
30 - 60 percent	\$ 99,876-\$174,256	8	1.44 units (2 units)*
Over 60 - 80 percent	\$174,257-\$243,462	7	1.26 units (1 unit)*
Over 80 - 120 percent	\$243,463-\$381,991	5	0.9 units (1 unit)*
Total		20	3.6 units (4 units)*

**Rounded up number*

Staff notes that the 18 dwelling units are proposed to be sold at a market price, which does not fall within the price ranges as specified above by the policy. Therefore the applicant has agreed to provide four affordable/workforce dwelling units elsewhere in areas designated as residential within Kingsmill (either by building new units or by placing deed restrictions on existing units), which would guarantee these units would be either sold or rented in accordance with the policy's minimum and maximum price range. The Housing Opportunities Policy was created to increase the number and availability of affordable housing throughout the County. Staff finds that the provision of the four affordable dwelling units, as proposed by the applicant, to be acceptable and that it meets the intent of the Housing Opportunities Policy.

Public Facilities

This project is located within the James River Elementary School, Berkeley Middle School, and Jamestown High School districts. Per the adequate public school facilities test adopted by the Board of Supervisors on June 23, 1998, all special use permit or rezoning applications should meet the test for adequate public school facilities. The test adopted by the Board uses the design capacity of a school, while the Williamsburg-James City County schools recognize the effective capacity as the means of determining student capacities. A total of approximately 7.2 students are expected to be generated by this proposal. As shown in the table below, Berkeley Middle School and Jamestown High School are currently over capacity.

School	Effective Capacity (Sept.2010)	Enrollment (2013)	Projected Students Generated by Proposal	Enrollment + Projected Students
James River	580	512	3.24 students (3)**	515
Berkeley	829	902	1.62 students (2)**	904
Jamestown	1,208	1,263	2.34 students (2)**	1,265

** Note - The WJCC School System no longer lists or uses design capacity in its documents.*

*** Rounded up number*

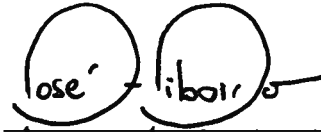
COMPREHENSIVE PLAN

The 2009 Comprehensive Plan Land Use Map designates the areas subject to this master plan amendment/rezoning application as Low Density Residential. In areas designated for Low Density Residential, a gross density of up to 1.0 dwelling unit is recommended, depending on the character and density of surrounding development, physical attributes of the property, buffers, the number of dwelling units proposed, and the degree to which the development is consistent with the Comprehensive Plan. With an overall gross density of ± 1 unit per acre (this density calculation includes the entire Kingsmill subdivision/resort area), the proposed development falls within the allowable density established by the Comprehensive Plan. The plan also notes that particular attention should be given to addressing such impacts as incompatible development intensity and design, building height and scale, land uses, smoke, noise, dust, odor, vibration, light, and traffic. With the proposed proffers that are provided to mitigate impacts, staff does not expect any such impacts associated with the development of the 18 dwelling units, particularly given its location in the resort area.

RECOMMENDATION

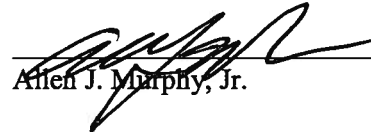
Staff finds the proposal to be compatible with the Kingsmill Master Plan and consistent with the 2009 Comprehensive Plan Land Use Map and Zoning Ordinance. Staff notes that this proposal does not meet the Adequate Public School Facilities test adopted by the Board of Supervisors for both Berkeley Middle School and Jamestown High School. However, proffers have been submitted to mitigate expected impacts to the school system and to provide for diverse housing opportunities. Staff therefore recommends the Board of Supervisors approve this application with the conditions listed in the staff report and acceptance of the voluntary proffers.

On May 7, 2014, the Planning Commission recommended approval of this application by a vote of 5-0-1 (Drummond being absent; O'Connor abstain).



Jose-Ricardo L. Ribeiro

CONCUR:



Allen J. Murphy, Jr.

JRLR/gb

Z03-13MP01-13LandBay.doc

ATTACHMENTS:

1. Resolution
2. Correspondence received by staff since the June 10 Board of Supervisors meeting – accessible on the online agenda

The following materials have been previously submitted for the June 10, 2014, Board meeting, and will be accessible on the online agenda

1. Unapproved Minutes from the May 7, 2014, Planning Commission meeting
2. Approved Minutes from the March 5, 2014, Planning Commission meeting
3. Location Map
4. Proffers signed and dated May 5, 2014.
5. Master Plan
6. Fiscal Impact Analysis Worksheet and Assumptions
7. Housing Opportunities Policy
8. School Cash Proffer Policy
9. All correspondence (letters/e-mails from citizens and organizations) received to date regarding the Kingsmill rezoning/master plan application.

RESOLUTION

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

MASTER PLAN AMENDMENT, LAND BAY AREA 8

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

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

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

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

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

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Adam R. Kinsman
Deputy Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	_____	_____	_____
JONES	_____	_____	_____
MCGLENNON	_____	_____	_____
ONIZUK	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2014.

Z03-13MP01-13LandBay-res

MEMORANDUM

DATE: July 8, 2014

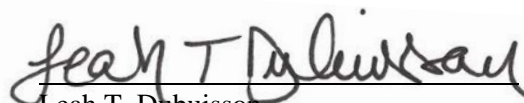
TO: The Board of Supervisors

FROM: Leah T. Dubuisson, County Attorney Law Clerk

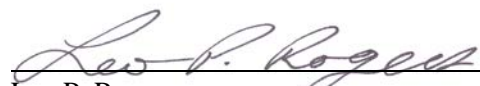
SUBJECT: An Ordinance to amend and reordain JCC Code Section 3-1, Definitions; by amending and renaming Section 3-8, Dangerous dogs; by adding Section 3-8.1, Vicious dogs; by amending Section 3-20, Running at large prohibited; Section 3-23, Dogs killing and injuring livestock or poultry; Section 3-32, Disposition of funds; Section 3-38, Dog license fee; exemption for certain dogs; Section 3-46, Impoundment and disposition of certain dogs; by renaming Section 3-47, Disposition of animals other than those in the county pound; and amending Section 3-60, Destruction or confinement of dog or cat bitten by rabid animal

The attached ordinance incorporates, by reference in the James City County Code ("County Code"), the amendments made by the General Assembly to the Comprehensive Animal Care laws through 2014. County Animal Control Officers are charging offenders under the County Code, which must be updated to reflect the General Assembly's changes that become effective through July 1, 2014. It is necessary that the County Code be amended in order to comply with the changes to State law.

The County Attorney's Office recommends adoption of the attached ordinance.


Leah T. Dubuisson

CONCUR:


Leo P. Rogers

LTD/nb
AnimalCOrd-mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, ANIMAL LAWS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 3-1, DEFINITIONS; BY AMENDING AND RENAMING SECTION 3-8, DANGEROUS AND VICIOUS ANIMALS TO DANGEROUS DOGS; AND BY ADDING SECTION 3-8.1, VICIOUS DOGS; BY AMENDING ARTICLE II, DOGS, DIVISION 1, IN GENERAL, SECTION 3-23, DOGS KILLING OR INJURING LIVESTOCK OR POULTRY; BY AMENDING ARTICLE II, DOGS, DIVISION 2, LICENSES, SECTION 3-32, DISPOSITION OF FUNDS; SECTION 3-38, DOG LICENSE FEE; EXEMPTION FOR CERTAIN DOGS; BY AMENDING ARTICLE III, IMPOUNDMENT, SECTION 3-46, IMPOUNDMENT AND DISPOSITION OF CERTAIN DOGS; BY RENAMING SECTION 3-47, DISPOSITION OF ANIMALS OTHER THAN THOSE IN THE COUNTY POUND; AND BY AMENDING ARTICLE IV, RABIES CONTROL, SECTION 3-60, DESTRUCTION OR CONFINEMENT OF DOG OR CAT BITTEN BY RABID ANIMAL.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 3, Animal Laws, is hereby amended and reordained by amending Section 3-1, Definitions; by amending and renaming Section 3-8, Dangerous dogs; by adding Section 3-8.1, Vicious dogs; by amending Section 3-23, Dogs killing and injuring livestock or poultry; Section 3-32, Disposition of funds; Section 3-38, Dog license fee; exemption for certain dogs; Section 3-46, Impoundment and disposition of certain dogs; by renaming Section 3-47, Disposition of animals other than those in the county pound; and by amending Section 3-60, Destruction or confinement of dog or cat bitten by rabid animal.

Chapter 3. Animal Laws

Article I. In General

Sec. 3-1. Definitions.

For the purposes of this chapter, the following words shall have the meaning given herein.

~~Animal shelter.~~ A facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated or maintained by a nongovernmental entity including, but not limited to, a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

Boarding establishment. A place or establishment other than a ~~pound~~ public or private animal shelter where companion animals not owned by the proprietor are sheltered, fed and watered in exchange for a fee.

Foster care provider. An individual who provides care or rehabilitation for companion animals through an affiliation with a ~~pound~~, public or private animal shelter, or other releasing agency.

Private Animal Shelter. A facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated or maintained by a nongovernmental entity including, but not limited to, a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

~~Pound.~~ *Public Animal Shelter.* A facility operated by the commonwealth or county for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals or a facility operated for the same purpose under a contract with any county, city, town or incorporated society for the prevention of cruelty to animals.

Releasing agency. A ~~pound~~, *public or private* animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue, that releases companion animals for adoption.

State law references-Similar provisions, Code of Va., § 3.2-5900; § 3.2-6500.

Sec. 3-8. Dangerous ~~and vicious animals~~ *dogs*.

(a) As used in this section:

“Dangerous dog.” A canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. However, when a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite, (ii) if both animals are owned by the same person, (iii) if such attack occurs on the property of the attacking or biting dog’s owner or custodian, or (iv) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event. A dog that has bitten, attacked, or inflicted injury on a person shall not be found to be dangerous unless the court determines, based on the totality of the evidence before it, that the dog is dangerous or a threat to the community. *No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner’s or custodian’s property, shall be found to be a dangerous dog.*

“Vicious dog.” ~~A canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous~~

~~finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by local ordinance, that it is a dangerous dog, provided that its owner has been given notice of that finding.~~

(b) Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within the county is a dangerous dog ~~or vicious dog~~ shall apply to a magistrate of the county for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous ~~or vicious~~. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. ~~If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of section 3-45.~~ The court, upon finding the animal to be a dangerous ~~or vicious~~ dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. *The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time as the animal is disposed of or returned to the owner.* The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (Section 19.2-260 et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

(c) No canine or canine crossbreed shall be found to be a dangerous dog ~~or vicious dog~~ solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog ~~or vicious dog~~ if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian, or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. ~~No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog or a vicious dog.~~

(d) If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

(e) The owner of any animal found to be a dangerous dog shall, within 45 days of such finding, obtain a dangerous dog registration certificate from the local animal control officer for a fee of \$150, in addition to other fees that may be authorized by law. The local animal control officer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. By January 31 of each year, until such time as the dangerous dog is deceased, all certificates obtained pursuant to this subsection shall be updated and renewed for a fee of \$85 and in the same manner as the initial certificate was obtained. The renewal registration shall include all information contained in the original registration and any updates. The owner shall verify the information is accurate by annual resubmissions. There shall be no change for any updated information provided between renewals. The County shall submit to the State Veterinarian by January 31 of each year \$90 for each dangerous dog it initially registered and \$25 for each dangerous dog for which it renewed registration within the previous calendar year. The animal

control officer shall post registration information on the Commonwealth of Virginia Dangerous Dog Registry, as established under section 3.2-6542 of the Code of Virginia, and any updates on the website.

(f) All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons 18 years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable, (ii) that the animal has been neutered or spayed, and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and (ii) the animal has been permanently identified by means of ~~a tattoo on the inside thigh or by~~ electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least \$100,000 that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least \$100,000.

(g) While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. ~~The structure shall be designed to provide the animal with shelter from the elements of nature.~~ *While so confined within the structure, the animal shall be provided for according to § 3.2-6503 of the Code of Virginia.* When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

(h) The owner shall cause the local animal control officer to be promptly notified of (i) the names, addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) ~~tattoo or~~ chip identification information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

(i) After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the local animal control authority to be notified if the animal (i) is loose or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved.

(j) Any owner or custodian of a canine or canine crossbreed ~~or other animal~~ is guilty of a:

(1) Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person;

(2) Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury; or

(3) Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or containment of a canine, ~~or~~ canine crossbreed, ~~or other animal~~ is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog ~~or other animal~~ attacking and causing serious bodily injury to any person.

~~The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its~~

owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

(k) The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section is guilty of a Class 1 misdemeanor.

Whenever an owner or custodian of an animal found to be a dangerous dog is charged with a violation of this section, the animal control officer shall confine the dangerous dog until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the animal to produce the animal.

Upon conviction, the court may (i) order the animal euthanized in accordance with the provisions of section 3-45 or (ii) grant the owner up to 45 days to comply with the requirements of this section, during which time the dangerous dog shall remain in the custody of the animal control officer until compliance has been verified. If the owner fails to achieve compliance within the time specified by the court, the court shall order the animal euthanized in accordance with the provisions of section 3-45. The court, in its discretion, may order the owner to pay all reasonable expenses referenced in subsection (b).

(l) All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the county for the purpose of paying the expenses of any training course required pursuant to section 3.2-6556 of the Code of Virginia.

State law reference-Control of dangerous or vicious dogs; penalties, Code of Va., § 3.2-6540.

Sec. 3-8.1. Vicious dogs.

(a) *As used in this section:*

"Serious injury." means an injury having a reasonable potential to cause death or any injury other than a sprain or strain, including serious disfigurement, serious impairment of health, or serious impairment of bodily function and requiring significant medical attention.

“Vicious dog.” means a canine or canine crossbreed that has (i) killed a person, (ii) inflicted serious injury to a person, or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by ordinance that it is a dangerous dog, provided that its owner has been given notice of that finding. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury or was protecting itself, its kennel, its offspring, a person, or its owner’s or custodian’s property, shall be found to be a vicious dog.

(b) Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a vicious dog shall apply to a magistrate serving the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of section 3-45. The court, upon finding the animal to be a vicious dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or to the estate of any person killed by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such vicious dog from the time the animal is taken into custody until such time as the animal is disposed of. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title

19.2 of the Code of Virginia. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

(c) No canine or canine crossbreed shall be found to be a vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a vicious dog if the threat, injury, or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times.

(d) Any owner or custodian of a canine or canine crossbreed or other animal whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life and is the proximate cause of such dog or other animal attacking and causing serious injury to any person is guilty of a Class 6 felony.

State law reference-Vicious dogs; penalties, Code of Va., § 3.2-6540.1.

Article II. Dogs

Division 1. In General

Sec. 3-20. Running at large prohibited.

(a) Dogs shall not run at large in the county except in those areas zoned A-1, General Agricultural; provided, however, even within A-1 areas dogs shall not run at large in platted subdivisions consisting of five or more lots, of which at least three lots have occupied dwellings or in manufactured home parks.

(b) For purposes of this section, "at large" shall mean roaming, running or self-hunting off the premises of the owner or custodian and not under the immediate control of the owner or his agent. However, a dog shall not be considered at large if during the hunting season it is on a bona fide hunt in the company of a licensed hunter or during field trials or training periods when accompanied by its owner.

(c) Any dog observed or captured while unlawfully running at large shall be disposed of in accordance with sections 3-45 through 3-47.

(d) For any dog identified as to ownership, if such dog is captured and confined by the animal control officer or other officer appointed under the provisions of this chapter, the owner shall be charged with the actual expenses incurred in keeping the animal impounded. Owners of dogs not impounded shall be issued a summons for violation of this provision. Each day thereafter that this section is not complied with shall be a separate offense.

State law references-Governing body of any locality may prohibit dogs from running at large, Code of Va., § 3.2-6538; county or city ~~pounds~~ *public animal shelters*; confinement and disposition of animals; *affiliation with foster care providers; penalties; injunctive relief*, Code of Va., § 3.2-6546.

Sec. 3-23. Dogs killing or injuring livestock or poultry.

