

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF MAY 2007, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

As adopted  
June 12, 2007

**A. ROLL CALL**

John J. McGlennon, Chairman, Jamestown District  
James O. Icenhour, Jr., Vice Chairman, Powhatan District  
Jay T. Harrison, Sr., Berkeley District  
Bruce C. Goodson, Roberts District  
M. Anderson Bradshaw, Stonehouse District

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

**B. MOMENT OF SILENCE**

Mr. McGlennon requested the Board and citizens observe a moment of silence.

**C. PLEDGE OF ALLEGIANCE** - Katoria Wright, an eighth-grade student at James Blair Middle School led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATION** - Tapestry Hanging from Ipswich, England, depicting the *Godspeed*

Mr. William C. Porter, Jr., Assistant County Administrator, presented a tapestry hanging from Ipswich, England, depicting the *Godspeed* leaving the port at Ipswich. Mr. Porter explained that the tapestry hanging was commissioned by the Ipswich Arts Association along with the Charter Hangings that had been displayed at Legacy Hall and the Williamsburg Regional Library on Croaker Road. He explained that the tapestry hanging would be framed along with a photo of the people who made it and they would be on display. He also presented a CD with photos of the group creating the tapestry hanging.

Mr. McGlennon thanked Mr. Porter for his presentation and requested that the photos on the CD be available on the County's website for the public to view.

**E. HIGHWAY MATTERS**

Mr. Jim Brewer, VDOT Residency Administrator, stated he had attended a preconstruction conference on May 24 for Route 608 and will soon establish a schedule. He stated a speed study had been conducted on Route 602 which determined that no change be made. He noted that he requested the data for that study for Mr. Bradshaw; stated that VDOT has been repairing potholes on Old News Road and doing pipe work along News Road as an ongoing project which should be completed this week; and that the requested Settler's Mill speed limit signs would soon be installed along with the "Watch for Children" signs.

Mr. Brewer commented that his involvement with the 400<sup>th</sup> Anniversary activities was a pleasure.

## **F. PUBLIC COMMENT**

1. Ms. Bridget Huckabee, 115 Deerrwood Drive, commented on the closure of Jolly Pond Road and requested more information about the status of the road reopening.

2. Ms. Marion Warburton, 2514 Jolly Pond Road, commented on the closure of Jolly Pond Road and difficulties that have arisen due to the closure.

3. Mr. Ed Warburton, Jr., 2514 Jolly Pond Road, commented on the closure of Jolly Pond Road and requested information about the progress of reopening.

4. Mr. Ed Warburton, III, 2626 Jolly Pond Road, commented on the closure of Jolly Pond Road and the funding required to reopen it.

5. Ms. Mary Lou Clark, 2035 Bush Neck Road, commented on the intention to expedite the opening of Jolly Pond Road and temporary repairs. She made note of a recent incident where a tractor trailer jackknifed on the road and requested action to reopen the road.

6. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on roadblocks in the progress to repair the dam at Jolly Pond to allow for Jolly Pond Road to be reopened.

7. Mr. David Brown, 1502 Bush Neck Road, commented on the closure of Jolly Pond Road, and stated the landowner was now responsible for the dam rather than the County. He stated there were no side roads and if Jolly Pond Road was blocked, there would be no way out. He requested that the County absolve the landowner of responsibility.

8. Ms. Stephanie Allen, 2001 Bush Neck Road, requested Jolly Pond Road be opened as quickly as possible.

9. Mr. David Allen, 2001 Bush Neck Road, commented that the road should be reopened as quickly as possible because of the liability of not being able to access the road in the event of an emergency.

10. Ms. Maxine Canaday, 3003 Jolly Pond Road, requested that Jolly Pond Road be reopened.

11. Ms. Audrey Brown, 3096 Jolly Pond Road, requested that Jolly Pond Road be reopened.

12. Mr. James Canaday, 3040 Jolly Pond Road, requested that Jolly Pond Road be reopened.

13. Ms. Olivia Canaday, 3040 Jolly Pond Road, requested that Jolly Pond Road be reopened for accessibility by emergency vehicles.

