



## MEMORANDUM

**Date:** May 26, 2015

**To:** Records Management

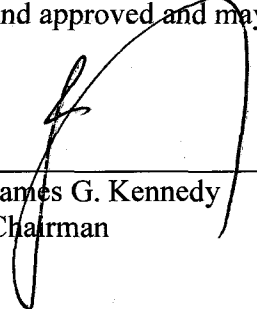
**From:** The Board of Directors

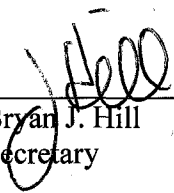
**Subject:** Board of Directors Minutes: April 14, 2003 through May 24, 2005

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The following minutes for the Board of Directors of James City County dated April 14, 2003 through May 24, 2005 are acknowledged to be missing signatures.

It is also acknowledged that the April 14, 2003 through May 24, 2005 minutes, were voted on and approved and may be mentioned in later dated minutes of the Board of Directors.

  
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James G. Kennedy  
Chairman

  
\_\_\_\_\_  
Bryan J. Hill  
Secretary

MEMOnosig-April14-2003May24-2005

AT A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE JAMES CITY SERVICE AUTHORITY, JAMES CITY COUNTY, VIRGINIA, HELD ON THE 10TH DAY OF AUGUST 2004, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

Jay T. Harrison, Sr., Chairman  
John J. McGlennon, Vice Chairman  
M. Anderson Bradshaw  
Bruce C. Goodson  
Michael J. Brown

Sanford B. Wanner, Secretary  
Leo P. Rogers, Acting County Attorney  
Robert H. Smith, Assistant General Manager

**B. CONSENT CALENDAR**

Mr. McGlennon made a motion to adopt the minutes on the Consent Calendar.

The motion passed by a unanimous voice vote.

1. Minutes - July 27, 2004, Regular Meeting
2. Regulations Amendment, Utility Inspection Fees, Public Hearing

**RESOLUTION**

**REGULATIONS AMENDMENT: UTILITY INSPECTION FEES, PUBLIC HEARING**

WHEREAS, the Board of Supervisors of the James City Service Authority (JCSA) desires to set a Public Hearing to discuss a proposed amendment to the Regulations Governing Utility Service changing the time for assessing utility inspection fees from the issuance of a land disturbance permit to when the JCSA issues a certificate to construct.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the James City Service Authority, James City County, Virginia, will conduct a Public Hearing on October 26, 2004, to receive public comment on a proposed amendment to Section 32, Clause K, of the Regulations Governing Utility Service changing the time the utility inspection fee is due, which would become effective immediately, if adopted.

BE IT FURTHER RESOLVED, that the complete proposed amendment be made a part of this resolution.

Attachment:

## SECTION 32. GENERAL RATE POLICY AND RATE SCHEDULE

- K. Inspection Fee for Water and Sewer Lines. There shall be a fee for the inspection of public water and sewer installations. Such fee shall be \$1.43 per foot for every foot of water main and sewer main constructed and shall be submitted at the time of filing an application for a ~~land disturbance permit~~ certificate to construct.

**The purpose of this change is to defray the cost incurred to make the actual inspection of the water and sewer lines.**

### C. PUBLIC HEARING

1. Amendment to the Regulations Governing Utility Service - Independent Water Systems Connection Fee (continued from July 27, 2004)

Mr. Robert Smith, Assistant Manager of the James City Service Authority (JCSA), stated that the Public Hearing has been continued from July 27 to receive public comment on the proposal to amend the JCSA's Regulations Governing Utility Service to allow for the assessment of an Independent Water System Connection Fee, and requested the Board's approval of the amendment.

Mr. Harrison opened the Public Hearing.

1. Mr. Seth Saunders, President of the Williamsburg Community Builders Association, stated appreciation for the discussions the JCSA staff has had with representatives, stated opposition to the establishment of the \$4,000 fee to be paid by the developers, and stated that the price of water should not be different for developments based upon its location.

