

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF NOVEMBER 2007, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

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 - Eric Johnson, an eighth-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Ms. Sarah Kadec, 3504 Hunters Ridge, on behalf of the James City County Concerned Citizens (J4Cs), commented on the group tabling the Development Recess resolution by Mr. Harrison. She commented on the tools necessary to evaluate cumulative impacts of development.

2. Ms. Deborah Kratter, 113 Long Point, commented on behalf of the J4Cs on the R-4 Initiating Resolution and stated the J4Cs opposed any language that granted extended ownership to the original developer that allowed further expansion. She recommended staff draft a rezoning resolution that would reserve the approval of R-4 additions by the Board.

3. Mr. Terry Elkins, 105 Lothian, commented on the R-4 Initiating Resolution and stated that ownership and control was in the context of transition from the developer to the homeowners' association.

4. Ms. Ann Hewitt, 147 Raleigh Street, on behalf of J4Cs regarding the Department of Environmental Quality (DEQ) well permits near Centerville Road. She asked that the following be considered: Chickahominy-Piney Point aquifer impact, water levels of reservoirs, financial impact, low water tables, and impact on homeowners. She asked for support of the J4Cs request for public hearing.

5. Mr. Vernon M. Geddy, III, 1177 Jamestown Road, stated R-4 zoning should be applied to an expansion the same way it would be applied in the creation of a residential-planned community.

6. Mr. Ed Oyer, 139 Indian Circle, commented on the Veterans Day memorial service; York County Board of Supervisors election and the HRTA; taxes and fees in the County; demographic changes; and groundwater levels.

7. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on the devolution of secondary roads and the expense of the projects.

E. CONSENT CALENDAR

Mr. Icenhour asked to pull Items 6 and 7 for separate comment.

Mr. Goodson made a motion to adopt the remaining items.

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

1. Minutes – October 23, 2007, Regular Meeting
2. Dedication of Streets in Wellington, Section 5

RESOLUTION

DEDICATION OF STREETS IN WELLINGTON, SECTION 5

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.

3. Code Violation Lien – Trash and Grass Lien

RESOLUTION

CODE VIOLATION LIEN – TRASH AND GRASS LIEN

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

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

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

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

ACCOUNT: Mary Margaret Hancock
8741 Merry Oaks Lane
Toano, VA 23168

DESCRIPTION: 8741 Merry Oaks Lane

TAX MAP/PARCEL NOS.: 11-2-01-0-0007-B
James City County, Virginia

FILING FEE: \$10.00

TOTAL AMOUNT DUE: \$350.00

4. Appropriation of Funds – Disaster Housing Assistance Program - \$6,228

RESOLUTION

APPROPRIATION OF FUNDS - DISASTER HOUSING ASSISTANCE PROGRAM - \$6,228

WHEREAS, the US Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) executed an interagency agreement in July 2007, which established the Disaster Housing Assistance Program (DHAP) to provide transitional housing assistance to certain individuals and families displaced by Hurricanes Katrina and Rita that struck the Gulf Coast in 2005; and

WHEREAS, under DHAP, HUD intends to utilize its existing network of local Public Housing Agencies (PHAs) to administer the program; and

WHEREAS, the James City County Office of Housing and Community Development (OHCD) is the designated PHA administering the Housing Choice Voucher Program in James City County; and

WHEREAS, OHCD has been contacted by and has verified the eligibility of an individual residing in James City County for DHAP rental assistance.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes OHCD to administer and provide Federal DHAP grant assistance within James City County and hereby amends the Community Development Fund Budget, as adopted for the fiscal year ending June 30, 2008, as follows:

Revenue:

Disaster Housing Assistance Program Grant \$6,228

Expenditure:

Housing Assistance Payments \$4,400
DHAP Program Administration 1,828
Total: \$6,228

5. Appropriation of Funds – Green Building Charrette Grant Award - \$5,000

RESOLUTION

APPROPRIATION OF FUNDS - GREEN BUILDING CHARRETTE GRANT AWARD - \$5,000

WHEREAS, the James City County Office of Housing and Community Development has been awarded a Green Communities Green Building Charrette Grant in the amount of \$5,000 from Enterprise Community Partners for Green Communities; and