14. Ms. Virginia Davis, 2200 Jolly Pond Road, stated the tractor trailer jackknifed in her driveway and she had no way to leave her home. She requested the road be reopened as quickly as possible.

15. Mr. John Davis, 2200 Jolly Pond Road, requested Jolly Pond Road be reopened.

16. Mr. Bob Bayton, 101 Deerwood Drive, stated he and others had met with County officials and State Dam Safety individuals regarding reopening Jolly Pond Dam which ended positively, but he had not heard anything further. Mr. Bayton commented on the tractor trailer incident which blocked the road and noted the emergency access needs that require the road to be opened and requested help from the County to repair the dam and reopen the road.

17. Mr. Ed Oyer, 139 Indian Circle, commented on traffic on Route 60 and transportation funding; the railroad crossing at Busch Gardens; and potholes near Windy Hill Market.

18. Mr. Brian Oyer, 1025 Barnes Road, commented on the reopening of Jolly Pond Road; the stormwater utility fee; and property assessments.

Mr. Larry Foster, James City Service Authority General Manager, responded to the comments regarding the closure of Jolly Pond Road. He stated there has been an extensive amount of open discussion with the property owner, legislators, and representatives from Dam Safety. He said he felt that the issues for temporary repairs were resolved in April when he met with Dam Safety representatives, citizens, Mr. Icenhour, the owner, and County staff. He stated the County has completed a study and documentation for Dam Safety and once the owner signs, the repairs can be authorized. He explained that the State has required standards in place that will cost a substantial amount of money to upgrade the dam which cannot be avoided if improvements are made to the current structure. He stated to meet the standards the property owner would need to do a major upgrade of the dam. Mr. Foster said the property owner was very willing to do temporary repairs, but these later requirements have compelled him not to sign the documents required. He stated that everyone was willing and cooperative, but the County was only a facilitator and not the owner of the property.

Mr. Icenhour stated at the last meeting he thought there was a solution that was reached and thought the owner was comfortable enough with the arrangements to sign the documents. He stated that when dealing with private property, the County has to get permission to facilitate the opening of the road. He stated his goal was to open the road as soon as possible, but the General Assembly has passed a very restrictive law with requirements of the landowner to meet current Dam Safety standards if the dam is repaired. Mr. Icenhour explained that the liability issue needed to be looked at as soon as possible, but even if the temporary repairs were done, the current legislation requires a considerable amount of money within a few years to fully renovate the dam or else the State would require it to be breached. He said this issue needed to be evaluated in the long term.

Mr. Allen asked why the landowner would be responsible for any future action that would occur with the dam.

Mr. McGlennon responded that the State has enacted legislation that requires a higher standard for dam safety.

Mr. Allen stated there was a greater liability in having the road closed than the soundness of the dam.

Mr. McGlennon stated these concerns would be addressed and there would be a response to questions that were raised.

Mr. Goodson asked about the liability issue surrounding the controversy.

Mr. Foster stated that if the dam should fail, if someone should be injured while crossing the dam, or if there were any damages downstream, the owner would be responsible for those losses.

Mr. Goodson asked who would be responsible for public dams that were washed out.

Mr. Rogers stated there was no liability in those cases and explained that liability was assumed as a private property owner, and this liability is something that the County cannot assume. He stated that if the dam is repaired but not in compliance with State standards and then it breaches, the private property owner can be responsible for damage downstream.

Mr. Foster stated he reviewed the dam evaluation in regard to hydrology, and though the landfill may

contribute to the runoff in the watershed, it was not identified as a major contributor, accounting for only 15 percent.

Mr. McGlennon stated that the Board and citizens all agreed about the urgency to reopen the dam, and directed that information should be distributed regarding progress of this goal.