2. Mr. Robert Duckett, Director of Public Affairs of the Peninsula Home Builders Association, complimented staff and members of the Board for the professionalism displayed during discussions on the establishment of the Independent Water System Connection Fee. He stated that the various builder association concerns still exist regarding the proposal such as the increased impact on housing costs does not promote water conservation, and the one-time flat fee does not take into account many factors that vary from system-to-system such as demand. He recommended a rate fee in proportion to water usage as an alternative; and proposed that due to the public benefits of the independent water system, the costs of a water system should be distributed amongst the public and not assessed exclusive to lots. He stated that water system utility fees' exemption is understandable. Finally, he stated that water conservation will not be encouraged because homeowners will not face the actual costs of the water use because the fee will move part of the cost over to the mortgage.

3. Mr. Tim Trant, Attorney with Kaufman & Canoles, evaluated the proposed regulation change as requested by the Peninsula Home Builders Association and the Williamsburg Community Builders Association. He stated his opinion regarding the proposal and its validity, commented that the Attorney General opinion is an informal opinion from the Office of the Attorney General and therefore is not afforded the same weight as an opinion from the Attorney General, that the fairness and reasonableness of the fee is not expressed in the opinion and is speculative in nature; that there are questions regarding the fairness and reasonableness of the fee regarding the use of an up-front one-time fee to recoup ongoing operational and maintenance costs that vary from system to system; questioned the timing and party to be charged for a fee, being the developer of the subdivision at the time of the dedication of the system, and not the ultimate

customer of the JCSA who would be generating the operating and maintenance costs; claimed that the fee is proposed to cover the projected maintenance and operating cost by its interest only and not by the interest and principal, the principal is speculatively to be disposed if and when the system is connected to the JCSA central system; stated that the opinion does not address if the fee imposes a special taxing district on lands outside Primary Service Area (PSA), which the JCSA has no authority to impose; claimed that the fee is based on speculative costs and therefore is an impact fee and the JCSA lacks the ability to impose such a fee; believed that the requirement that the systems be dedicated to the JCSA raises regulatory takings questions; and requested the Board take into consideration these points when acting on the proposal.

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

Mr. McGlennon stated that the conservation issue is not impacted by the fee as the customers would not be paying their full cost of operation anyway and this proposed fee is an effort to recover some of the money the JCSA would be losing in operating the systems.

The Board briefly discussed the builder associations' rate structure proposal for different water systems and the JCSA has concurred that it is not an appropriate avenue.

Mr. Brown requested Mr. Rogers' response to Mr. Trant's comments and concerns regarding the legality and appropriateness of the proposal.

Mr. Rogers stated that staff and the Board has considered the concerns as the proposal was developed. He stated that the JCSA begins incurring costs associated with the independent water system when it receives it so in the test for reasonableness and fairness the Board can make that determination to impose the fee on the party dedicating the system and that the system is an improvement necessary for the sale and development of the lots. The only entity who can pay the fee at the time the JCSA starts to incur the costs is the owner/developer. Although there are alternatives available to impose the fee, that does not mean the proposal is not fair and reasonable. He stated that Mr. Trant was not accurate when he stated that the increased costs were recovered from interest on the fee. According to the consultant's report, principle and interest is calculated in covering the cost. He stated there was no merit to the establishment of the special tax district. In terms of the fee being somehow construed as an impact fee, that goes back to when and how the fee is imposed. The proposal is designed so it is not an impact fee. In the opinion of the County Attorney's office and the Attorney General's office, the fee does not constitute an impact fee. With regard to the County Ordinance requirement, there are valid public purposes for requiring independent water systems. Some of those public purposes are identified in the resolution adopting the independent water system connection fee.

Mr. Bradshaw thanked the builders for their questions and stating their concerns. He commented that utility and user fees are used to provide water and therefore utilities are paid by those that use the services, the increased housing costs' impact may or may not occur, independent water system costs vary from system to system, however, some mechanism is needed to recover the funds used to operate and maintain the system and this proposal is acceptable. He commented that depending upon where one stands, the benefits of the independent water system not connected to the central system vary.

Mr. McGlennon made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Brown, McGlennon, Harrison (4). NAY: Goodson (1).