(a) It shall be the duty of the animal control officer or an animal control officer who may find a dog in the act of killing, injuring or chasing livestock or poultry to *seize or* kill such dog forthwith whether such dog bears a tag or not. Any person finding a dog in the act of killing or injuring livestock or poultry shall also have the right to kill such dog on sight as shall any owner of livestock or his agent finding a dog chasing livestock on land utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court shall have the power to order the animal control officer or other officer to kill any dog known to be a confirmed livestock or poultry killer, and any dog killing poultry for the third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian or harbinger of the dog to produce the dog.

(b) If the animal control officer has reason to believe that a dog is killing livestock or poultry, he shall be empowered to seize such dog solely for the purpose of examining such dog in order to determine whether it committed any of the depredations mentioned in this section. The animal control officer or any other person who has reason to believe that a dog is killing livestock or committing any of the depredations mentioned in this section shall apply to a magistrate of the county, who shall issue a warrant requiring the owner, if known, to appear before the general district court at a time and place named therein, at which time evidence shall be heard. If it shall appear that the dog is a livestock killer or has committed any of the depredations mentioned herein, the general district court shall order that the dog be (i) killed immediately by the animal control officer or other officer designated by the court or (ii)

removed to another state which does not border on the commonwealth and prohibited from returning to the commonwealth. Any dog ordered removed from the commonwealth which is later found in the commonwealth shall be ordered by a court to be killed immediately.

State law reference-Dogs killing, injuring or chasing livestock or poultry, Code of Va., § 3.2-6552.

Article II. Dogs

Division 2. Licenses

Sec. 3-32. Disposition of funds.

(a) The county treasurer shall keep all money collected for dog license fees pursuant to section 3-31 in a separate account from all other funds collected by him. The county shall use the dog license funds for the following purposes:

- (1) The salary and expenses of the animal control officer and necessary staff;
- (2) The care and maintenance of a ~~pound~~ *public animal shelter*;
- (3) The maintenance of a rabies control program;
- (4) Payments as a bounty to any person neutering or spaying a dog up to the amount of one year of the license fee as provided in section 3-31;
- (5) Payments for compensation as provided in section 3-24; and
- (6) Efforts to promote sterilization of dogs and cats.

(b) Any part or all of any surplus remaining in such account on December 31 of any year may be transferred into the general fund of the county.

State law references-Disposition of funds, Code of Va., § 3.2-6534; supplemental funds, Code of Va., § 3.2-6535.

Sec. 3-38. Dog license fee; exemption for certain dogs.

(a) The license tax as prescribed in this chapter is due not later than 30 days after a dog has reached the age of four months, or not later than 30 days after an owner acquires a dog four months of age or older and each year thereafter.

(b) Any kennel license tax prescribed pursuant to this chapter shall be due on January 1 and not later than January 31 of each year.

(c) No license tax shall be levied on any dog that is trained and serves as a guide dog for a blind person, that is trained and serves as a hearing dog for a deaf or hearing impaired person or that is trained and serves as a service dog for a mobility-impaired *or otherwise disabled* person.

As used in this section, “hearing dog” means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond and “service dog” means a dog trained to ~~accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or other such activities of service or support~~ *do work or perform tasks for the benefit of a mobility-impaired or otherwise disabled person. The work or tasks performed by a service dog shall be directly related to the individual’s disability or disorder. Examples of work or tasks include providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting an individual to the presence of allergens, retrieving items, carrying items, providing physical support and assistance with balance and stability, and preventing or interrupting impulsive or destructive behaviors. The provision of emotional support, well-being, comfort, or companionship shall not constitute work or tasks for the purposes of this definition.*

State law references-Amount of license tax, Code of Va., § 3.2-6528; when license tax payable, Code of Va., § 3.2-6530; *Definitions, Code of Va., § 51.5-40.1.*

ARTICLE III. IMPOUNDMENT

Sec. 3-46. Impoundment and disposition of certain dogs.

(a) The county shall maintain or cause to be maintained a ~~pound~~ *public animal shelter* in which dogs found running at large without the tag required by section 3-35 or dogs found in violation of sections 3-20

or 3-21 shall be confined. Nothing in this section shall be construed to prohibit confinement of other companion animals in such ~~pound~~ *public animal shelter*.

(b) An animal confined pursuant to this section shall be kept for a period of not less than five days, such period to commence on the day immediately following the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner thereof.

The operator or custodian of the ~~pound~~ *public animal shelter* shall make a reasonable effort to ascertain whether the animal has a collar, tag, license, tattoo, or other form of identification. If such identification is found on the animal, the animal shall be held for an additional five days, unless sooner claimed by the rightful owner. If the rightful owner of the animal can be readily identified, the operator or custodian of the ~~pound~~ *public animal shelter* shall make a reasonable effort to notify the owner of the animal's confinement within the next 48 hours following its confinement.

If any animal confined pursuant to this section is claimed by its rightful owner, such owner may be charged with the actual expenses incurred in keeping the animal impounded.

(c) If an animal confined pursuant to this section has not been claimed upon expiration of the appropriate holding period as provided by subsection (b), it shall be deemed abandoned and become the property of the ~~pound~~ *public animal shelter*.

Such animal may be humanely destroyed or disposed of by the methods set forth in subsections (1) through (5). No ~~pound~~ *public animal shelter* shall release more than two animals or a family of animals during any 30-day period to any one person under subsections (2), (3), or (4).

- (1) Release to any humane society, *private* animal shelter, or other releasing agency within the commonwealth, provided that each humane society, *private* animal shelter, or other releasing agency obtains a signed statement from each of its directors, operators, staff, or animal caregivers

specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment and updates such statements as changes occur;

- (2) Adoption by a resident of the county or city for which the ~~pound~~ *public animal shelter* is operated and who will pay the required license fee, if any, on such animal, provided that such resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;
- (3) Adoption by a resident of an adjacent political subdivision of the commonwealth, provided that such resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;
- (4) Adoption by any other person, provided that such person has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and provided that no animal may be adopted by any person who is not a resident of the county or city for which the ~~pound~~ *public animal shelter* is operated, or of an adjacent political subdivision, unless the animal is first sterilized, and the ~~pound~~ *public animal shelter* may require that the sterilization be done at the expense of the person adopting the animal; or
- (5) Release for the purposes of adoption or euthanasia only, to ~~an~~ *a private* animal shelter, or any other releasing agency located in and lawfully operating under the laws of another state, provided that such animal shelter, or other releasing agency: (i) maintains records that would comply with section 3.2-6557 of the Code of Virginia; (ii) requires that adopted dogs and cats be sterilized; (iii) obtains a signed statement from each of its directors, operators, staff, and animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment, and updates such statement as changes occur; and (iv) has provided to ~~the pound,~~ *a public or private* animal shelter, or other releasing agency within the Commonwealth a statement signed by an authorized representative specifying the entity's compliance with clauses (i) through (iii), and the provisions of adequate care and performance of humane euthanasia, as necessary in accordance with the provisions of this chapter.

For purposes of recordkeeping, release of an animal by a ~~pound~~ *public animal shelter* to a ~~pound~~, *public or private* animal shelter, or other releasing agency shall be considered a transfer and not an adoption. If the animal is not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.

(d) Nothing in this section shall prohibit the immediate euthanasia of a critically injured, critically ill, or unweaned animal for humane purposes. Any animal euthanized pursuant to the provisions of this chapter shall be euthanized by one of the methods prescribed or approved by the State Veterinarian.

(e) Nothing in this section shall prohibit the immediate euthanasia or disposal by the methods listed in subsections (1) through (5) of subsection (c) of an animal that has been released to a ~~pound~~, *public or private* animal shelter, other releasing agency, or animal control officer by the animal's rightful owner after the rightful owner has read and signed a statement (i) surrendering all property rights in such animal, (ii) stating that no other person has a right of property in the animal, and (iii) acknowledging that the animal may be immediately euthanized or disposed of in accordance with subsections (1) through (5) of subsection (c).

(f) Nothing in this section shall prohibit any feral dog or feral cat not bearing a collar, tag, tattoo, or other form of identification which, based on the written statement of a disinterested person, exhibits behavior that poses a risk of physical injury to any person confining the animal, from being euthanized after being kept for a period of not less than three days, at least one of which shall be a full business day, such period to commence on the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner. The statement of the disinterested person shall be kept with the animal as required by section 3.2-6557 of the Code of Virginia. For purposes of this subsection, a disinterested person shall not include a person releasing or reporting the animal.

(g) No ~~pound~~ *public animal shelter* shall place a companion animal in a foster home with a foster care provider unless the foster care provider has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and each ~~pound~~ *public animal shelter* shall update such statement as changes occur. The ~~pound~~ *public animal shelter* shall maintain the original statement and any updates to such statement in accordance with this chapter and for at least so long as

the ~~pound~~ *public animal shelter* has an affiliation with the foster care provider.

(h) A ~~pound~~ *public animal shelter* that places a companion animal in a foster home with a foster care provider shall ensure that the foster care provider complies with section 3.2-6503 of the Code of Virginia.

(i) If a ~~pound~~ *public animal shelter* finds a direct and immediate threat to a companion animal placed with a foster care provider, it shall report its findings to the animal control agency in the locality where the foster care provider is located.

“*Animal*” shall not include agricultural animals.

“*Rightful owner*” means a person with a right of property in the animal.

State law reference-County or city ~~pounds~~ *public animal shelters*; confinement and disposition of animals; *affiliation with foster care providers; penalties; injunctive relief*, Code of Va., § 3.2-6546.

Sec. 3-47. Disposition of animals other than those in the county ~~pound~~ *public animal shelter*.

(a) No animal bearing a tag, license or tattooed identification shall be used or accepted by any person for the purpose of medical research or experimentation, unless the individual who owns such animal consents in writing.

(b) No person who acquires an animal from an animal shelter in the county shall sell such animal within a period of six months from the time the animal is acquired from the shelter. Violation of this section shall constitute a Class 4 misdemeanor.

State law references-Acceptance of animals for research or experimentation; prohibition, Code of Va., § 3.2-6547; Regulation of sale of animals procured from animal shelters, Code of Va. § 3.2-6545.

ARTICLE IV. RABIES CONTROL

Sec. 3-60. Destruction or confinement of dog or cat bitten by rabid animal.

Any dog or cat for which no proof of current rabies vaccination is available and which is exposed to rabies through a bite or through saliva or central nervous system tissue in a fresh open wound or mucous membrane by an animal believed to be afflicted with rabies shall be confined in a ~~pound~~ *public animal shelter*, kennel or enclosure approved by the health department for a period not to exceed six months at the expense of the owner; however, if this is not feasible, the dog or cat shall be euthanized as provided in section 3-45 of this chapter. A rabies vaccination shall be administered prior to release. Inactivated rabies vaccine may be administered at the beginning of confinement. Any dog or cat so bitten or exposed to rabies through saliva or central nervous system tissue in a fresh open wound or mucous membrane with proof of a valid rabies vaccination shall be revaccinated immediately following the bite and shall be confined to the premises of the owner, or other site as may be approved by the health department, for a period of 45 days.

State law reference-Rabid animals, Code of Va., § 3.2-6522.

Mary K. Jones
Chairman, Board of Supervisors

VOTES

ATTEST:

Adam R. Kinsman
Deputy Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	_____	_____	_____
JONES	_____	_____	_____
MCGLENNON	_____	_____	_____
ONIZUK	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2014.

AnimalCOrd-ord

AGENDA ITEM NO. 1-3**SPECIAL USE PERMIT-0004-2014. WindsorMeade Marketplace Wendy's (New Town Sec. 11)
Staff Report for the July 8, 2014, Board of Supervisors Public Hearing**

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

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Complex

June 4, 2014, 7:00 p.m.

July 8, 2014, 7:00 p.m.

SUMMARY FACTS

Applicant:

Mr. Paul Gerhardt, Kaufman and Canoles

Land Owner:

SLN Casey Associates, LLC

Proposal:

Fast food restaurant

Location:

4800 Monticello Avenue (WindsorMeade Marketplace out-parcel in front of the Martin's fuel station)

Tax Map/Parcel Nos.:

3831800003A

Project Acreage:

+/- 1.322 acres

Zoning:

MU, Mixed Use with proffers

Comprehensive Plan:

Mixed Use

Primary Service Area:

Inside

STAFF RECOMMENDATION

Staff finds the proposal to be in accordance with the New Town Section 11 master plan and design guidelines. Staff also finds the proposal to be consistent with the 2009 Comprehensive Plan and zoning ordinances. Staff recommends the James City County Board of Supervisors approve this application subject to the conditions detailed in the attached resolution.

Staff Contact:

Leanne Pollock

Phone: 253-6876

PLANNING COMMISSION RECOMMENDATION

The Planning Commission recommended approval of this Special Use Permit (SUP) application and the proposed conditions at its June 4, 2014, meeting by a vote of 6-1 (nay: O'Connor).

Proposed Changes Made Since Planning Commission Meeting

There have been no changes proposed since the Planning Commission meeting.

BRIEF HISTORY AND DESCRIPTION OF NEW TOWN WEST

On what is commonly referred to as the west side of New Town, due to its location west of Route 199, the WindsorMeade Retirement Community/Section 13 rezoning application (Case Z-02-01/MP-02-01) was approved by the Board of Supervisors on October 23, 2001. The WindsorMeade Retirement Community master plan permits 343 dwelling units and 34,100 square feet of commercial and health care space (includes skilled nursing areas). WindsorMeade Marketplace/Section 11 (Case Z-05-03/MP-06-03) was approved on October 14, 2003, and permits 200,000 square feet of commercial and retail space fronting Monticello Avenue. New Town Section 12, now referred to as Founders Village, includes 247 for-rent townhomes. The rezoning application for Founders Village (Z-0003-2012/MP-0001-2012) was approved by the Board of Supervisors on October 9, 2012, and the construction process is ongoing. The developer anticipates that the first buildings will be ready for occupancy starting this fall.

PROJECT DESCRIPTION

Mr. Paul Gerhardt of Kaufman and Canoles has applied for an SUP to allow the construction of an approximately 3,137-square-foot Wendy's fast food restaurant in New Town Section 11 (WindsorMeade Marketplace). A fast food restaurant is a specially permitted use in the MU, Mixed Use zoning district. As mentioned, while WindsorMeade Marketplace was previously approved for commercial and retail space, the adopted master plan did not provide for a fast food restaurant. Currently, there are 189,609 square feet of commercial uses built in Section 11. With the addition of the proposed Wendy's, Section 11 would have approximately 7,200 square feet of commercial development remaining under the adopted master plan cap.

The project is surrounded by property zoned MU, Mixed Use, and developed as part of New Town on two sides (the Martin's fuel station and Sleepy's mattress store) and is bordered by WindsorMeade Way, Old News Road, and Monticello Avenue. Surrounding properties in New Town are zoned Mixed Use and designated Mixed Use on the 2009 Comprehensive Plan Land Use Map. The adjacent Monticello Marketplace shopping center (Martin's and Target) is zoned R-4, Residential Planned Community, and designated Community Commercial on the Comprehensive Plan Land Use Map.

Given the small parcel size and existing public road constraints to creating a larger parcel, the applicant requested a waiver to the buffer requirement along Old News Road. The Planning Director has supported this buffer reduction since it will make the Wendy's more consistent with the area's urban development pattern, allow integration with the adjacent Monticello Marketplace, and create room for further separation and pedestrian accommodation between parking and the drive-thru. Furthermore, the full buffer requirement would have significantly impacted the development potential of the parcel. Similar reductions were granted for the Martin's fuel station and Goodyear.

NEW TOWN DESIGN REVIEW BOARD

Design guidelines were adopted with the original rezoning to ensure the vision of the winning town plan and to establish the New Town Design Review Board (DRB) and a process from which to review and approve proposed developments. When WindsorMeade Marketplace was rezoned in 2003, the Board of Supervisors also adopted a set of design guidelines for this specific section which address parking, architecture, pedestrian connections, building elevations/materials, landscaping, and open space. The DRB reviewed the proposed Wendy's master plan and building elevations in February 2014 and found them consistent with the adopted design guidelines. Staff notes that some modifications to the building face signage shown on the elevations will be necessary in order to meet Zoning Ordinance requirements. The DRB and staff will also review the final site plan, building elevations, and signage.