#### **G. CONSENT CALENDAR**

Mr. Harrison requested to pull Item No. 6 to allow for Chief Tal Luton to introduce the assistant fire marshal.

Mr. Harrison made a motion to adopt the remainder of the consent calendar.

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

1. Minutes - May 8, 2007, Regular Meeting
2. Dedication of a Street in Grove Hill Estates, Section Three

#### **RESOLUTION**

##### **DEDICATION OF A STREET IN GROVE HILL ESTATES, SECTION THREE**

WHEREAS, the street described on the attached Additions Form AM-4.3, fully incorporated herein by reference, is shown on the plat recorded in the Clerk=s Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the street meets the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the street described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to ' 33.1-229 of the Code of Virginia, and the Department=s Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills, and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

3. Dedication of Streets in Scott's Pond, Section One-C

**RESOLUTION**

DEDICATION OF STREETS IN SCOTT'S POND, SECTION ONE - C

WHEREAS, the streets described on the attached Additions Form AM-4.3, fully incorporated herein by reference, are shown on plats recorded in the Clerk=s Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to ' 33.1-229 of the Code of Virginia, and the Department=s Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills, and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

4. Dedication of Streets in Settler's Mill, Section 6

**RESOLUTION**

DEDICATION OF STREETS IN SETTLER'S MILL, SECTION 6

WHEREAS, the streets described on the attached Additions Form AM-4.3, fully incorporated herein by reference, are shown on plats recorded in the Clerk=s Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to ' 33.1-229 of the Code of Virginia, and the Department=s Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills, and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

5. Installation of "Watch for Children" Signs - Settler's Mill Subdivision

**RESOLUTION**

**INSTALLATION OF "WATCH FOR CHILDREN" SIGNS - SETTLER'S MILL SUBDIVISION**

WHEREAS, Section 33.1-210.2 of the Code of Virginia provides for the installation and maintenance of signs by the Virginia Department of Transportation (VDOT) alerting motorists that children may be at play nearby, upon request by a local governing body; and

WHEREAS, Section 33.1-210.2 further requires that the funding for such signs be from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of the Settler's Mill community have requested that two "Watch for Children" signs be installed. Staff recommends that the signs be installed at the intersections of Level Way and Lakewood Drive, and Lakewood Drive and Mill Stream Way as illustrated on the attached map titled "Settler's Mill Subdivision 'Watch for Children' signs."

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request that VDOT install and maintain two "Watch for Children" signs as requested with funds from the County's secondary road system maintenance allocation.

7. Contract Award - PPTA and PPEA RFP Development and Proposal Review Consultant

**RESOLUTION**

**CONTRACT AWARD - PPTA AND PPEA RFP DEVELOPMENT AND**

**PROPOSAL REVIEW CONSULTANT**

WHEREAS, a Request for Proposals (RFP) was publicly advertised for consultant services on an "as needed" basis to assist the County in developing solicited Public-Private Transportation Act of 1995 (PPTA) and Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) RFP, and reviewing both solicited and unsolicited PPTA and PPEA proposals; and

WHEREAS, the Evaluation Committee reviewed the four proposals submitted and selected McDonough Peck, Inc. as the most fully qualified and best suited to meet the County's needs as defined in the RFP.

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the contract for PPTA and PPEA RFP Development and Proposal Review Consulting Services to McDonough Bolyard Peck, Inc.

8. Appropriation - Surveillance Cameras for Williamsburg Area Transport Buses - \$92,840

**RESOLUTION**

**APPROPRIATION - SURVEILLANCE CAMERAS FOR**

**WILLIAMSBURG AREA TRANSPORT BUSES - \$92,840**

WHEREAS, Williamsburg Area Transport (WAT) received a grant to purchase surveillance cameras.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appropriates the following FY 2007 revenues and expenditures to the WAT fund:

Revenues:

Federal Grants (STP)	\$88,000
State Grants (STP)	<u>4,840</u>
Total	<u>\$92,840</u>

Expenditures:

Surveillance Cameras	<u>\$110,000</u>
Local WAT Capital Funds	<u>( 17,160)</u>
Total	<u>\$92,840</u>

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, increases the approved Fiscal Year 2007 Budget in the amount of \$92,840.