**RESOLUTION****AMENDMENT TO THE REGULATIONS GOVERNING UTILITY SERVICE -****INDEPENDENT WATER SYSTEMS CONNECTION FEE**

- WHEREAS, on December 16, 2003, staff and consultants presented the Board of Directors with a Cost of Service Study prepared by Municipal & Financial Services Group (MFSG) demonstrating that the costs to operate exceeded revenues for the six Independent Water Systems owned by the James City Service Authority (JCSA); and
- WHEREAS, MFSG recommended the establishment of a fee on water connections, serving new independent water systems, the proceeds of which as well as any investment income would be used to offset the costs of operating the independent water systems established after an effective date to be determined by the Board of Directors; and
- WHEREAS, MFSG determined that a fee of \$4,000 per connection is necessary to offset the costs over revenues for independent water systems; and
- WHEREAS, the proceeds from the connection fee will be deposited in a dedicated Independent Water System Fee Account and used to offset the operating deficit of the water system; and
- WHEREAS, Section 15.2-5136 (G) of the Code of Virginia requires that a Public Hearing be conducted on any proposal to implement or increase an existing water fee; and
- WHEREAS, the notice of Public Hearing, to be held on July 27, 2004, appeared in the May 15 and 24, 2004, Daily Press; and
- WHEREAS, by a letter dated June 10, 2004, the Attorney General's Office issued an opinion confirming the authority of the JCSA to impose an Independent Water System Connection Fee; and
- WHEREAS, the JCSA proposes to amend the Regulations Governing Utility Service in order to promote the health, safety, and welfare of the community and the County by: 1) ensuring that an adequate water supply with a qualified dependable operator is available for the homes served by the water system; 2) ensuring an adequate and dependable flow of water to provide fire protection; 3) providing a level of protection to the aquifer supporting the JCSA's and County's efforts to safeguard the groundwater system; and 4) precluding the JCSA and County from having to incur the expense of retrofitting a neighborhood with a public water system should a private water system or private wells fail to serve the homes.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the James City Service Authority, James City County, Virginia, hereby amends the James City Service Authority's Regulations Governing Utility Service by adding Section 32-D as follows:

The developer of any independent water system for which the development plans are submitted after in accordance with the provisions of Section 19-57, Water Facilities of the Subdivision Ordinance, shall be required to pay a per-lot or residential unit Independent Water System Connection Fee of \$4,000 to the JCSA for each lot or residential unit created by the subdivision prior to the JCSA accepting the facilities for operation and maintenance.

The monies collected shall be placed in a dedicated account; the proceeds and investment returns will be used to offset the costs of operating the Independent water systems created after August 10, 2004. Should it become financially practical for the JCSA to connect an independent water system constructed under these provisions to the JCSA Central Water System and all necessary land use approvals are obtained from the County, then the monies deposited in the account for such system shall be used to offset the costs of constructing the infrastructure to connect the two water systems. Any balance of the funds will remain in the JCSA account and be used to offset the operating deficits of the independent water system created after August 10, 2004.

1. Contractual Agreement. Any developer (person, corporation, or partnership) of an independent water system that is to be dedicated to the JCSA shall enter into an agreement with the JCSA prior to approval by the JCSA of the Independent Water Facility submission. The contract shall set forth, at a minimum, the following:
  - a. The location, size, and capacity of the facilities to be constructed;
  - b. The developer's obligation to comply with the requirements of the JCSA regulations Section 29.A.2; and
  - c. The obligation of the developer to dedicate and the JCSA to accept the facilities pursuant to Section 29.A.4. of the JCSA regulations and after payment of the Independent Water Connection Fee set forth in Paragraph D above.
2. System Facility Charge Exemption. Any lots created after August 10, 2004, which are to be served by an Independent water system, shall be exempt from the Water System Facilities Charge set forth in Section 32.c.1 of the Regulations Governing Utility Service.

**D. BOARD REQUESTS AND DIRECTIVES - None**

**E. ADJOURNMENT**

Mr. Bradshaw made a motion to adjourn until September 28, 2004.

The motion passed by a unanimous voice vote.

At 8:22 p.m., Mr. Harrison adjourned the Board to 7:00 p.m. on September 28, 2004.

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Sanford B. Wanner  
Secretary to the Board