COMMUNITY MEETING

The applicant held a meeting with the residents of the WindsorMeade Retirement Community on May 7 to provide information about the project, answer questions, and receive comments. The primary concerns expressed by residents were the increase in vehicle traffic on both WindsorMeade Way and Old News Road and bike/pedestrian accessibility and safety. Residents noted that the traffic pattern in the area is often confusing and congested and that accidents occur on a regular basis.

As a result, staff consulted with the James City County (JCC) Police Department for accident statistics to try to determine if there was a particular area/pattern that was the site of most accidents. Based on Police reporting, there have been 12 reportable accidents between September 2010 and May 2014 on WindsorMeade Way (only two of those were reported within the last year). There have not been any reportable accidents on Old News Road during this same time period. Per the Police, the majority of these crashes were the fault of motorists who failed to yield the right-of-way. A high percentage of these listed crashes could be reduced if motorists would take more time to make sure the lane(s) are clear to merge into from the shopping center or gas station access road.

The applicant and staff also walked the area of concern with representatives from Virginia Department of Transportation (VDOT), the shopping center property management company (S.L. Nusbaum Realty), and the JCC Police Department to discuss possible solutions to help address resident concerns. Many of the resident concerns are pre-existing and are not directly related to or caused by the potential Wendy's. Despite this, all parties have recognized the need to address the concerns. Transportation and proposed improvements and conditions are discussed in more detail below.

PUBLIC IMPACTS

Archaeology

A widespread Phase I archaeological study was conducted prior to the development of New Town West. As no potentially eligible archaeological sites were identified during this study, staff has not included a condition for any further work.

Engineering and Resource Protection

Watershed: Powhatan Creek

Staff Comments: The property was previously cleared and there is no existing vegetation, Resource Protection Areas, or wetlands on the property. Stormwater management can be addressed at the development plan stage.

Public Utilities

The property is served by public water and sewer and will connect into existing water transmission main and gravity sewer main.

Staff Comments: Staff has reviewed the Community Impact Statement and Master Plan and concurs with the information, while noting that additional information will need to be considered at the development plan design stage. The James City Service Authority (JCSA) has requested that the applicant develop water conservation standards prior to development plan approval.

Transportation

DRW Consultants prepared a traffic study for this project which focused on the un-signalized intersections at WindsorMeade Way and Old News Road and the internal access driveways and the signalized intersections along Monticello Avenue. Previous traffic impact studies, such as those for New Town Section 9, Courthouse Commons, and Founders Village, have accounted for the full development of 200,000 square feet of retail development in WindsorMeade Marketplace.

Wendy's, on its own, is anticipated to generate 100 total PM peak hour trips. Updating the background traffic counts and factoring in this projection for the Wendy's and all approved but un-built development in New Town West did not result in changes to the Level of Service (LOS) projected by the Founders Village traffic impact analysis for all of the signalized intersections on Monticello Avenue that were analyzed. Updated traffic counts for Monticello Avenue are also still well within volumes forecasted by previous traffic analyses. The 2016 projected overall levels of service for signalized intersections along Monticello Avenue are shown in Table 1 below:

Table 1:

	News Road	Mont. Market-place	Windsor Meade	Route 199	Casey Boulevard	Settlers Market Boulevard	New Town Avenue	Court-house Street	Ironbound Road
Overall LOS	D	D	B	D	D	C	C	C	C

The study also looked at the four un-signalized intersections on Old News Road and WindsorMeade Way. Since these are un-signalized, there is a LOS for each turning movement rather than for the overall intersection. There were some decreases in LOS for some turning movements at these intersections. The 2016 projected levels of service for un-signalized intersections are shown in Table 2 below. Shaded cells indicate where LOS is projected to decrease by one level. The LOS for all of the un-shaded cells remained the same.

Table 2:

Intersection	East-Bound Approach	West-Bound Approach	North-Bound Approach	South-Bound Approach
Old News Road with North Access Road	C	C	A	A
Old News Road with South Access Road	B	B	A	A
WindsorMeade Way with North Access Road	C	E	A	A
WindsorMeade Way with South Access Road	A	D		A

Traffic Counts:

The James City County/Williamsburg/York County Comprehensive Transportation Study (Regional Study) that was completed in March 2012 indicated that the most recent weekday volume for Monticello Avenue from Route 199 to News Road was 41,398 trips. This represents a PM peak hour LOS of F for the corridor. VDOT completed counts for WindsorMeade Way in 2010 indicating 1,300 average annual daily trips (AADT) between Monticello Avenue and the gate of the retirement community. As a point of comparison this two-lane road was generally designed to handle a maximum capacity of 15,000 vehicles per day, which is similar to the vehicle load on Jamestown Road between Boundary Street and Ukrop Way in the City of Williamsburg. VDOT completed counts on Old News Road in 2012 as part of a recent construction project. Counts indicated an AADT of 2,800 trips for the entire road (from Monticello Avenue to News Road).

Projected Traffic Volume:

The County does not maintain projected volumes for WindsorMeade Way, but the traffic study prepared by DRW Consultants projects about 3,000 vehicles per day at full build-out of WindsorMeade Retirement Community, Founders Village, and WindsorMeade Marketplace. On Monticello Avenue between Route 199 and News Road, 45,000 to 47,569 AADT are projected for 2035 – this is in the category of warranting improvement (from four to six lanes). The Regional Study notes that the PM peak hour LOS for the corridor is projected to still be at a LOS of F in 2034, but staff notes that this projection does not take the following proposed Monticello Avenue corridor improvements into account. The Comprehensive Plan specifically addresses Monticello Avenue and notes that efforts should be made to maximize capacity of the segment from Route 199 to News Road through geometric improvements and signal coordination, which VDOT is in the process of doing. The scope of work begins at the Monticello Avenue and Old News Road intersection and includes demolishing the existing right-in/right-out “porkchop” to create an additional thru/right-turn lane for traffic. The improvements are estimated to be completed by spring 2015.

VDOT Comments: VDOT concurred that the Wendy’s would provide a minor increase in traffic generation over an alternative commercial use on this parcel, but would have little impact on the operation

of Monticello Avenue. As a result, no improvements are recommended for Monticello Avenue. VDOT's additional comments regarding drainage, entrance design, and sidewalk access will be addressed at the development plan stage.

Staff Comments: Staff has been working closely with the applicant, VDOT, and S.L. Nusbaum to discuss concerns related to Old News Road and WindsorMeade Way (both public roads) and the two private access roads and shopping center entrances. As indicated earlier, many of the traffic safety concerns in this area are pre-existing conditions that are not a result of the Wendy's proposal. As a result, staff will continue to work with VDOT and shopping center management to address concerns.

Staff has proposed two conditions related to transportation for this application:

- Striping of a crosswalk across Old News Road near the Southern Access Road unless otherwise not permitted by VDOT. Please note that staff is currently in the process of talking with VDOT to determine whether this crosswalk would be advisable so this condition may be subject to change as a result of those discussions.
- Limitations on the location of the Wendy's entrance so that only one entrance is permitted and the entrance has to be located on the Southern Access Drive.

The original rezoning for WindsorMeade Marketplace includes a proffer that requires a signal warrant analysis and installation of any recommended improvements for the intersection WindsorMeade Way with the Northern Access Road (between Martin's fuel and Goodyear) when requested by the County. Staff has continued to discuss this intersection through each development proposal and, to date, built and projected traffic volumes do not indicate that a signal is warranted at this location. In looking at alternatives for addressing concerns, S.L. Nusbaum has indicated a willingness to install various striping treatments, signage and sidewalk improvements:

- Removal of the "thru" arrow at the first drive aisle onto WindsorMeade Way at the shopping center.
- Re-striping the pedestrian crossing at the "porkchop" at the intersection of the South Access Drive and WindsorMeade Way.
- Painting the "porkchop" curb yellow and adding painted striping to extend the "porkchop" as a further visual indication that it is a right-in/right-out only access.
- Extending sidewalk from WindsorMeade Way to the bus stop located next to PetSmart.
- Contributing toward expenses in public right-of-way (unless otherwise not permitted by VDOT) for:
 - o striping an extension of the median in WindsorMeade Way;
 - o striping "thru" and "thru/right turn" arrows in the WindsorMeade Way travel lanes; and
 - o striping a crosswalk on Old News Road.

VDOT is also already in the process of installing a "no left turn" sign in the median facing vehicles approaching the shopping center from Monticello Avenue and is also planning to conduct a speed study for the WindsorMeade Way corridor to see if the speed limit should be reduced from the current 40 mph speed limit.

COMPREHENSIVE PLAN

The project is designated Mixed Use on the 2009 Comprehensive Plan Land Use Map and is in the New Town Community Character Area. Mixed Use areas should be in the Primary Service Area and should be centers for higher density development with a mix of uses served by adequate infrastructure and public services. The consideration of development proposals should focus on the development potential of a given area compared to the area's infrastructure and the relation of the proposal to the existing and proposed mix of uses and their impacts. Specifically, the New Town area calls for principal suggested uses as a mix of commercial, office, and limited industrial with residential as a secondary use and should be governed by design guidelines.

Again, this project should be considered in the context of the overall New Town development. Per the original master plan, this section was anticipated for commercial development. This outparcel is one of the last remaining undeveloped areas of Section 11 before reaching the 200,000 square foot cap.


The application includes several enhancements for the Monticello Avenue Community Character Corridor (CCC) along the property's frontage, including a sidewalk connection to existing sidewalks on either side of the property, continuation of the town fence, and enhanced landscaping in the CCC buffer. The development is served by adequate water, sewer, and road infrastructure; is in close proximity to other commercial development, adjacent residential development, and the wider New Town area; and provides pedestrian connectivity to these areas in an effort to reduce vehicle trips. Limiting vehicular access to the private access road also reduces potential conflict points on the adjacent public roads in close proximity to Monticello Avenue. Finally, oversight by the New Town Design Review Board will ensure the architectural design, building scale, signage, and streetscapes are in line with expectations for the rest of New Town and are compatible with development on adjacent properties. Staff finds the proposed development to be consistent with the 2009 Comprehensive Plan.

RECOMMENDATION

Staff finds the proposal to be in accordance with the New Town Section 11 master plan and design guidelines. Staff also finds the proposal to be consistent with the 2009 Comprehensive Plan and zoning ordinances. The Planning Commission recommended approval of this SUP application and the proposed conditions at its June 4, 2014, meeting by a vote of 6-1 (nay: O'Connor). Staff recommends the James City County Board of Supervisors approve this application subject to the conditions detailed in the attached resolution.


 Leanne Pollock

CONCUR:


 Allen J. Murphy, Jr.

LP/gb
 Sup04-14Wendys.doc

ATTACHMENTS:

1. Resolution
2. Location map – color map accessible on the online agenda
3. Unapproved minutes of the June 4, 2014, Planning Commission meeting
4. Supplemental materials binder (includes master plan, community impact statement, elevations, and the traffic study) – accessible on the online agenda

RESOLUTION

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

(NEW TOWN SECTION 11)

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

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

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

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

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

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

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

1. Use: This SUP shall be valid for an approximately 3,200-square-foot fast food restaurant (the "Development").
2. Master Plan: The site plan for the Development shall be generally consistent with the Master Plan as determined by the Director of Planning.
3. Applicability of New Town Section 11 Proffers and Design Guidelines: Development shall continue to be subject to the proffers and design guidelines as adopted by the Board of Supervisors as James City County (JCC) Case No. Z-0005-2003 and MP-0006-2003 on October 14, 2003.
4. Elevations: Final building elevations shall be generally consistent with the Entry Side, Drive-Thru, Rear and Front Conceptual Renderings prepared by Ionic Deziign Studios and dated February 4, 2014, as determined by the New Town Design Review Board and the Director of Planning.
5. Access: Access to the Development shall be limited to the one vehicular entrance (the "Entrance"). The Entrance shall be located on the South Access Road as shown on

Exhibit 2 of the report prepared by DRW Consultants on March 26, 2014, and titled “Traffic Analysis for Proposed Wendy’s New Town West” (the “Analysis”) and shall be developed generally as depicted on the Master Plan.

6. Signage: In addition to building face signage as permitted by the JCC Zoning Ordinance (the “Ordinance”), the Development shall be limited to one freestanding brick monument-style sign on the Property. All signage, content, and materials shall be in accordance with the New Town Section 11 Design Guidelines and the Ordinance and approved by the New Town Design Review Board.
7. External Pedestrian Accommodations: Unless otherwise not permitted by the Virginia Department of Transportation, a non-signalized crosswalk across Old News Road and connecting the proposed sidewalk parallel to the South Access Road with existing sidewalk on the adjacent property located at JCC Real Estate Tax Map No. 3831200002B shall be installed prior to issuance of a final certificate of occupancy for the Development.
8. Internal Pedestrian Accommodations: Development shall provide internal pedestrian connections wherever sidewalk enters the parking area or crosses the Entrance or drive-thru lane. The connections shall be clearly delineated by use of a different color of pavement, brick pavers, or some other method determined to be acceptable by the Director of Planning.
9. Monticello Avenue Buffer: A landscaping plan shall be approved by the Director of Planning, or his designee, prior to final site plan approval for this Development. The landscaping plan shall include enhanced landscaping within the 50-foot Community Character Corridor buffer along Monticello Avenue so that the required sizes of plants and trees equal, at a minimum, 133 percent of the size requirements of the JCC Landscape Ordinance. A minimum of 50 percent of the plantings within the Community Character Corridor buffer shall be evergreen and plant material shall match those contained within the existing Monticello Avenue buffer in front of WindsorMeade Marketplace. The typical town fence shall be installed along the Monticello Avenue frontage of the Development.
10. Water Conservation Standards: The Applicant shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources. Standards shall be reviewed and approved by the JCSA prior to final site plan approval of the Development.
11. Commencement: Construction on the Development shall commence within 24 months from the date of approval of this SUP or this permit shall be void. Construction shall be defined as obtaining building permits and an approved footing inspection and/or foundation inspection.
12. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

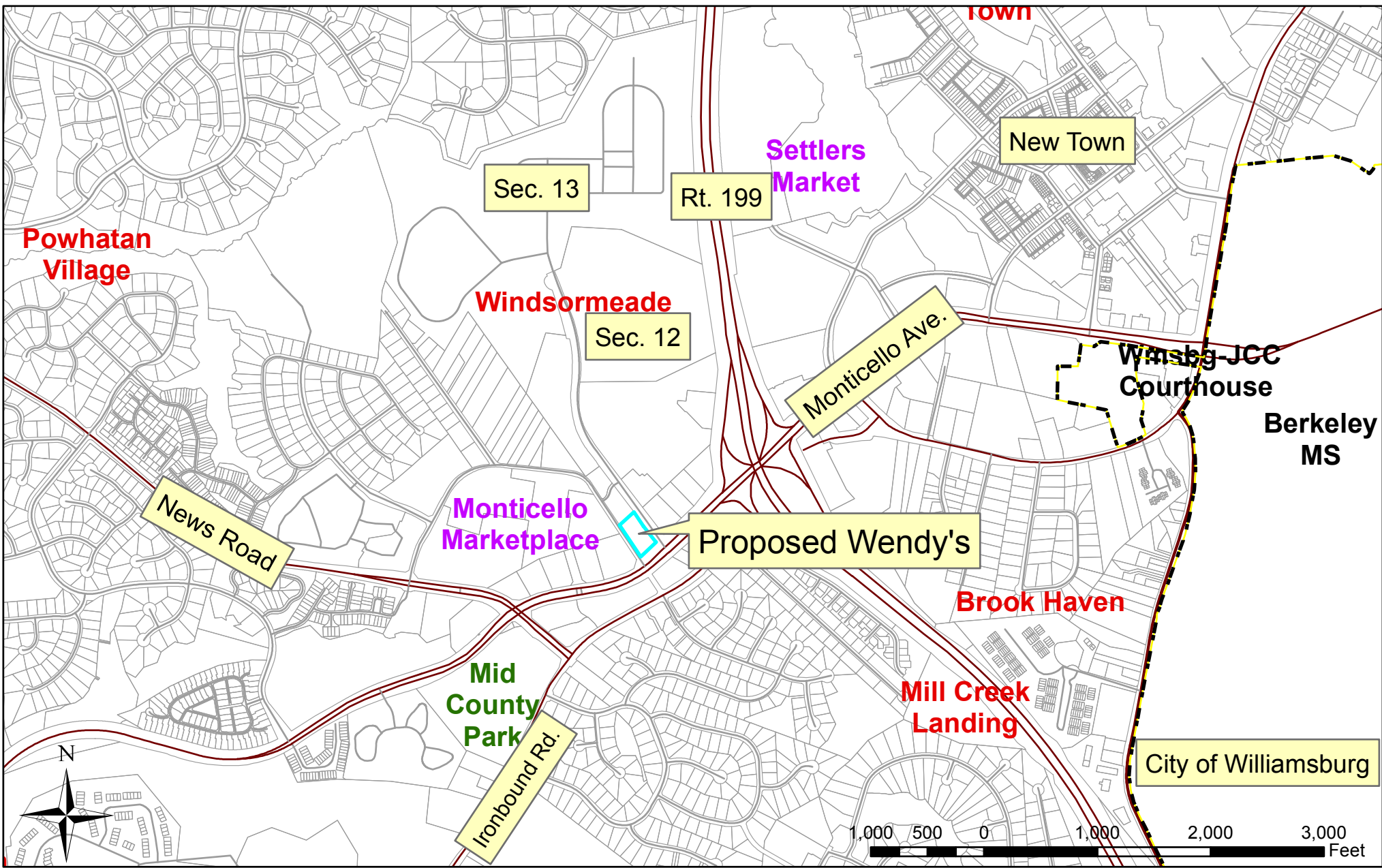
Adam R. Kinsman
Deputy Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	_____	_____	_____
JONES	_____	_____	_____
MCGLENNON	_____	_____	_____
ONIZUK	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2014.