9. Appropriation - Dominion Resources Grant for Jamestown Campground and Yacht Basin - Appropriation to Greenspace - \$250,000

**RESOLUTION**

**DOMINION RESOURCES GRANT - JAMESTOWN CAMPGROUND AND YACHT BASIN -**

**APPROPRIATION TO GREENSPACE - \$250,000**

WHEREAS, Dominion Resources has awarded \$250,000 to James City County via the Trust for Public Land towards the acquisition of the Jamestown Campground and Yacht Basin property; and

WHEREAS, the Board of Supervisors, in accepting the grant, would like to express its appreciation to Dominion Resources for its generous award and to the Trust for Public Land for its assistance in securing the grant; and

WHEREAS, the funds should be appropriated to the County's Greenspace account, within the Capital Budget, as partial reimbursement of the County's previous spending towards the acquisition of the Jamestown Campground and Yacht Basin property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts \$250,000 from Dominion Resources via the Trust for Public Land to assist in the acquisition of the Jamestown Campground and Yacht Basin property and wishes to express its gratitude for that financial support.

BE IT FURTHER RESOLVED that the Board of Supervisors appropriates these funds as partial reimbursement to the Greenspace account in the County's Capital Budget.

6. Appointment of Assistant Fire Marshal, Authorization of Fire Prevention Powers and Authorization of Police Powers

Mr. McGlennon extended congratulation to Chief Tal Luton for the performance of emergency responders during Anniversary Weekend.

Chief Tal Luton introduced Michelle Toutaint and stated she has completed the necessary requirements for appointment as Assistant Fire Marshal in accordance with State code, and that the appointment must be authorized by the Board. He recommended approval of the resolution.

Mr. Harrison made a motion to adopt the resolution.

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

**RESOLUTION**

**APPOINTMENT OF ASSISTANT FIRE MARSHAL, AUTHORIZATION OF  
FIRE PREVENTION POWERS AND AUTHORIZATION OF POLICE POWERS**

WHEREAS, Section 27-34.2 of the Code of Virginia, 1950, as amended, provides that James City County may authorize the local Fire Marshal to arrest, to procure and serve warrants of arrest, and to issue summons in the manner authorized by general law for violation of local fire prevention and fire safety and related ordinances; and

WHEREAS, Section 27-34.2:1 of the Code of Virginia, 1950, as amended, provides that James City County may authorize the local fire marshal to have the same law enforcement powers as a police officer for the purpose of investigation and prosecution of all offenses involving fires, fire bombings, attempts to commit such offenses, false alarms relating to such offenses, and the possession and manufacture of explosive devices, substances, and fire bombs; and

WHEREAS, Section 27-34.2:1 of the Code of Virginia, 1950, as amended, provides that James City County may authorize the local fire marshal to exercise the powers authorized by the Fire Prevention Code; and

WHEREAS, Section 27-34.2:1 of the Code of Virginia, 1950, as amended, provides that James City County may appoint Assistant Fire Marshals, who, in the absence of the Fire Marshal, shall have the powers and perform the duties of the Fire Marshal; and

WHEREAS, Michelle L. Toutaint has completed all minimum training and certification requirements of the Department of Criminal Justice Services and the Department of Fire Programs.



NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appoints Michelle L. Toutaint as a James City County Assistant Fire Marshal with all such police powers and authority as provided in Virginia Code Sections 27.30 et. seq.

## **H. PUBLIC HEARING**

### **1. Resolution Approving the Powers Granted to the Hampton Roads Transportation Authority**

Mr. Sanford Wanner, County Administrator, stated the resolution before the Board approved the powers granted to the Hampton Roads Transportation Authority. He stated that during the 2006 General Assembly session, there was a great deal of compromise and the Governor has approved the Hampton Roads Transportation Act, effective July 1, 2007. Mr. Wanner stated the Act requires the governing bodies of Hampton Roads adopt a resolution to accept the Act and each jurisdiction must vote to be a voting member of the Authority to impose the fees and taxes assessed. He stated the Act was a compromise and did not please everyone. Mr. Wanner said the legislation was an act by the General Assembly to avoid adequately funding transportation. He noted that the County would benefit from two of the projects that would be administered through the Authority, including the widening of I-64 and the improvement to the water crossings. He stated no locality was happy with this matter, but it was necessary to address the transportation needs of the region. He recommended approval of the resolution approving the powers granted to the Hampton Roads Transportation Authority and for the County to join the Authority.

Mr. McGlennon stated a work session was held prior to the meeting to address this matter and it was discussed extensively with members of the Hampton Roads Partnership.

1. Mr. Leonard Sazaki, 3927 Ironbound Road, stated the General Assembly was wrong to pass this issue on to local government. He commented that the money from the State would decrease and little progress would be made; asked what recourse would be given to the locality or its citizens; stated it was the function of the State to handle this issue; and requested the Board deny this resolution.

2. Mr. Michael Richardson, 2701 Jolly Pond Road, requested the Board deny this resolution. He stated taxes were too high as is and the State should not pass this responsibility onto local government. He requested tolls be put on the roads.

3. Mr. Hugh Sharpe, 124 Highland, commented that the State was imposing its responsibilities on local governments and the Authority could not be controlled.

4. Mr. Bill Thibeault, 137 Shinnecock, stated his opposition to the Hampton Roads Transportation Authority. He stated the same issue came forward in Northern Virginia years ago and it was rejected. He commented that the State was passing on its transportation responsibilities onto local government.

5. Mr. Dick Schreiber, President of the Greater Williamsburg Chamber and Tourism Alliance stated that transportation has been a need for years, and though the State ducked its responsibility and passed it onto local government, there would be no solution for years if it was rejected. He stated this was a legislative compromise and if the Board stood on principle against this matter, the current and future transportation issues would not be addressed and would get worse. He stated the Chamber and Tourism Alliance requested approval of the resolution.

6. Mr. Morris Halsey, 2265 West Island Road, asked why the public was not given more information about this matter.

7. Mr. James Taverna, 204 Hurlston, requested more information and requested a denial until guarantees were given regarding funding.

8. Mr. Ed Oyer, 139 Indian Circle, commented that this Authority dictates very inflexible taxes, fees, Comprehensive Plan designations, and other regulations. He noted that the General Assembly refuses to raise taxes of the State, but raises them locally through these types of initiatives. He commented that commercial trade will avoid these taxes and the burden will be on citizens.

9. Ms. Mary Magoon Delara, 92 Sandhill, stated her disapproval of the resolution. She requested that more information be given to citizens about the powers, authority, and fees, and suggested that more guarantees be made for funding of the transportation projects before this was considered.

10. Mr. Brian Oyer, 9025 Barnes Road, stated there was no benefit to the County and there was regional discontinuity on the issue; and 67 percent of voters turned down the transportation referendum. He requested the Board disapprove the resolution.

11. Dr. Christine Llewellyn, 16000 Heritage Landing Road, requested the Board vote against the resolution.

12. Mr. Gerard Smith, 10572 Harbor Road, asked what the County would get from this legislation and for what cost. He stated the Board should represent the citizens' wishes and work to benefit them. He requested the Board deny the resolution.