Sup04-14Wendys-res

JCC-SUP-0004-2014, WindsorMeade Marketplace Wendy's (New Town Sec. 11)



Unapproved Minutes of the June 4, 2014 Planning Commission Meeting

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

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

Mr. Wright stated that he is concerned with traffic exiting the proposed establishment and trying to turn left on Monticello Avenue.

Mr. Richardson asked if there is an image the Commission could view.

Ms. Pollock displayed an aerial drawing and noted the area with which Mr. Wright is concerned. Ms. Pollock noted that there is only one lane of traffic that must be crossed.

Mr. Wright stated that he wanted to ensure that traffic would not be forced to turn right on Monticello and then make a U-turn.

Ms. Pollock stated that the road layout was chosen as part of the Master Plan for New Town Section 11, and noted that it is a legislative case because of the fast-food use.

Mr. Basic noted that the DRC discussed the illegal turns taking place at that intersection, and asked what efforts are being made by all involved parties to keep the situation from becoming worse.

Ms. Pollock gave an overview of the proposed signage and striping improvements.

Ms. Bledsoe noted that the traffic issues associated with the access road are not a result of the Wendy's but were preexisting.

Ms. Pollock confirmed.

Mr. O'Connor inquired if the adopted Master Plan specified a use for the parcel.

Ms. Pollock stated that it is shown as non-residential, and any use requiring a Special Use Permit (SUP) in the Mixed Use District that is not specifically called out on the Master Plan must go through the legislative process.

Mr. O'Connor asked for more information regarding the condition for an external pedestrian accommodation listed in the staff report.

Ms. Pollock stated that this would be a crosswalk stretching across Old News Road from the Wendy's to the Ruby Tuesday's parcel, and noted that additional studies are still required.

Mr. O'Connor asked what the traffic speed is on Old News Road.

Ms. Pollock stated that she believes the speed limit is 35 MPH.

Mr. Krapf inquired if the Commissioners have any disclosures they wished to note.

Mr. Wright and Ms. Bledsoe stated that he had a conversation with Mr. Paul Gerhardt.

Mr. Krapf opened the public hearing.

Mr. Gerhardt, of Kaufman and Canoles, addressed the Planning Commission giving an overview of the proposal.

Mr. H. Donald Nelson, 4312 Southbury Square, addressed the Commission in support of the application.

There being no one else wishing to speak, Mr. Krapf closed the public hearing.

Mr. Basic moved to approve the application.

On a roll call vote, the Planning Commission voted to recommend approval of the application with the conditions listed in the staff report by a vote of 6-1; Mr. O'Connor voting Nay.

**SPECIAL USE PERMIT-0005-2014. Creative Kids Child Day-Care Center
Staff Report for the July 8, 2014, Board of Supervisors Public Hearing**

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

PUBLIC HEARINGS Building F Board Room; County Government Complex

Planning Commission: June 4, 2014, 7:00 p.m.

Board of Supervisors: July 8, 2014, 7:00 p.m.

SUMMARY FACTS

Applicant: Ms. Tracey Williams

Land Owner: Ms. Tracey Williams

Proposal: Renewal of a Special Use Permit (SUP) to continue the operation of a child day-care center in a residential neighborhood and to increase the number of children from 12 to 20.

Location: 701 Mosby Drive

Tax Map/Parcel No.: 4140300103

Parcel Size: ± 0.39 acres

Existing Zoning: R-2, General Residential

Comprehensive Plan: Low Density Residential

Primary Service Area (PSA): Inside

STAFF RECOMMENDATION

Staff finds that the proposed increase from 12 to 20 children incompatible with the location. Staff finds that an increase in the number of children served from 12 to 20 is out of scale for an interior lot to an existing established single-family neighborhood. Staff finds a limited-scale commercial day-care center for no more than 12 children more appropriate and consistent with the surrounding zoning and development and compatible with the 2009 Comprehensive Plan. Additionally, staff finds a day-care center for no more than 12 children more consistent with the Planning Commission's Policy recommendations for child day-care centers located in the interior of residential neighborhoods (Attachment No. 4). Staff recommends the Board of Supervisors approve the day-care center serving no more than 12 children with the attached conditions.

On June 4, 2014, the Planning Commission voted 4-3 to recommend approval of the application for up to 20 children. Should the Board of Supervisors wish to approve the application as recommended by the Planning Commission, staff has proposed conditions outlined in the second attached resolution allowing for up to 20 children.

Staff notes, the following changes were made to the conditions approved in 2013: an extension of the validity clause from 12 to 36 months, the addition of licensure requirements, continued enforcement of the Water Conservation Agreement signed and approved August 1, 2013, and a minor change to the food preparation condition, clarifying expectations.

Staff Contact:

Jennifer VanDyke, Planner

Phone: 253-6882

An amendment to Condition 1 (occupancy) was requested by the Commission. This amendment would increase the number of children permitted from 12 to 20. Should the Board of Supervisors wish to approve the application as recommended by the Planning Commission, staff has proposed conditions outlined in the second attached resolution allowing for up to 20 children.

Proposed Changes Made Since Planning Commission Meeting

The Planning Commission discussed the impacts of the proposed increase from a “family day home”, as defined by the Department of Social Services (DSS) as offering services to no more than 12 children, versus a “child day center,” offering services to more than 12 children. As discussed below, the DSS outlines additional requirements for child day centers relevant to structure stability, fire safety, handicap accessibility, and designated parking. DSS also requires that the center provide food if the food brought from home is forgotten, inadequate in quantity, or spoiled. According to DSS, Food provided by the center, other than prepackaged non-potentially hazardous snacks, must come from a permitted food establishment. For a child day center located in a private residence, a separate kitchen would be required or food would be provided by a catering service or other off-site, permitted food establishment. During the course of the Health Department’s compliance review, Ms. Williams indicated that lunch would be catered and prepackaged food provided for snacks. The applicant has proposed requiring guardians to supply all food; however, per DSS this cannot be the sole provision for food offered. While prepared foods must come from a permitted food establishment for child day centers, family day homes are not held to this standard.

PROJECT HISTORY

This proposal seeks to renew an existing SUP and increase the number of children in a child day-care center located at the proprietor’s personal residence. Ms. Williams has been operating with licensure from the DSS. On July 9, 2013, the Board of Supervisors approved a SUP for the child day-care center for up to 12 children for a period of 12 months (Case No. SUP-0006-2013).

Upon submission of the SUP application last year, staff became aware of restrictive covenants associated with Ms. William’s neighborhood. The restrictive covenants for James Terrace included the following language: “no lot in the tract shall be used except for residential purposes.” Staff was counseled by the County Attorney to recommend denial due to the conflict with the restrictive covenants. Staff did not support the application; however, staff did forward conditions to the Planning Commission and Board in the event the Board chose to approve the child day-care center. The Planning Commission forwarded a recommendation to approve the application allowing for up to 20 children. On July 9, 2013, the Board approved the child day-care for up to 12 children with an added condition stating: “this SUP shall be valid for a period of 12 months from the date of approval during which the child day-care center owner shall maintain (and renew or obtain as necessary) all needed County and State permits to operate the child day-care center.” Ms. Williams was also advised to have the restrictive covenants revised prior to a reconsideration of the SUP. The applicant has submitted documentation to the satisfaction of the County Attorney which demonstrates compliance with the condition requiring a revision to the covenants to allow a commercial operation within the neighborhood.

PROJECT DESCRIPTION

Ms. Tracey Williams has applied for an extension to the existing SUP to continue the operation of a child day-care center in an existing single-family detached home located at 701 Mosby Drive. This property is zoned R-2, General Residential, which requires a SUP for the operation of a child day-care center.

In 2006, Ms. Williams submitted an application for a child day-care center which was approved by the County as a home occupation. Child day-care facilities of five children or less are permitted by-right as a home occupation. In 2013, Ms. Williams applied and was approved for an SUP to bring her business into compliance with the Zoning Ordinance as required by DSS. A child day-care center is defined by the ordinance as “an establishment offering group care to six or more children away from their home for any part of the day.” Per

the previously approved SUP, a day care service is currently operating from her residence with a maximum of 12 children.

Per DSS requirements, Ms. Williams submitted a functional design plan to their agency for review in 2013. The functional design plan is used to determine the maximum number of children a day-care center can serve based on an evaluation of square footage. DSS requires 35-net-square-feet dedicated to the use of the day care per child. Ms. Williams' SUP application submitted last year, proposed she and her family move out of the home; however, a condition carried over from Case No. SUP-0006-2013 requires that the owner maintain the home as a residence. Consistent with the proposal, Ms. Williams' functional design plan allocated the total square footage of the house, approximately 1,248 square feet, to the child day care use. On May 3, 2013, DSS submitted a letter (Attachment No. 3) to Ms. Williams indicating that the reported square footage would provide for a projected capacity of 24 children. Ms. Williams recently received building permit approval for an addition to the residence. A building permit was issued on May 5, 2014, for an addition approximately 384 square feet in size. Since the initial determination by DSS was based upon the total area being used for commercial purposes and did not include the addition, a new evaluation must be made to determine the appropriate capacity per DSS standards. Staff notes, the building permit was reviewed and approved based on an evaluation to the standards established for a single-family home. No evaluation was made regarding the commercial use of the site.

Under DSS regulation, facilities offering day care services to *more than* 12 children are identified as child day centers and are held to stricter standards than those serving 12 or fewer. Ms. Williams is currently licensed for up to 12 children and is reviewed against the minimum standards for family day homes. DSS, in conjunction with Virginia Uniform Statewide Building Code places additional requirements on child day centers relevant to structure stability, fire safety, handicap accessibility, and designated parking. DSS has another distinction made for those child day centers offering services for children less than 2.5 years of age; however, Ms. Williams has indicated that her program would shift to serving children ages 2.5 years of age through 12 years old should she be approved for up to 20 children. Ms. Williams is currently serving children between the ages of one through 12-years old. Minimum standards outlined for child day centers offering services for those children less than 2.5 years of age have additional fire safety standards that must be met.

The building permit was reviewed and approved based on an evaluation to the standards established for a single-family home. To ensure compliance with all additional requirements placed on child day centers, DSS requires a Certificate of Occupancy (CO). DSS also performs periodic inspections to ensure the children under supervision do not exceed the approved number and age requirements, along with many other child safety requirements.

While staff defers to DSS and the established approval process to ensure all building code and safety measures are met, staff notes that DSS does not make a distinction between day-care centers in a home versus a commercial setting. Staff finds DSS requirements and the impacts of the proposed day-care center serving 20 children predicate the demand for a more compatible location. The traffic generated by a day-care center serving 20 children is not compatible with an interior lot to an existing established neighborhood. DSS and Virginia Uniform Statewide Building Code requires a minimum of one dedicated handicap parking space and sign, these features are not typically found in residential areas of this nature and would contribute to unmet parking demand.

The Health Department typically places food service requirements on facilities serving greater than 12 children, requiring a separate kitchen. Any additional kitchen used for the purposes of serving food to the children would be held to the same standards as any other food establishment, such as a restaurant. However, in this case, the Health Department has approved the use of a catering service if a separate kitchen is not added to the existing dwelling. Staff would note that having a catering food service vehicle arrive to the house will add to traffic and parking concerns. Proposed SUP Condition No. 8 outlines restrictions to commercial food preparation and laundry services. The condition, as written, restricts any commercial food distribution and laundering services to the children being cared for and/or the day-care center staff.

Ms. Williams proposes a continuation of the established hours of operation. The hours are 5:30 a.m. to midnight, Monday through Friday, and from 7 a.m. to midnight, Saturday and Sunday. Except for transportation provided directly by the owner/operator of the day care all pick-ups and drop-off's to the day care shall be limited to the hours between 6 a.m. and 8 p.m. The expanded hours offered for those children being picked up and/or dropped off during the early morning and late evening hours (by the owner/operator) was a concession made by Ms. Williams last year in an attempt to abate staff's concerns. This application proposes a continuation of this practice.

The Planning Commission previously approved a policy for child day-care centers located in the interior of residential neighborhoods. The policy recommends that three conditions be placed on any such application: 1) a three-year limit in order to monitor the impacts of the day-care center; 2) no signage shall be permitted; and 3) no additional exterior lighting shall be permitted. Staff has included these conditions as part of this application and a copy of the policy has also been provided for your reference (Attachment No. 4).

Engineering and Resource Protection (ERP):

Staff Comments: Staff has reviewed this application and has recommended approval. Staff notes that James Terrace is situated in the College Creek watershed and historically has been an area with problem drainage.

James City Service Authority (JCSA):

Staff Comments: The site is located within the PSA and it is served by public water and sewer. JCSA has reviewed this application and has recommended approval. A Water Conservation Agreement was approved and signed on August 1, 2013. The outlined conditions include a provision to enforce the water conservations standards signed and approved on August 1, 2013.

Virginia Department of Transportation (VDOT):

VDOT Comments: VDOT had no concerns with the proposed SUP. No traffic improvements were recommended or proposed by VDOT.

Staff Comments: Staff acknowledges that, due to the varying parental schedules, children will be picked up and dropped off at varying times, thus helping to ease potential traffic congestion at peak hours. However, staff has concerns that an increase in the number of children from 12 to 20 and a catering truck arriving to the site will increase the volume of traffic to levels in excess of residential neighborhoods of this nature.

In addition to traffic concerns, staff finds the amount of available parking does not support an increase in the number of children or meet the minimum requirements for a child day center. The Zoning Ordinance requires single-family homes have a minimum of two off-street parking spaces. While the ordinance does not specify a minimum parking calculation for day cares in general, staff has typically used a formula of one space per employee, plus one space per four children. Accordingly, a minimum of five parking spaces will be required plus two spaces for employees as well as one dedicated, handicap accessible parking space with required signage. Staff has determined the property would adequately accommodate up to six smaller vehicles, double-stacked in the driveway. While additional parking would not be allocated to the occupants of the single-family home it is reasonable to expect there may be additional vehicles on-site personally owned by the Williams family.

Staff notes that Mr. Williams has an approved home occupation permit for a moving company. All home occupation applications must be determined to not generate traffic in volumes greater than would normally be expected in a residential neighborhood and any need for parking generated by the conduct of such home occupation shall be met off the street. Beyond the requirements for dwelling unit type, the ordinance does not require additional parking for home occupations. The Zoning Ordinance requires that there be no outdoor storage of machinery or equipment in relation to the home occupation. Mr. Williams' home occupation application indicated that moving trucks used for the business operation would be rented and would remain off-site. While it was determined that Mr. Williams' business met the criteria for a home occupation it is reasonable to expect that additional business activity on the premises will contribute to traffic on Mosby Drive

and place a greater strain on parking demand at the residence.