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

Mr. McGlennon stated that Northern Virginia has a transportation district and it was included in this legislation, but was not designated specific projects. He said for this area, six local projects developed by the Metropolitan Planning Organization (MPO) were identified by legislators to be funded by this Authority. Mr. McGlennon noted that the work session prior to the meeting was held to clarify some information and there has been significant information through State government, the Hampton Roads Planning District Commission (HRPDC), MPO, and newspapers. He noted that the HRPDC holds analysis of the taxes and fees that would be collected by this Authority. He commented that the Board needed to be able to explain the local importance of the six designated projects, as well as reasons for or against joining the Authority. He stated this is a complex problem and commented that citizens should address it to their State legislation and vote accordingly, but since this has not been done, it appears not to be a priority in people's consideration at the ballot box. He stated the Board had an opportunity to question some experts at the work session prior to the meeting and that the Board should not act on this resolution until the next regular meeting on June 12, 2007.

Mr. Harrison stated foresight needed to be used to see what the effect would be if the Authority was passed by other jurisdictions and imposed on the County. He also stated that citizens needed to address this issue with the State legislation at the ballot box.

Mr. Bradshaw stated he was very well informed at the work session and saw many faults with this legislation. He commented that the positive and negative effects of sending this matter back to Richmond needed to be considered further.

Mr. Goodson stated he appreciated the citizen and Board comments. He commented that he was interested in a solution and was unsure if the solution was to pass the resolution and modify the transportation authority from within to meet the needs requested by the citizens and provide more flexibility.

Mr. Icenhour stated this was a bad bill and struggled with what will be possible consequences of rejection of the item. He stated the Board needed to take the time to examine the matter further.

Mr. McGlennon stated this item would be considered on June 12, 2007.

## **I. BOARD CONSIDERATION**

### **1. Case No. ZO-1-07. Mixed Use District Amendment**

Ms. Ellen Cook, Senior Planner, stated this ordinance was presented at the May 8, 2007, Board meeting and was deferred to May 22, 2007. She stated there were two ordinances with staff recommending the original ordinance that designated the Planning Commission as the body to approve setback modifications. She noted that the alternate ordinance designated the Board of Supervisors as the approving body.

Staff recommended approval of the ordinance amendment.

Mr. Icenhour thanked Ms. Cook for her help in clarification of the matter. He stated he had visited the sites indicated and while there were a few setbacks for 50 feet, the average was 29 feet. Mr. Icenhour stressed the responsibility of the Board to be more careful in approving master plans.

Mr. Icenhour made a motion to approve the alternate ordinance that proposed setback modifications be approved by the Board of Supervisors rather than the Planning Commission.

Mr. Goodson stated his opposition and stated the Planning Commission was sufficient. He noted that the extra time required to bring the matter back to the Board would be an unnecessary delay. He clarified that there was always a maximum density cap on rezonings, so setbacks would not impact the number of units, but would actually impact the amount of greenspace and open areas in the development. He stated that there was a need for better design practices and said he would rather leave that decision to an expert in that area.

Mr. Harrison stated he supported the alternate ordinance because the Board was elected to make hard decisions and needed the additional oversight to get the project right. He stated there needed to be more binding master plans at the level of the Board of Supervisors approval.

Mr. McGlennon stated he felt the Planning Commission traditionally dealt with setbacks so they were an adequate means to handle this issue. He stated the setback modifications outlined in the memorandum were almost entirely in New Town, which were anticipated and they were part of the design of New Town. He said he does not see other examples where this would be a problem, and if the Board felt the waiver approvals should come back to the Board members, there should be a Comp Plan change for all districts and not just New Town. Mr. McGlennon agreed that the Board should be more careful during the approval phase when applicants were being bound to master plans. He clarified that this matter was not a vehicle to increase density in the developments and stated he was comfortable with ordinance recommended by staff.

On a roll call vote on the alternate ordinance, the vote was: AYE: Harrison, Icenhour. (2). NAY: Bradshaw, Goodson, McGlennon. (3).

Mr. Goodson made a motion to adopt the original ordinance amendment.

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

**J. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, commented on local spending for education versus performance.
2. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on assumption of liability for reopening Jolly Pond Road and the responsibility of the County as an upstream landowner.
3. Mr. Leonard Sazaki, 3927 Ironbound Road, thanked the Board for taking more time to evaluate the transportation authority resolution.

**K. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated Anniversary Weekend was very successful, with only minor incidents and a successful presidential visit. He stated the public safety officials collaborated with Federal and State officers and other officials to make the weekend a success. He also recognized Richard Drumwright and the outstanding service by those involved in the transportation planning. Mr. Wanner thanked the Board for its support and noted that the County will recognize staff in the future for their time contributions for the commemoration.

Mr. Wanner stated following a meeting of the James City Service Authority Board of Directors, the Board should hold a Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, specifically the Thomas Nelson Community College Board and the Board of Zoning Appeals; and Section 2.2-3711 (A)(3) of the Code of Virginia for the consideration of the acquisition of a parcel of property for public use. He stated when the Board completed its business, it should adjourn until 7 p.m. on June 12, 2007.

**L. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon responded to the educational spending comments by Mr. Oyer and stated that Mr. Oyer's percentages were correct. He stated the numbers Mr. Oyer referenced indicated, based on the State's formula for calculating fiscal responsibility for education, that the County was considered an affluent community and was held to a higher standard than York County, as compared by Mr. Oyer. He stated that the County often spends more on education than the State required, and that York County only expected to carry about one-third of the cost for the State standards whereas James City County was required to spend about twice as much. He stated that local spending is accounted for in the formula, and the State pays more of York's educational costs than James City County's.

Mr. McGlennon stated the 400<sup>th</sup> Anniversary commemoration was a wonderful event and thanked the Board for this opportunity. He thanked and congratulated organizations that were involved and recognized good action by the Board to acquire the property used for Anniversary Park for protection.

Mr. McGlennon recessed the Board for a meeting of the James City Service Authority.

**M. CLOSED SESSION**

At 9:32 p.m., Mr. Bradshaw made a motion to go into closed session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, specifically the Thomas Nelson Community College Board and the Board of Zoning Appeals; and Section 2.2-3711(A)(3) of the Code of Virginia for the consideration of the

acquisition of a parcel of property for public use.

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

At 9:57 p.m. Mr. McGlennon reconvened the Board into open session.

Mr. Harrison made a motion to adopt the closed session resolution.

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

## **RESOLUTION**

### **CERTIFICATION OF CLOSED MEETING**

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and, (ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions; and Section 2.2-3711(A)(3) for consideration of the acquisition of a parcel(s) of property for public use.

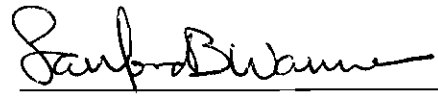
Mr. Icenhour made a motion to appoint Ms. Carol Scheid to an unexpired term on the Thomas Nelson Community College Board, term to expire on July 31, 2009, and a motion to recommend Ms. Barbara Moody to a five-year term on the Board of Zoning Appeals, term to expire February 29, 2012

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

**N. ADJOURNMENT** - until June 12, 2007, at 7 p.m.

Mr. Icenhour made a motion to adjourn.

At 9:58 p.m. Mr. McGlennon adjourned the Board until 7 p.m. on June 12, 2007.

A handwritten signature in black ink, appearing to read "Sanford B. Wanner". The signature is written in a cursive style with a horizontal line extending from the end.

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Sanford B. Wanner  
Clerk to the Board

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MAY 22 2007

ORDINANCE NO. 31A-226BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24 ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V, DISTRICTS, DIVISION 15, MIXED USE, MU, SECTION 24-527, SETBACK REQUIREMENTS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Section 24-527, Setback requirements.

Chapter 24. Zoning  
Article V. Districts  
Division 15. Mixed Use, MU

Section 24-527. Setback requirements.