Virginia Department of Health (VDH):

Staff Comments: The applicant has agreed to cater lunch and serve prepackaged food for snacks. A Department of Health food permit will not be required as long as Creative Kids Child Development Center follow the following requirements:

- Food is procured from a permitted food establishment responsible for all food preparation in their permitted kitchen.
- All food service will be handled by the permitted food establishment employees.
- All leftovers will be discarded at the end of each meal.
- There will be no food stored or food preparation at the child care site.
- All food service equipment and utensils will return to the permitted establishment for cleaning.
- Any changes to the food service plan or change in cater shall be coordinated through this office prior to making any changes.

Virginia Department of Social Services (DSS):

Staff Comments: The DSS is the agency responsible for monitoring and licensing the day-care facility. The DSS granted a license for the child day care serving 12 children ranging from one through 12 years old which is due to expire August 20, 2014. Ms. Williams has indicated her desire to serve children between 2.5 and 12 years of age.

Building Safety and Permits (BSP):

Staff Comments: Staff notes that should the child day-care center maintain its current occupancy at 12 children, no structural alterations to the house are required. However, once the occupancy number rises above 12 children several new requirements must be met in accordance with Virginia Uniform Statewide Building Code relevant to structure stability, fire safety, handicap accessibility, and designated parking. A handicap accessible parking space, building entrance, and route between the parking space and entrance must be provided at minimum. Should Ms. Williams expand her services to children younger than 2.5 years of age, each room used for this age group must be located on the first floor and have an exit door directly to the exterior.

COMPREHENSIVE PLAN

The 2009 Comprehensive Plan Land Use Map designates this parcel as Low Density Residential. Recommended uses are primarily residential but schools, churches, and very limited commercial uses are also allowed upon meeting the following standards (2009 Comprehensive Plan, article 4-d, page 141) with staff analysis in *italics*:

- a. Complements the residential character of the area;
Staff finds that a day-care center for 20 children is more appropriately located in a commercial or mixed-use zoned area. Staff is concerned that an increase in children in conjunction with the late evening and early morning hours may be disruptive and impact the quieter character associated with a residential neighborhood.
- b. Have traffic, noise, lighting and other impacts similar to surrounding residential uses;
Staff finds that a day-care center for 20 children that includes a catering service has the potential to create additional vehicular traffic and noise in the neighborhood. Staff is particularly concerned with meeting the demand for parking and finds the available parking inadequate.

- c. Generally be located on collector or arterial roads at intersections;
The property is not located on a major road, though it is situated near Penniman Road, an arterial road. The fact that the property is not located deep into the neighborhood may alleviate some traffic impacts on Mosby Drive; however, staff notes the proximity to an intersection with periodic heavy traffic. The intersection of Penniman Road and Hubbard Lane marks the location of Magruder Elementary School. This intersection has heavy traffic during morning drop-off times and afternoon dismissals.
- d. Provide adequate screening and buffering to protect the character of nearby residential areas; and
Adjacent property to the east appears to have some vegetation that creates a natural buffer. Staff is not aware of any fences or other screening materials located at the child day-care center.
- e. Generally intended to support the residential community in which they are located.
According to Mrs. Williams, the child day-care center supports the needs of parents not only in her neighborhood, but also in other areas in the County and nearby localities.

STAFF RECOMMENDATION

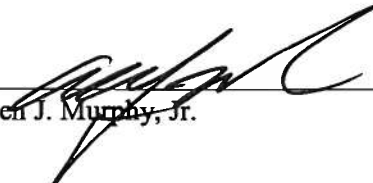
Staff finds that the proposed increase from 12 to 20 children incompatible with the location. Staff finds that an increase in the number of children served from 12 to 20 is out of scale for an interior lot to an existing established single-family neighborhood. Staff finds a limited-scale commercial day-care center for no more than 12 children more appropriate and consistent with the surrounding zoning and development and compatible with the 2009 Comprehensive Plan. Additionally, staff finds a day-care center for no more than 12 children more consistent with the Planning Commission's Policy recommendations for child day-care centers located in the interior of residential neighborhoods (Attachment No. 4). Staff recommends the Board of Supervisors approve the day-care center serving no more than 12 children with the attached conditions.

On June 4, 2014, the Planning Commission voted 4-3 to recommend approval of the application for up to 20 children. Should the Board of Supervisors wish to approve the application as recommended by the Planning Commission, staff has proposed conditions outlined in the second attached resolution allowing for up to 20 children.

Staff notes, the following changes were made to the conditions approved in 2013: an extension of the validity clause from 12 to 36 months, the addition of licensure requirements, continued enforcement of the Water Conservation Agreement signed and approved August 1, 2013, and a minor change to the food preparation condition, clarifying expectations.


Jennifer VanDyke

CONCUR:


Allen J. Murphy, Jr.

JVD/nb
SUP05-14CKidsCtr

ATTACHMENTS:

1. Resolution (Allowing for a Maximum of 12 Children)
2. Alternate Resolution (Allowing for a Maximum of 20 Children)
3. Location Map, General Area – color map accessible on the online agenda
4. Location Map, 701 Mosby Drive – color map accessible on the online agenda
5. Unapproved Minutes from June 4, 2014, Planning Commission Meeting
6. Letter from the Department of Social Services dated May 3, 2013
7. Child Day-Care Centers Located in the Interior of Residential Neighborhoods Policy
8. Letters of Recommendation from Clients Submitted 2013

RESOLUTION

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

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

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

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

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

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

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

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

1. Occupancy: No more than 20 children shall be cared for at the child day-care center at any one time, subject to approval by the State Department of Social Services.
2. Hours of Operation: Hours of operation shall be limited from 5:30 a.m. to midnight, Monday through Friday, and from 7 a.m. to midnight, Saturday through Sunday. Except for transportation provided directly by the owner/operator of the day care, all pick-ups and drop-offs to the day care shall be limited to between 6 a.m. to 8 p.m.
3. Residency: The owner/operator of the child day-care center shall reside on the property for the duration of the validity of the SUP.
4. Validity of SUP: This SUP shall be valid for a period of 36 months from the date of approval during which the child day-care center owner shall maintain (and renew or obtain as necessary) all needed County and State permits and licensure to operate the child day-care center.
5. Signage: No signage shall be permitted which relates to the use of the property as a child day-care center.
6. Lighting: No additional exterior lighting shall be permitted on the property, other than lighting typically used at a single-family residence.

7. Water Conservation Agreement: The applicant shall be responsible for enforcing the water conservation standards established in the signed and approved Water Conservation Agreement dated August 1, 2013. The standards address water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources.
8. Food preparation: No commercial food preparation or laundry services shall be provided aside from the operation of the child day-care center. For purposes of this condition, “commercial food preparation or laundry services” shall be defined as meaning any food preparation or laundry services provided at the center that are not directly related to, and intended to serve the needs of, the children being cared for and/or the day-care center staff.
9. Severance Clause: This SUP is not severable. Invalidity of any word, phrase, clause, sentences, or paragraph shall invalidate the reminder.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Adam R. Kinsman
Deputy Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	_____	_____	_____
JONES	_____	_____	_____
MCGLENNON	_____	_____	_____
ONIZUK	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2014.

Sup5-14CKidsCtr-res1

RESOLUTION

CASE NO. SUP-0005-14. CREATIVE KIDS CHILD DEVELOPMENT CENTER

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

WHEREAS, Ms. Tracey Williams has applied for an SUP to operate a child day-care center for a maximum of 12 children on a parcel totaling 0.39 acres and zoned R-2, General Residential; and

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

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

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

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

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

1. Occupancy: No more than 12 children shall be cared for at the child day-care center at any one time, subject to approval by the State Department of Social Services.
2. Hours of Operation: Hours of operation shall be limited from 5:30 a.m. to midnight, Monday through Friday, and from 7 a.m. to midnight, Saturday through Sunday. Except for transportation provided directly by the owner/operator of the day care, all pick-ups and drop-offs to the day care shall be limited to between 6 a.m. to 8 p.m.
3. Residency: The owner/operator of the child day-care center shall reside on the property for the duration of the validity of the SUP.
4. Validity of SUP: This SUP shall be valid for a period of 36 months from the date of approval during which the child day-care center owner shall maintain (and renew or obtain as necessary) all needed County and State permits and licensure to operate the child day-care center.
5. Signage: No signage shall be permitted which relates to the use of the property as a child day-care center.
6. Lighting: No additional exterior lighting shall be permitted on the property, other than lighting typically used at a single-family residence.

7. Water Conservation Agreement: The applicant shall be responsible for enforcing the water conservation standards established in the signed and approved Water Conservation Agreement dated August 1, 2013. The standards address water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources.
8. Food preparation: No commercial food preparation or laundry services shall be provided aside from the operation of the child day-care center. For purposes of this condition, “commercial food preparation or laundry services” shall be defined as meaning any food preparation or laundry services provided at the center that are not directly related to, and intended to serve the needs of, the children being cared for and/or the day-care center staff.
9. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentences, or paragraph shall invalidate the reminder.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Adam R. Kinsman
Deputy Clerk to the Board

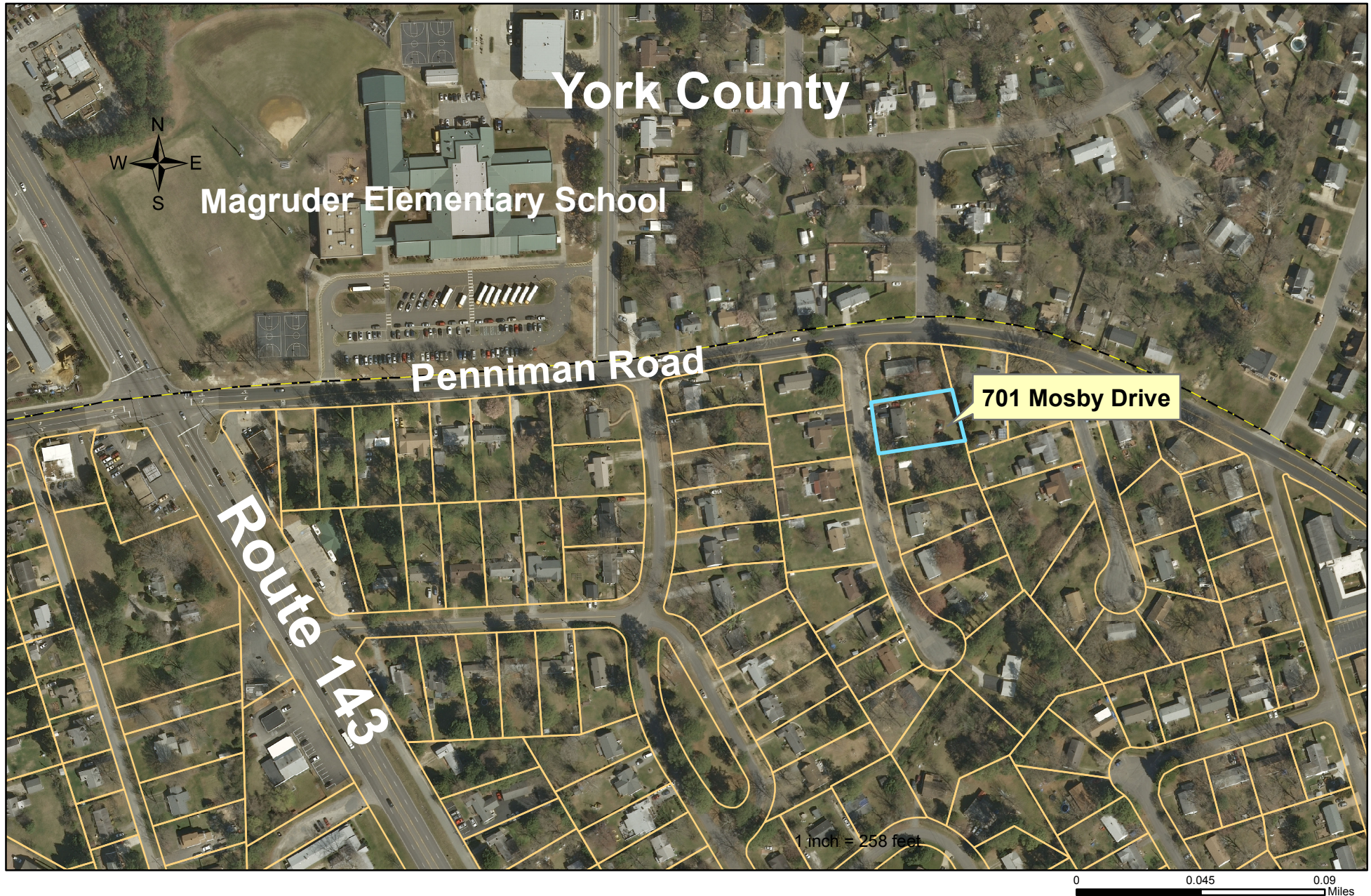
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	_____	_____	_____
JONES	_____	_____	_____
MCGLENNON	_____	_____	_____
ONIZUK	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2014.

SUP5-14CKidsCtr-res2

SUP-0005-2014, Creative Kids Child Development Center

90



SUP-0005-2014, Creative Kids

701 Mosby Drive



Unapproved Minutes of the June 4, 2014 Planning Commission Meeting

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

Ms. Jennifer VanDyke, Planner, addressed the Planning Commission giving a summary of the staff report included in the Agenda Packet.

Mr. Drummond inquired if the applicant has already received a permit to increase the size of the dwelling to accommodate the additional children.

Ms. VanDyke stated that at this time, she is allowed to have up to twelve children, and that permit is set to expire.

Mr. Krapf inquired if she already has the building permit for the addition to her home.

Ms. VanDyke confirmed that she has received a building permit.

Mr. Drummond asked if the permit is in order to accommodate more children.

Ms. VanDyke stated that the building permit was reviewed solely by the Building Safety and Permits division and is a separate issue from the SUP.

Mr. Richardson inquired if the covenants have officially been revised to allow a daycare in James Terrace.

Ms. VanDyke confirmed that the covenants have been changed to allow child care at 701 Mosby Drive.

Mr. Richardson inquired if the recommendation to only approve up to 12 children, versus 20, is due to the size of the lot and nature of the neighborhood.

Ms. VanDyke confirmed that staff has determined that an operation for 20 children would be out of scale for the neighborhood.

Mr. Krapf inquired if the Commissioners have any disclosures they wished to note.

There being none, Mr. Krapf opened the public hearing.

Ms. Tracey Williams, 701 Mosby Drive, addressed the Planning Commission giving an overview of the proposal and requesting approval for up to 20 children.

Ms. Bledsoe inquired if Ms. Williams is still providing service to many families in her neighborhood, including overnight care for children.

Ms. Williams confirmed.

Mr. Drummond inquired if Ms. Williams has already met all of the requirements set forth by the Department of Social Services in order to increase to 20 children.

Ms. Williams responded that Social Services must visit her home to determine the number of children allowed. Ms. Williams noted that she has begun making improvements to her home in order to evidence what she would like to accomplish.

Mr. O'Connor inquired if all of the fire safety and handicap accessibility requirements have already been met or if those improvements are dependent on receiving approval for up to 20 children.

Ms. Williams responded that those changes will come with approval for up to 20 children.

Mr. O'Connor asked how many employees Ms. Williams has.

Ms. Williams stated that she has two employees and one floater.

Mr. O'Connor inquired if she will have a catering truck deliver food if she has 20 children.

Ms. Williams stated that she will have catering and parents will have the option of packing food.

Mr. O'Connor inquired if the 20 children receiving care would be spread throughout the day and how many children she could be caring for at any given time.

Ms. Williams stated that the children would be spread throughout the day.

Mr. Wright asked where the closest fire station is located.

Ms. Williams responded that the closest station is behind Magruder Elementary School.

Mr. Krapf noted that 12 children is the tipping point for many additional requirements, including fire suppression and parking. Mr. Krapf also noted that Ms. Williams' husband is operating a moving business from the same location and inquired if the property is capable of accommodating the number of parking spaces needed.

Ms. Williams responded that her property allows parking for up to nine vehicles, with two additional spots on a side street. Ms. Williams also stated that her husband's business is handled over the telephone, and no workers park their vehicles at the house.