(a) *Location of structures.* Structures shall be located 50 feet or more from any *external* existing or planned public road right-of-way, *or any internal arterial road right-of-way*, which is 50 feet or greater in width. Where the *external* existing or planned public road right-of-way, *or the internal arterial road right-of-way*, is less than 50 feet in width, structures shall be located 75 feet or more from the centerline of the *external* existing or planned *or internal arterial*, public road.

(b) *Required set back from mixed use districts.* For commercial, industrial, office, residential and mixed uses a setback of 50 feet shall be maintained from the perimeter of a mixed use district. The setback shall be left in its natural undisturbed state and/or planted with additional or new landscape trees, shrubs and other vegetative cover such that the setback serves to minimize the visual intrusion and other negative impacts of new development or redevelopment on adjacent development.

(c) ~~Lesser setback requirements for mixed use area internal to mixed use districts; criteria for determination. The planning commission may recommend approval of a setback of less than 50 feet for those areas of a mixed use district that are internal to a Mixed Use area as designated by the Comprehensive Plan upon finding~~ *Setback modifications; criteria for determination. Reduction of the*

*width of the setbacks specified in subsections (a) and (b) above may be approved for a mixed use zoning district that is designated Mixed Use by the Comprehensive Plan upon demonstration that the proposed setbacks, by substitution of technique or design, will achieve results which clearly satisfy the overall purposes and intent of the setback requirements of this section and the intent of section 24-86 (Landscaping and Tree Preservation Requirements), shall have no additional adverse impact on adjacent properties or public areas, and will not result in detrimental impacts to the orderly development or character of the area, the environment, sound engineering or planning practice, or the goals, objectives, strategies and policies of the Comprehensive Plan. In addition, ~~the planning commission shall find that one or more of the following criteria are met~~ a request for a setback modification must meet one or more of the following criteria:*

(1) The proposed setback is for the purpose of integrating proposed mixed use development with adjacent development;

(2) The proposed setback substantially preserves, enhances, integrates and complements existing trees and topography;

(3) The proposed setback is due to unusual size, topography, shape or location of the property, or other unusual conditions, excluding the proprietary interests of the developer.

*Reduction of the width of the setbacks may also be approved for a mixed use zoning district that is not designated Mixed Use by the Comprehensive Plan upon finding that the proposed setback meets one or more of the criteria listed above and both of the following additional criteria:*

(1) *Properties adjacent to the properties being considered for a reduction in setback must be compatible;*

(2) *The proposed setback reduction has been evaluated by appropriate county, state or federal agencies and has been found to not adversely impact the public health, safety or welfare.*


(d) *Requests for modifications.* Requests for modifications ~~to the 50 foot setback pursuant to subsection (c) above~~ shall be filed in writing with the planning director and shall identify the reasons for



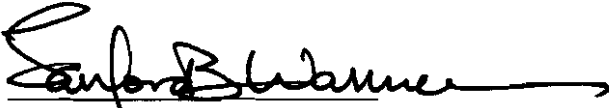
such requests together with the proposed alternative. The planning director shall make a recommendation to the ~~development review committee~~ *planning commission* to approve, deny or conditionally approve the request and shall include a written statement certifying that one or more of the above criteria are met.

(e) *No minimum lot size or yard requirements.* Except for required setbacks *specified in (a) and (b) above*, there shall be no minimum lot size nor minimum front, side or rear yard requirements for any lot within a Mixed Use Development District other than as specified in approved final plans.

(f) *Uses prohibited.* Setbacks shall not be used for streets or for parking except for entrances and driveways which may penetrate the setback.

  
John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

  
Sanford B. Wanner  
Clerk to the Board

SUPERVISOR	VOTE
HARRISON	NAY
BRADSHAW	AYE
GOODSON	AYE
ICENHOUR	AYE
MCGLENNON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of May, 2007.