Mr. Krapf inquired how many children would be on the premises at any given point.

Ms. Williams stated that the children are generally spread out throughout the day, and are only in her care when the parents are at work. Ms. Williams noted that she would like the number of allowed children to be increased for occasional circumstances, such as school holidays, where more of her enrolled children will need care at one time. Ms. Williams further noted that many parents have multiple children, thus decreasing the number of cars travelling to the location.

Mr. Krapf asked if Ms. Williams still plans to remain living in the home.

Ms. Williams confirmed.

Mr. Richardson inquired licenses are required for her two staff members in order for them to care for the children in her absence.

Ms. Williams stated that she is the director and will be there all of the time because she resides there.

Mr. Wright inquired if all of the care takers are required to receive first aid training.

Ms. Williams stated that they are all trained in first aid and CPR.

Mr. Wright inquired if some of the children she keeps reside on her cul-de-sac.

Ms. Williams confirmed.

Mr. Basic inquired regarding the number of children on the premises at a given time that would trigger additional safety requirements.

Ms. Williams stated that she would only need a monitored fire alarm, not a sprinkler system.

Mr. Paul Holt stated that additional changes to the structure would occur with any SUP approval for above 12 children.

Mr. Basic stated that those modifications make him hesitant to approve more than 12 children. Mr. Basic explained that he is supportive of the service Ms. Williams is providing the community, but believes it may best fit another location.

Ms. Bledsoe asked if Ms. Williams is prepared to make changes to her structure if the Commission recommends permitting 20 children.

Ms. Williams confirmed and noted that she has already begun making renovations.

Mr. Holt noted that the plans would have to be amended if more than 12 children are permitted.

Ms. Bledsoe asked if Ms. Williams understands that.

Ms. Williams stated that she received a recommendation for approval with twenty children last year from the Commission, but did not receive approval from the Board of Supervisors.

Mr. Holt stated that the SUP approved by the Board last year was for 12 children.

Mr. Richardson asked where the legal requirements for the additions come from.

Mr. Holt stated that the requirements come from Building Code.

Mr. Rogers stated that the Department of Social Services also has requirements for the number of square feet required per child.

Mr. Richardson noted that the Department of Social Services had given approval for up to 24 children and inquired if this was based on the square footage after the renovations are complete.

Ms. Williams stated that that recommendation was based on her moving out of the residence.

Mr. Wright inquired if the SUP would still apply to the property if Ms. Williams moves to another location.

Mr. Holt stated that the SUP is for the property, but there is a 3-year expiration clause for the permit.

Mr. O'Connor inquired if Ms. Williams will be required to come back every 3 years to renew her permit.

Mr. Holt confirmed.

Mr. Krapf noted that the Department of Social Services determined that the playground on the property has a capacity for 290 children and stated that it does not make sense for the physical structure to only accommodate 24.

Mr. Holt stated that he is not informed on their standards.

Mr. Rogers stated that the capacity for the playground is most likely determined based on use throughout the course of the day.

Mr. Drummond inquired if all requirements have been met for the Department of Social Services.

Ms. Williams confirmed.

Mr. Drummond inquired if she has met all requirements set forth by the County.

Ms. Williams confirmed that she has met all requirements in regards to the covenants.

Mr. Drummond inquired if the Department of Social Services has given permission for up to 24 children.

Ms. Williams stated that that determination was based on her moving out of the home, and that is why she has done a renovation.

Mr. Holt noted that that is a preliminary assessment.

Mr. Eric Williams, 701 Mosby Drive, stated that the square footage of the addition is the same square footage taken away from the assessment for residential living space.

Mr. Drummond asked when addition will be complete.

Ms. Williams stated that it should be complete by July or August.

Mr. Krapf inquired if the improvements would have to be inspected by County staff before Ms. Williams would be able to begin keeping more than 12 children, if approved.

Mr. Holt confirmed.

Mr. Drummond inquired if final approval would have to come from the Department of Social Services.

Ms. Williams confirmed.

Mr. Wright inquired regarding the demographics of the residents on Ms. Williams' street.

Ms. Williams stated that there is a mix of residents.

Mr. O'Connor inquired regarding the definition of "significant impacts" according to County policy.

Ms. VanDyke stated that it would include a combination of traffic and noise. Ms. VanDyke noted that staff does not find the impacts of this case compatible with an internal neighborhood location.

Mr. Richardson inquired if the County has received any complaints.

Ms. VanDyke stated that she is not aware of any.

Ms. Bledsoe inquired if Ms. Williams will be providing most of the transportation.

Ms. Williams stated that she will be doing transportation for her evening clients, and the catering truck will be coming during the day when most people are at work. Ms. Williams also stated that many of the children live on her street and walk to her home.

Mr. Holt stated that staff has also taken into consideration the changes to the exterior of the building resulting in the home appearing more like a commercial structure.

Mr. Drummond asked what the current square footage of the home is.

Mr. Holt replied that that staff report indicates the current square footage is 1,248.

Mr. Drummond stated that he believes an additional 300 square feet on the back of the home will not have a big impact. Mr. Drummond also noted that he has driven by the home and did not see any additional traffic.

Mr. Basic stated that he does not feel that the property is the best location for the childcare operation, and noted that he does not want to set a precedence of permitting similar uses in residential areas.

Ms. Bledsoe stated that she believes this is a unique case because Ms. Williams has the support of her neighbors and if another applicant did not, she would not support it.

Mr. Basic stated that both situations would be in conflict with the ordinance.

Ms. Bledsoe stated that Ms. Williams is not in conflict because she had the covenants changed.

Mr. Basic stated that he is referring to the handicap parking space, additional methods of egress, and deliver truck coming to her come.

Mr. Krapf stated that the issue of whether child care is permitted was resolved by the covenant change, and the issue now is the additional requirements triggered by increasing from 12 to 20 children.

Mr. Holt stated that the covenants do not state a limit on the number of children.

Ms. Williams stated that she was approved for 12 children in order to give her time to address any issues associated with approving 20 children. Ms. Williams also stated that she would not like her case to be considered based on any hypothetical applications that could be submitted in the future.

Mr. Krapf asked if any other members of the audience would like to speak.

There being none, Mr. Krapf closed the public hearing.

Mr. Krapf opened the floor for discussion by the Commissioners.

Mr. Drummond stated that Ms. Williams has met all requirements, and he would support approval for 20 children based on the approval from the Department of Social Services.

Mr. Richardson inquired whether a condition could be added to ensure that any renovations are made within a specified period of time if Ms. Williams receives approval for 20 children.

Mr. Krapf stated that she will not be permitted to bring in additional children until the changes have been made. Mr. Krapf also stated that the major issue being raised by the Commission is whether or not an operation with 20 children will still fit the character of a residential neighborhood.

Ms. Williams stated that the food truck is an option, and parents could alternatively provide meals themselves.

Ms. VanDyke stated that, based on her understanding of the Health Department's requirements, Ms. Williams would have to either build a second kitchen or have a food truck deliver on a daily basis.

Mr. Drummond inquired regarding the size of the catering truck.

Ms. Williams stated that she does not need to have a second kitchen.

Mr. Krapf stated that he understands that installing a second kitchen is not a requirement, but he believes the food truck is.

Mr. Holt stated that the letter Ms. Williams provided states the conditions allowed if a food truck is provided, but does not state what the requirements are if a food truck is not provided. Mr. Holt stated that it is staff's understanding that she must either utilize a food truck or build a second kitchen.

Ms. VanDyke stated that the Department of Social Services requires that prepared food be served when caring for more than 12 children. Ms. VanDyke stated that the Department of Health typically requires a second kitchen, but had determined that the food truck would be an acceptable alternative. Ms. VanDyke also noted that she can follow up with the Department of Social Services for more clarity.

Mr. Krapf stated that this is an issue that will be resolved before the case goes to the Board of Supervisors, even if the Commission recommends approval.

Ms. Williams stated that food could be brought in from restaurants as well.

Mr. Drummond made a motion to approve the application with the conditions listed in the staff report, with the exception of increasing the number of children from 12 to 20.

Mr. Basic stated that he is more supportive of permitting 12 versus 20 children in a residential area.

Mr. Wright stated that he is favorable of the application based on the applicant's work to get the covenants changed, as well as providing a service to the community. Mr. Wright also stated that if the applicant were to come back wanting an increase above 20 children, she should consider another location.

Mr. Richardson stated that he believes Ms. Williams is providing a service to the community, and the approval of the neighborhood is an important consideration.

Mr. O'Connor stated he does not believe a residential neighborhood is the correct location for a business operating until midnight, seven days a week. Mr. O'Connor stated that he could support 12 children, but not 20, based on the additional requirements.

Mr. Richardson asked if there is a County ordinance limiting the number of children being cared for in a residential area.

Mr. Holt stated that ordinance requires a SUP to care for more than five children in a residential area.

Mr. Basic stated that the Commission must determine if this will still be considered a residential use.

Mr. Drummond stated that there are a number of business in residential areas who have begun with a SUP.

Ms. Williams stated that there are several businesses operating in her area.

Mr. Krapf stated that it is unclear whether those are licensed businesses.

Mr. Holt stated that the motion on the floor is to approve the SUP with the conditions listed the staff report, with the exception that the number of children be 20, subject to final approval by the State.

On a roll call vote, the Planning Commission voted to recommend approval of the ordinance by a vote of 4-3; Mr. Basic, Mr. O'Connor and Mr. Krapf voting Nay.

PENINSULA LICENSING OFFICE
11751 ROCK LANDING DRIVE, SUITE H6
NEWPORT NEWS, VA 23606-4233
TELEPHONE (757) 247-8020
FAX (757) 247-8024



COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

May 3, 2013

Ms. Tracey Butler
Creative Kids CDC, LLC
701 Mosby Drive
Williamsburg, Virginia 23185

Dear Ms. Butler,

This letter will confirm receipt and review of the functional design features and floor/site plans for a child day center to be located at 701 Mosby Drive, Williamsburg, Virginia. The site plan details a one-story building with four rooms of the building being used by the children in care. The number of toilets and sinks will allow for a capacity of 40 children based on the applicable ratio for preschoolers; however, the reported square footage will provide for a projected capacity of 24 children. Please note the reported square footage did not include measurements for obstructions noted on the diagram and the square footage may be altered when actual measurements of all areas are taken.

This drawing has been reviewed for the required square footage standards as well as toilets and sinks relevant to the Standards for Licensing Child Day Centers and they appear to meet all of the requirements. Your request indicates you will serve children 16 months through five years. Please note your Certificate of Occupancy obtained from the city/county in which you reside must specify the population you are permitted to serve. Changing tables must be located in a manner that allows for sight and sound supervision during diapering.

The playground will provide for a projected capacity of 290 children based on your reported acreage. This projected capacity is based on the playground square footage provided. Please be advised that equipment with climbing or moving parts will require resilient surfacing of some type and the appropriate fall zones as required by the American Society for Testing and Materials standards and National Program for Playground Safety.

Please note that the final determination for licensure is based upon an on-site investigation by the assigned licensing inspector and a review of the filed application. Actual inspection of this area may alter the projected capacity for the center.

James City County Planning Commission's Policy Committee
Child Day Care Centers Located in the Interior of Residential Neighborhoods
June 22, 2001

Policy Committee Recommendation for Child Day Care Centers Located in the Interior of Residential Neighborhoods:

1. If planning staff determines there are significant impacts on a neighborhood as a result of a child day care center, staff shall recommend denial of any child day care center located on a residential lot in the interior of a subdivision.
2. The Policy Committee recommends that the current threshold for requiring a special use permit for a child day care center shall remain as is (more than 5 children requires a special use permit), and each application will continue to be reviewed on a case by case basis. This threshold is based upon state licensing requirements, building permit requirements, land use impacts and home occupations limitations, and the Policy Committee finds that this threshold is appropriate for Commission and Board review.
3. ~~Should the Planning Commission and Board of Supervisors choose to recommend~~ approval of a special use permit application for a child day care center located on a residential lot in the interior of a subdivision, the Policy Committee recommends adding the following conditions:
 - there shall be a three-year time limit in order to monitor the impacts of the day care center;
 - no signage shall be permitted on the property;
 - no additional exterior lighting shall be permitted on the property, other than lighting typically used at a single-family residence.

Darnica R. Faison
246 New Hope Road
Williamsburg VA 23185

757 603 7561

3/26/13

To Whom it may concern:

Tracey Butler is favored by both of my young girls for her high energy and nurturing attitude. Since my almost 3 year old has been attending, her speech and social development has progressed greatly. Also the playground in her backyard has helped her develop physically.

My now 5 year old had a harder time getting to know Tracey as she had no previous experience in a daycare setting before attending her elementary school.

The convenience of having Tracey so close to my home is wonderful. I would greatly benefit if she were able to have more children in her

care because often she does not have the room to keep ~~her~~^{them} in the evening and I work mostly evenings. So it would cut down on my cost for daycare to not have to send them to someone else.

I fully believe that Tracey is a great, role model for my girls. and I fully intend to keep her as a sitter/daycare provider as long as possible.

Damecia Faison

To whom this may concern:

I have known Tracy Butler a Child Care Provider for a number of years.

Tracy is very good with children and gives her Child Care children, much love and attention.

There aren't many 24 hour childcare providers around in Williamsburg, VA.

I know I have worked with children 46 years and Tracey puts her all into her Child Care as well as her love for her own family.

Sincerely,

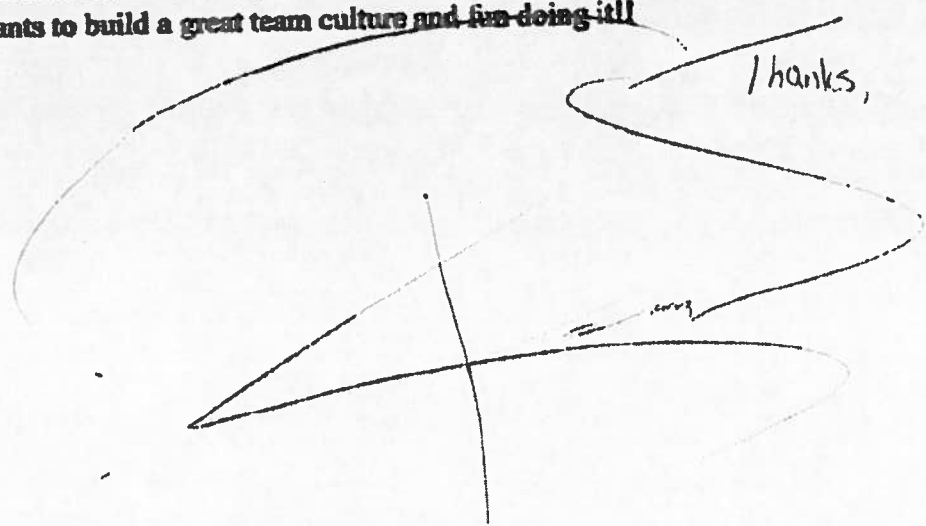
Evette Jemerson

Recommendation for Tracey Butler:

Tracey Butler is a dynamic, self-directed consummate Leader. Tracey is a very talented leader who brought a great deal to children at her day care center and the community. Inspiring and motivating is certainly one of her signature strengths and she leveraged this to help build excitement and momentum around key priorities with children in the community and in the center she led. Tracey is a passionate leader that delivers great results while making development and recognition a key part of her talent strategy. During the 15 years knowing Tracey, she helped me be a more effective leader with communication and strategy.

Tracey is a creative leader who thinks about a total solution. She is proactive and progressive in her thinking. She focuses on training and development which in turn creates long-term solutions. Tracy possesses a high emotional IQ and a senior level understanding of operating a business. She gives honest and valued feedback to her subordinates and peers. She can manage both across and up the chain of command. Her insight allows her to get to the root cause and diminish or eliminate problems. Tracey has strong qualities around teaching and coaching and she is a fabulous trainer. Tracey brings a very sound and well-rounded skill set as well as innate enthusiasm and is a key contributor to children. I would recommend Tracey to any business that wants to build a great team culture and ~~fun doing it!!~~

Thanks,



To Whom It May Concern:

I have known Tracey Butler in a variety of capacities for many years. She has been my daughter's child care provider for the past 8years and my son's for 8months. In addition, she is the god mother to my children and takes full responsibility for my shortcoming with them. She is a true definition of Acts of Kindness! Her heart is huge and she does not mind assisting others who may be in need, no individual in her eyes is a stranger.

Tracey is organized, efficient, extremely competent, a great caregiver and has an excellent rapport with people of all ages and ethnicities. Her communication skills, both written and verbal are marvelous. I would not trade the level of care Tracey provides to my children to anyone else unless it was an immediate family member.

In summary, I highly recommend approving the expansion of TYI Home Care request or endeavor she may pursue. Other parents should be granted the high level of comfort, professionalism and love for their children that Tracey provides. Every child in she cares for has advanced in academics and achieve on a higher level than their peers. She will be a valuable asset and great instructor to any child and or parent that comes into her presence.

If you have any questions, please do not hesitate to contact me. I can be reached via email; tolland81@live.com or by phone; 804-501-0053.

Regards,

Tasha Holland

3-25-13

To whom it may concern

Mrs Tracy Butler was highly recommended to me by my single father coach from CDR. She has been exceptional in caring for my daughter while I have to work. Penelope loves going in the morning ^{business} she enjoys her time there ^{everyday} ^{Especially} Mrs Butler has been great w/ working with my long haul's & transporting her to + from her pre-school during the week. I would advise anyone looking for childcare her direction

Thank you,
Walter Garner
~~like~~

494 Penniman rd
Williamsburg VA
23185

Annette Robinson
321 Peachtree Lane
Yorktown, VA. 23693
March 25, 2013

To: Whom It May Concern

It is with great pleasure that I submit a letter of reference on behalf of Tracey Butler.

I had the pleasure of working with Tracey Butler for several years while I was employed as the Child Care Coordinator with the City of Williamsburg Human Services. As a child care worker Tracey proved to be a hard worker, and committed to providing quality child care services to the children she cared for. She always went that extra mile to assist parents who were looking for jobs, in school or attending mandated court appearances. She would work extra hours to accommodate their schedules; during the hours other child care centers was closed or refuse to service customers.

Tracey is a person who parents can depend to care for their children. She provides a safe and loving environment.

Respectfully submitted,

Annette Robinson
757-508-1607

3/26/2013

TO: It whom may concern.

Mrs. Tracey Butler has been such a great help to me after struggling trying to find a provider .

She is reliable, dependable, professional and most of everything she is flexible with my schedule and hours that changes every week. She has a great personality and positive attitude.

My son enjoys her great activities and being under her care.

Norma Tannehil 757 5615981

108 Cooley Rd Apt E Williamsburg VA 23188

Norma Tannehil

AGENDA ITEM NO. I-5**SPECIAL USE PERMIT-0006-2014. 2604 John Tyler Highway Public Sewer Connection
Staff Report for the July 8, 2014, Board of Supervisors Public Hearing**

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

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Complex

June 4, 2014, 7:00 p.m.

July 8, 2014, 7:00 p.m.

SUMMARY FACTS

Applicant:

Mr. Vernon Geddy, III

Land Owner:

Bayshore Development

Proposal:

Permit a public sewer connection to the Governor's Land Force Main

Location:

2604 John Tyler Hwy

Tax Map/Parcel No.:

4420100010

Parcel Size:

± 3.18 acres

Existing Zoning:

A-1, General Agricultural

Comprehensive Plan:

Rural Lands

Primary Service Area:

Outside

STAFF RECOMMENDATION

Staff finds that the extension of a public utility outside the Primary Service Area (PSA) is inconsistent with the land use goals, strategies, and actions of the Comprehensive Plan and the Public Utilities Policy adopted as part of the 1997 Comprehensive Plan. Approval of this application would set a precedent for similarly situated properties outside the PSA where property owners seek connections to nearby public utilities regardless of cost or need. Staff recommends that the Board of Supervisors deny this Special Use Permit (SUP) application and that the property owner continue to rely upon a private septic system. Should the Board of Supervisors wish to approve the application, staff recommends that the approval be subject to the conditions listed in the attached resolution.

Staff Contact:

Ellen Cook and Luke Vinciguerra

Phone: 253-6693/253-6783

PLANNING COMMISSION RECOMMENDATION

At its June 4, 2014, meeting, the Planning Commission voted to recommend denial of the application by a vote of 4-3 (nay: Drummond, Basic, Bledsoe).

Proposed Changes Made Since Planning Commission Meeting

The application has not changed since the Planning Commission meeting.

PROJECT DESCRIPTION

Mr. Vernon Geddy, III has applied on behalf of the property owner of 2604 John Tyler Highway for an SUP to allow for a connection to an existing public sanitary sewer force main. As the property is not adjacent to the force main, a private extension of approximately 220 feet would be required to serve the lot. The lot is currently vacant; however, the applicant has stated the owner intends to construct a single-family house.

History

Utility extensions to this area outside the PSA stemmed from the approval of the Governor's Land project in 1989 where approximately 1,500 acres of agricultural land was rezoned to R-4, Residential Planned Community. Staff had recommended denial of the project due to its location outside the PSA at densities higher than the Rural Lands designation supported, as well as its potential to open other vacant land along Route 5 to growth and related impacts. To preserve the integrity of the Rural Lands and the PSA, the conditions for the related Governor's Land utility lines limited connections to the Governor's Land development and existing structures adjacent to the lines. To address concerns from property owners with vacant lots adjacent to the lines and to prevent more widespread extension of the PSA, the Board revised the utility policy in 1997 and authorized adjacent vacant lots platted before January 28, 1997, outside the PSA to connect for a single residential structure. Staff prepared detailed maps as part of the utility policy and SUP amendments showing which lots would be permitted to connect to the Route 5 water and sewer lines.

Staff comment: In 1989, adjacent property owners were notified of the sewer line project and in 1997 adjacent property owners were notified of the revised policy. Attachment 3 is the map shown to property owners illustrating which lots are permitted to connect to public water, sewer, or not permitted to connect. Staff has confirmed that in 1989 the property owner of the subject parcel was notified of the sewer expansion; however, there is no indication that the property owner was notified during the 1997 policy revision. The applicant has not stated it was assumed on purchase that the property would have access to sewer.

PUBLIC IMPACTS

Engineering and Resource Protection

Watershed: Gordon Creek

Engineering and Resource Protection Staff Comments: The Engineering and Resource Protection Division has no comments on the proposed SUP application.

James City Service Authority (JCSA)

As shown on Attachment 2, the subject property is not adjacent to the public sewer line. Any connection would likely require an extension in the right-of-way in front of the neighboring parcel. The applicant has notified the neighboring property owner of the proposal recommending the owner co-sign the SUP application and attempt sewer access as well. This attempt was unsuccessful.

Connection to the waterline is currently permitted. As the existing waterline extends approximately 120 feet further west along Route 5 than the sewer line, the approved SUP considers the lot adjacent and would permit a connection. Should the application be approved, Planning staff recommends the following SUP condition to limit future connections to the sewer force main.

Proposed Condition recommended by Planning

Except for James City County Real Estate Tax Map Parcel No. 4420100010, no connections shall be made to the force main which would serve any property located outside the (PSA except for connections to the Governor's Land project and existing structures as of January 28, 1997, located on property outside the PSA adjacent to the force main. In addition, for each platted lot recorded in the James City County Circuit Court Clerk's office as of January 28, 1997, that is vacant, outside the PSA, and adjacent to the main and the property located at 2604 John Tyler Highway, which can be further identified as Real Estate Tax Map Parcel No. 4420100010, one connection shall be permitted with no larger than a 1-1/4-inch service line.

JSCA Staff Comments

The JCSA has reviewed the proposal and has confirmed there is capacity in the existing force main to accommodate two additional lots. The JCSA mentions this as a factual statement, not a recommendation to permit the proposed connections.

Health Department

The Health Department has issued a permit for the installation of an alternative on-site sewage disposal system capable of accommodating a four-bedroom house. The system has not yet been installed.

Staff comment: As the applicant has not demonstrated a valid need for public sewer connection (such as failing septic system), staff finds the request for a public sewer connection as a convenience rather than a public health, safety, or welfare issue.

COMPREHENSIVE PLAN

The project area is designated as Rural Lands on the 2009 Comprehensive Plan. Rural Lands are areas containing farms, forests, and scattered houses, exclusively outside of the PSA, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for in the future. Appropriate primary uses include agricultural and forestal activities, together with certain recreational, public or semi-public, and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.

The PSA policy is James City County's long-standing principal tool for managing growth. As a growth management tool it attempts to direct growth in one area (where public facilities and services are planned) and away from another (where the majority of agricultural and forestal activities occur). The PSA, first established in 1975, utilizes many of the same principles as Urban Growth Boundaries or Urban Service Areas found in other localities. They are all concepts for promoting growth in a defined geographical area in order to accomplish the following goals:

- To encourage efficient utilization of public facilities and services (water and sewer, roadways, schools, fire and police stations, libraries, etc.);
- To help ensure such facilities and services are available where and when needed;
- To increase public benefit per dollar spent;
- To promote public health and safety through improved emergency response time;
- To minimize well and septic failures; and
- To preserve rural lands.

The PSA is most effective when it is tied to the provision of public utilities. Connecting developments to public utilities facilitates development and increases the need for associated peripheral uses. Extending utilities to the rural lands encourages previously farmed or forested lands to convert to development. Development pressures could entice more rural landowners into selling their lands, which could increase the pace of development and increase the amount of forest and farmland developed.

The effectiveness of the PSA as a policy tool is affected as more housing and amenities are allowed. More intensive expansion outside of the PSA boundary creates a need for additional core services, such as health facilities, supermarkets, post offices, and so forth. While the County does not necessarily directly bear the cost of providing these types of services, there are indirect effects: the new services require staffing, which brings traffic to the Rural Lands; the creation of new businesses and services in the Rural Lands increases the demands for new housing. As more new houses are built, the demand for businesses, services, and amenities increases, creating a cycle of "providing amenities leading to demanding additional amenities." The net effect of this cycle is that the PSA boundary could quickly become an ineffectual way of controlling or limiting growth.

Any extension of utilities beyond the PSA boundary is essentially an artificial expansion of the PSA. The incremental expansion of public utilities outside the PSA undermines the County's growth management efforts. Should this application be approved, a precedent will be set and other properties further west on Route 5 will likely attempt to gain access to public utilities as well. Should this occur, the County would lack a credible basis to deny any future applications. This undermines the County's ability to ensure growth proceeds in a logical and orderly fashion.

Public water and sewer are catalyst to dense residential and commercial development. A water and sewer extension could put tremendous pressure on the County to approve zoning changes that permit higher densities and commercial development along Route 5.

Examples of previously approved water and sewer extensions outside the PSA

One of the basic legal tenets of land use planning is that similarly situated parcels must be treated similarly. For this reason, allowing any extension of public utilities outside the PSA must be carefully considered to avoid setting a precedent for other landowners to make a similar request. During the 2009 update, the County's land use consultant recommended if the Board elects to expand the PSA or allow for a utility extension outside the PSA, it should *outline the unique reasons why such an extension is appropriate for a particular site and what public purpose is met by the extension*. Furthermore, the consultant stated utility extensions for environmental or health reasons or to serve public facilities will generally have the least potential to weaken the PSA concept, while *extensions for economic development or to encourage a specific private development have greater potential to weaken the PSA concept* more because they can be extended more generally to adjacent, similarly situated properties.

The Board has often followed this guidance. The following are specific examples where utility lines were extended outside the PSA for a public purpose or for a health issue:

Jolly Pond Road Water and Sewer extension – This extension was to serve Hornsby Middle School and Blayton Elementary School. This is an example of an extension to serve a public benefit.

Brick Bat Road Water and Sewer extension – This extension was to serve Matoaka Elementary School. This is an example of an extension to serve a public benefit.

Greensprings Mobile Home Park – In this instance, the mobile home park's aging septic system was failing. This is an example of extending service to address a public health, safety, and welfare issue.

Riverview Plantation – This extension was approved to address a failing water system within the development that was maintained by the JCSEA. This is an example of extending service for a public health issue.

Chickahominy Road – The intent of constructing the lines was to improve the quality of housing and living conditions for the existing residents of that area, many of whom did not have indoor plumbing. This extension was also to help protect the reservoir from aging septic systems.

Cranston's Mill Pond Road – This transmission line was constructed to connect to the Jolly Pond Road line. This loop provided the Centerville Road area with a more reliable water source.

In the instances mentioned above, the Board made the judgment that sufficient and significant public benefit existed to permit extensions of public utilities to occur outside the PSA, with minimal impact due to limitations placed on additional connections to the utilities. This rationale is consistent with the consultant's recommendations.

Other Considerations

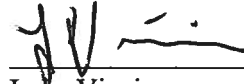
1. One point of discussion was whether this request would be an isolated and unique situation. Staff expects that if this SUP were approved, additional requests would be submitted for connections to public water, sewer, or both. Interest on the part of a neighboring property owner was expressed during the Planning Commission meeting and staff has checked with JCSA staff, who indicated that other property owners along Route 5 have inquired about this possibility in the past.
2. The current utility policy, which is reflected in the adopted Comprehensive Plan, states that only the lots immediately adjacent to the public water or sewer utility main can connect. During discussion, some members of the Commission discussed that since the current lot is adjacent to **other lots** with access to water and sewer utilities, that this could be a rationale for approving this request. Staff would note that if this alternative principle were applied, it would mean that granting a sequence of SUP requests involving 11 property owners on the south side of Route 5 and 11 property owners on the north side of Route 5 could bring one or both utilities to the James City County border at the Dresser Bridge.
3. Points one and two above focus on the Route 5 area, but the implications of applying a new principle would be widespread throughout the County. Other areas of the County have similar situations (i.e., lots which would currently not be permitted to have water or sewer, which have some adjacency to lots that are permitted, and do have, water, sewer, or both). Examples include Centerville Road, Jolly Pond Road, Chickahominy Road, and Riverview Road.
4. Staff would want to bring to the Board's attention that there are important technical engineering considerations that would likely result from this decision and future SUP requests that could then raise other questions about the regulations and policies that are in place such as the A-1 zoning regulations and the requirement for central wells for major subdivisions. Staff would like to make the Board aware of the following as immediate issues of this nature:
 - This lot and others along Route 5 would need to use grinder pumps if sewer line connections were allowed. JCSA has a policy that if the grinder pump is designed to JCSA standards, the property owners have the ability to enter into a maintenance agreement which then obligates JCSA to 24-hour service for repair or replacement of the pump.
 - Staff has been informed by Virginia Department of Transportation (VDOT) that private sewer lines are not permitted in the right-of-way. The applicant has been informed of this limitation. Should the Board approve the application, two possible options are for the property owner to construct the connection to JCSA standards and dedicate it to the JCSA, or run the line through private easements.

RECOMMENDATION

Staff finds that the extension of a public utility outside the PSA is inconsistent with the land use goals, strategies, and actions of the Comprehensive Plan and the Public Utilities Policy adopted as part of the 1997 Comprehensive Plan. Approval of this application would set a precedent for similarly situated properties outside the PSA where property owners seek connections to nearby public utilities regardless of cost or need. At its June 4, 2014, meeting, the Planning Commission voted to recommend denial of the application by a vote of 4-3 (nay: Drummond, Basic, Bledsoe). Staff recommends that the Board of Supervisors deny this SUP application and that the property owner continue to rely upon a private septic system. Should the Board of Supervisors wish to approve the application, staff recommends that the approval be subject to the conditions listed in the attached resolution.

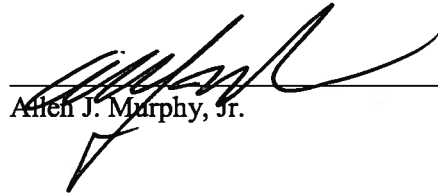


Ellen Cook



Luke Vinciguerra

CONCUR:



Allen J. Murphy, Jr.

EC/LV/gb
Sup06-14PubSewer.doc

ATTACHMENTS:

1. Resolution
2. Location map – color map accessible on the online agenda
3. Unapproved Minutes of the June 4, 2014, Planning Commission meeting
4. Map showing lots permitted to connect to public water and sewer from previously approved SUP

RESOLUTION

CASE NO. SUP-0006-2014. 2604 JOHN TYLER HIGHWAY PUBLIC SEWER CONNECTION

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

WHEREAS, Mr. Vernon Geddy, III has applied for an SUP to allow for a connection to an existing public sanitary sewer force main at 2604 John Tyler Highway and further identified as James City County Real Estate Tax Map Parcel No. 4420100010; and

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

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this application to be consistent with the land use goals, strategies, and actions of the Comprehensive Plan and the Public Utilities Policy.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-0006-2014 as described herein with the following conditions:

1. Sewer Connections. Except for James City County Real Estate Tax Map Parcel No. 4420100010, no connections shall be made to the force main which would serve any property located outside the Primary Service Area (PSA) except for connections to the Governor's Land project and existing structures as of January 28, 1997, located on property outside the PSA adjacent to the force main. In addition, for each platted lot recorded in the James City County Circuit Court Clerk's office as of January 28, 1997, that is vacant, outside the PSA, and adjacent to the main and the property located at 2604 John Tyler Hwy which can be further identified as Real Estate Tax Map Parcel No. 4420100010, one connection shall be permitted with no larger than a 1-1/4-inch service line.
2. Site Plan. A site plan shall be approved in advance of a Certificate to Construct. The site plan shall meet the minimum design and connection criteria of the JCSA to the satisfaction of the James City Service Authority (JCSA) General Manager or his designee. Final approval of the site plan and a Certificate to Construct shall be obtained within 24 months of issuance of this SUP or the SUP shall become void.
3. Severance Clause. This SUP is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Adam R. Kinsman
Deputy Clerk to the Board

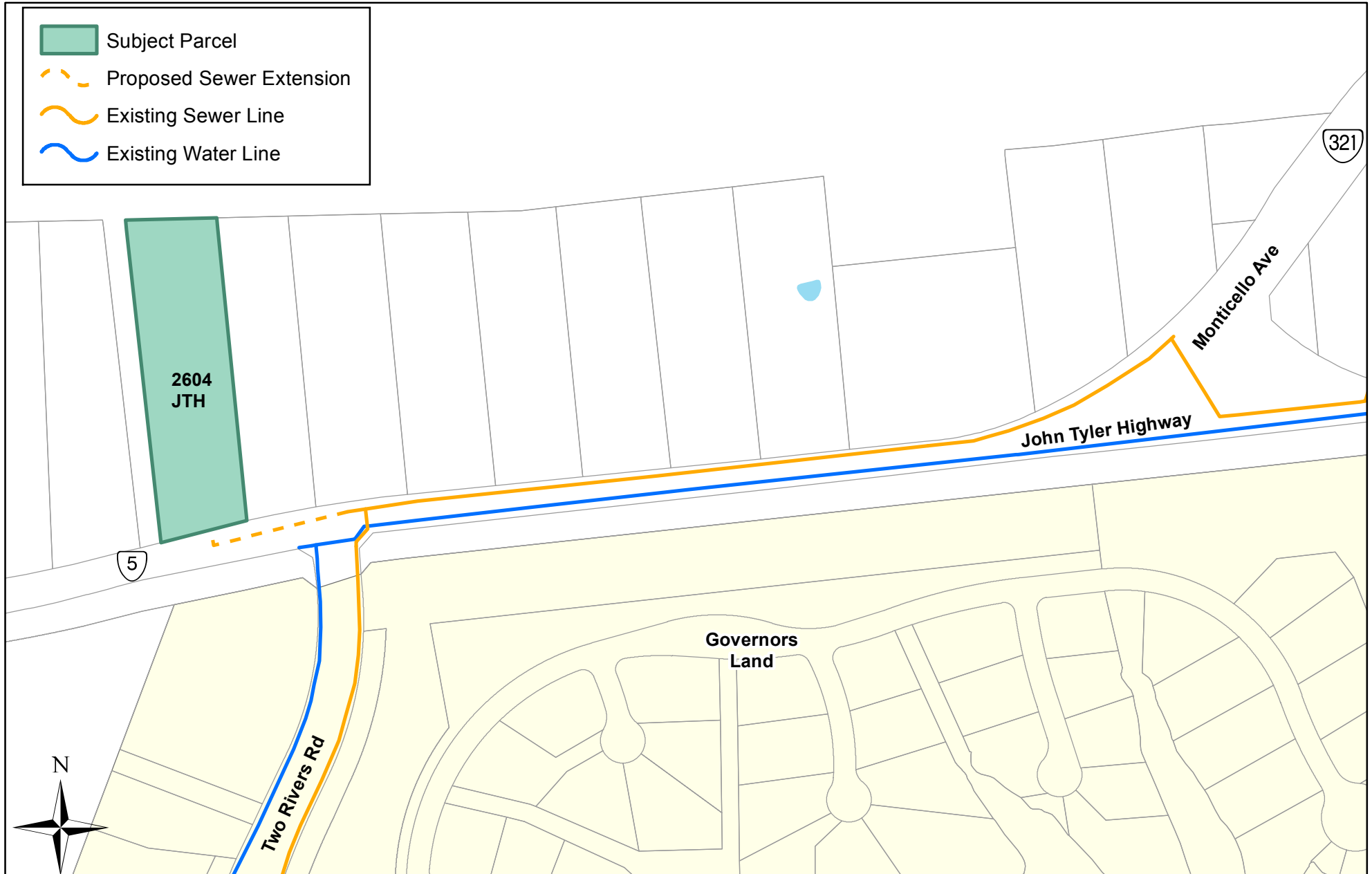
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	_____	_____	_____
JONES	_____	_____	_____
MCGLENNON	_____	_____	_____
ONIZUK	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July,
2014.

Sup06-14PubSewer-res

SUP-0006-2014

Route 5 Sewer Line Extension



Unapproved Minutes of the June 4, 2014 Planning Commission Meeting

A. Case No. SUP-0006-2014, John Tyler Highway Sewer Connection

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

Ms. Ellen Cook, Planner, addressed the Planning Commission regarding the County's Primary Service Area (PSA).

Mr. Wright asked where Chickahominy Riverfront Park gets their water from.

Mr. Rogers stated that the sewer is onsite, but he does not know where their water comes from.

Ms. Bledsoe inquired if they are being served by the County.

Mr. Rogers stated that they are not.

Mr. Drummond asked how far the connection is from the residence.

Mr. Vinciguerra stated that it is approximately 220 feet.

Mr. Holt noted that the existing sewer line is indicated in orange on the map provided.

Ms. Bledsoe inquired regarding the cost estimate.

Mr. Holt stated that the estimated distance or cost should not be a factor in the Commission's decision, as it is against County policy to extend water and sewer outside of the PSA.

Ms. Bledsoe stated that she inquired about the dollar amount because she recalled the estimate being very high.

Mr. Rogers stated that she may be referring to the James City Service Authority (JCSA) Utility Regulations.

Mr. Drummond asked how many feet are allowed by the JCSA Utility Regulations.

Mr. Rogers stated that is approximately 1,000 feet and only applies to properties inside the PSA. Mr. Rogers also noted that properties immediately abutting the line may be allowed to connect.

Mr. Wright inquired if there is a septic system already on the lot.

Mr. Vinciguerra stated that there is not, but there is approval from the Health Department for an onsite alternative sewage disposal system.

Mr. Wright inquired if the land will perc.

Mr. Vinciguerra stated that the land will most likely not perc, and this is why an alternative system is necessary.

Mr. Krapf noted that this is a vacant lot with no structures already existing.

Mr. O'Connor inquired if the property has ever been considered adjacent to the lines.

Mr. Vinciguerra stated that the property is considered adjacent to the water lines, as they extend further, but not the sewer lines.

Mr. Drummond stated that he believes it may be more environmentally friendly to allow the property to connect instead of using a sewer system.

Mr. Vinciguerra stated that any effluent would be regulated by the State regardless of the method determined.

Mr. Holt stated that the distinction between this case and other past cases that have received approval is that those cases had existing failing systems, resulting in health and environmental concerns.

Mr. Krapf inquired if the Commissioners have any disclosures they wished to note.

Mr. O'Connor stated that he has spoken with Mr. Geddy regarding the case.

Mr. Krapf opened the public hearing.

Mr. Geddy addressed the Planning Commission, giving an overview of the proposal.

Ms. Bledsoe inquired if the lot would be residential.

Mr. Geddy confirmed that is zoned A-1.

Ms. Zina Stokes, 2644 and 2638 John Tyler Highway, addressed the Commission in support of the proposal.

There being no one else wishing to speak, Mr. Krapf closed the public hearing and opened the floor for discussion by the Commissioners.

Mr. Krapf stated that he does not believe the Commission should set a precedent for extending service outside of the PSA for reasons of convenience.

Ms. Bledsoe inquired if the applicant is looking to extend the PSA.

Mr. Geddy replied that the PSA would not be extended.

Ms. Bledsoe inquired regarding the zoning of the surrounding lots.

Mr. Geddy replied that he believes they are all zoned A-1.

Mr. Krapf stated that he believes allowing the property to connect to sewer is a de facto extension of the PSA.

Ms. Bledsoe noted that the nearby properties are all also zoned agricultural and receive sewer services.

Mr. Krapf stated that those were part of the agreement reached for Governor's Land.

Mr. Holt stated that those connections were based on the County policy that properties adjacent to the line are allowed to connect.

Mr. O'Connor inquired if there was a condition in the Governor's Land connection stating that only the properties adjacent to the line could connect.

Mr. Rogers stated that it was an amendment to the Governor's Land SUP.

Mr. O'Connor inquired regarding the use of the larger parcel behind the one in question.

Mr. Geddy stated that it is the western end of the property for the proposed cemetery.

Mr. Drummond stated that he believes the rural character of the land has already been changed by putting residential homes there.

Mr. Krapf stated that providing public utilities allows more dense development to occur, defeating the purpose of using the PSA as a growth development tool.

Mr. Drummond inquired if Governor's Land is in violation of the PSA line.

Mr. Holt stated that they are not because they received a SUP. Mr. Holt also stated that, in addition to preserving rural lands, staff indicated in their report several different reasons the PSA policy is important to uphold.

Mr. Wright noted that is difficult to weigh the responses of the Comprehensive Plan surveys, stating that growth should be managed, versus the potential environmental impacts of a septic system that could one day fail.

Mr. Richardson stated that he believes the citizens want to maintain the rural flavor of the County, and the PSA line is an important tool to utilize.

Mr. O'Connor noted that although he has seen the impacts of a failing septic system, extending sewer connections opens the door for many more properties wanting to connect.

Mr. Basic stated that he agrees with Mr. O'Connor.

Mr. Steve Clymer, 2604 John Tyler Highway, stated that each lot must be looked at on a case by case basis, and stated that the County can use zoning to control growth.

Mr. Krapf stated that he is still concerned with setting a precedent.

Ms. Bledsoe stated that, because a dwelling will be placed on the lot regardless of the outcome, the County would not be promoting growth by allowing them to connect. Ms. Bledsoe also noted that she believes it would be contrary to not allow this property to connect when his neighbors were allowed.

Mr. Krapf stated that he disagrees because those connections were a part of a previous SUP allowing connections only for those adjacent to the sewer line.

Ms. Bledsoe stated that she disagrees with the argument that not allowing the connection is a means to control growth in this case.

Mr. O'Connor stated that although zoning does control growth through density restrictions, the land itself controls growth because it does not perc and thus cannot accommodate a larger home.

Mr. Drummond stated that he agrees that it would be contrary to have allowed some lots to connect but not others now.

Mr. Krapf stated that those lots were allowed to connect based on the SUP for the Governor's Land development. Mr. Krapf also stated that this logic reinforces his argument that one approval will lead to another.

Mr. Holt stated that those lots were approved because they are directly adjacent to the existing main.

Ms. Bledsoe inquired regarding the reason for approving those lots.

Mr. Rogers stated that when Governor's Land was approved it did not include any connections to public water and sewer, and residents ended up with lots that did not perc right beside the existing line. Mr. Rogers stated that the Board decided at that time to amend the SUP to allow connections for those adjacent to the line.

Mr. Holt noted that that exception was for lots that were in existence at the time.

Ms. Cook stated that the decision was subsequent to an examination during the Comprehensive Plan review process.

Mr. Holt stated that there are many areas where some people receive public water and sewer and others do not.

Mr. Wright noted that there are several Land Use proposals dealing with this this same issue.

Mr. Holt confirmed that there are several applications requesting extensions to the PSA.

Mr. Drummond inquired why the County would allow lots to be developed at all outside of the PSA if they are trying to use that to control growth.

Mr. Krapf explained that the PSA line is used to control the density of development.

Mr. Holt noted that these lots were subdivided out before the existence of the infrastructure.

Ms. Bledsoe inquired if the lot in question was in existence at the time the Governor's Land SUP was amended.

Mr. Rogers confirmed.

Mr. Basic stated that he believes zoning will determine the density allowed on that lot, not the connection to sewer, or lack thereof.

Mr. Holt stated that the Board made its decision so that there would not be an arbitrary cut off for where connections should end.

Mr. Krapf stated that he is not taking into account the structure that will be built on the lot, but that the connection would be violating County policy without a reason of public health or safety.

Mr. Basic stated that almost all land outside of the PSA is zoned A-1, thus high density development could not occur without a rezoning.

Mr. Holt stated that three acre lots could occur on the larger parcel behind the one in question. Mr. Holt further stated that without connecting to public utilities, a communal well would have to be installed, which would be cost prohibitive.

Mr. O'Connor stated that the adjacency argument will result in a domino effect of SUP applications.

Mr. Basic inquired regarding the trigger for a central water system.

Mr. Holt stated that after nine lots, a central water system must be installed per the County ordinance.

Mr. Krapf stated that outside of the PSA, that central water system would have to be a communal well.

Mr. O'Connor noted that this system is what is being installed on Centerville Road.

Ms. Bledsoe inquired who pays for the communal well.

Mr. Krapf stated that the developer is responsible for the expense. Mr. Krapf also noted that this could lead to a situation in which a communal well fails, and a large number of lots would want to connect to public utilities as well.

Mr. Drummond inquired if all of the lots were developed at the same time.

Mr. Krapf stated that the most important issue is not how many other lots are out there or how long they've been there, but that the Board decided to only give permission to those adjacent to the line.

Mr. Drummond stated that if the purpose of the PSA is to control growth, the County failed by allowing the development of Governor's Land outside of the PSA.

Mr. Holt stated that it was a decision made by the Board at that point in time.

Mr. Drummond stated that the Commission is in the position to make an exception.

Mr. Krapf stated that the decision should be based on sound logic, not personal convenience.

Mr. Drummond stated that he believes there is logic for approving this case.

Mr. O'Connor stated that without a public health concern or public benefit to be provided, a precedent would be set.

Mr. Geddy stated that because these lots have been in existence, this could avoid setting a precedent that would allow a whole new subdivision to come in and want to connect to public utilities.

Mr. Rogers stated that the County utility policy is designed to control growth, and every time an exception is made it becomes harder to defend the policy. Mr. Rogers stated that the subdivision of a lot is not the same as the development of a lot. Mr. Rogers also noted that the fact that these lots have been in existence for some time without being developed shows that growth has been successfully controlled.

Mr. Krapf noted that the drawings provided from the 1997 SUP amendment specifically indicates which lots will receive water and sewer, water only, or nothing.

Mr. Holt stated that just because a lot is created, there is no guarantee that public water and sewer will be available.

Mr. Krapf moved to deny the application.

Mr. Basic asked if any residential development over nine lots would require water infrastructure based on the County Subdivision Ordinance, and if without a water line, a private well would be required.

Mr. Holt confirmed.

Mr. Basic inquired if a water system would still be built if a water line was nearby and the County denied access.

Mr. Holt confirmed that it could still be built at a great expense to the developer.

Mr. Drummond inquired if there would be a tap fee for the applicant to connect to the line.

Mr. Rogers confirmed that there would be fees associated with connecting.

On a roll call vote, the Planning Commission voted to recommend denial of the ordinance by a vote of 4-3; Mr. Drummond, Mr. Basic and Ms. Bledsoe voting Nay.

W.S. - W'S AVAILABLE
N - NEITHER W'S
AVAILABLE

Per SUP agreement

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GOVERNANCE

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LAND R4

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