WHEREAS, the grant funds are to be used to conduct a green building seminar to educate builders, policy makers and community members and to foster green and sustainable building practices in the development of new single homes within the Ironbound Square Redevelopment Area; and

WHEREAS, no matching funds are required by this grant.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and hereby amends the Community Development Fund Budget, as adopted for the fiscal year ending June 30, 2008 as follows:

Revenue:

Green Communities, Green Building Charrette Grant \$5,000

Expenditure:

Green Building Charrette for Ironbound Square \$5,000

8. Endorsement of Bond Referendum for Williamsburg Landing by the City of Williamsburg Economic Development Authority and Industrial Development Authority of Mathews County

A RESOLUTION CONCURRING WITH THE ISSUANCE BY THE ECONOMIC
DEVELOPMENT AUTHORITY OF THE CITY OF WILLIAMSBURG, VIRGINIA,
OF ITS REVENUE BOND IN AN AMOUNT NOT TO EXCEED \$9,100,000 FOR
WILLIAMSBURG LANDING, INC.

WHEREAS, there has been described to the Economic Development Authority of James City County, Virginia (the James City County Authority), the plans of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Economic Development Authority of the City of Williamsburg, Virginia (the City of Williamsburg Authority), of its Revenue Bond (the Bond) in an amount not to exceed \$9,100,000 to assist the Borrower in (a) refinancing a loan to the Borrower to finance the construction and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the Bond; and

WHEREAS, the above facilities are owned by the Borrower; and

WHEREAS, a public hearing with respect to the Bond as required by Section 15.2-4906 of the Code of Virginia of 1950, as amended (the Virginia Code), and the Internal Revenue Code of 1986, as amended (the Code), was held by the James City County Authority on October 16, 2007; and

WHEREAS, the City of Williamsburg Authority also held a public hearing with respect to the Bond on September 19, 2007, and adopted an approving resolution (the City of Williamsburg Authority Resolution) with respect to the Bond on that date; and

WHEREAS, the James City County Authority has adopted a resolution (the James City County Authority Resolution) recommending that the Board of Supervisors of the County of James City, Virginia (the Board), concur with the City of Williamsburg Authority Resolution; and

WHEREAS, Section 15.2-4905 of the Virginia Code provides that the Board must concur with the adoption of the City of Williamsburg Authority Resolution prior to the issuance of the Bond; and

WHEREAS, the Code provides that the highest elected governmental officials of the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of a private activity bond is located shall approve the issuance of such bond; and

WHEREAS, the Bond will refinance property located in the County of James City (the County) and the members of the Board constitute the highest elected governmental officials of the County; and

WHEREAS, a copy of the James City County Authority Resolution, the City of Williamsburg Authority Resolution, a summary of the comments made at the public hearing held by the James City County Authority and a statement in the form prescribed by Section 15.2-4907 of the Virginia Code have been filed with the Board.

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

1. The Board concurs with the adoption of the City of Williamsburg Authority Resolution, and approves the issuance of the Bond by the City of Williamsburg Authority to the extent required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code.
2. The concurrence with the City of Williamsburg Authority Resolution, and the approval of the issuance of the Bond, as required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code, do not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Borrower or the project being refinanced and the Bond shall provide that no political subdivision of the Commonwealth of Virginia, including the County and the James City County Authority, shall be obligated to pay the Bond or the interest thereon or other costs incident thereto and neither the faith or credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the County and the James City County Authority, shall be pledged thereto.
3. The County, including its elected representatives, officers, employees, and agents, shall not be liable and hereby disclaims all liability for any damage to the Borrower, direct or consequential, resulting from the City of Williamsburg Authority's failure to issue the Bond for any reason.
4. This resolution shall take effect immediately upon its adoption.

A RESOLUTION CONCURRING WITH THE ISSUANCE BY THE INDUSTRIAL
DEVELOPMENT AUTHORITY OF MATHEWS COUNTY, VIRGINIA, OF ITS
REVENUE AND REFUNDING BOND IN AN AMOUNT NOT TO EXCEED
\$6,200,000 FOR WILLIAMSBURG LANDING, INC.

WHEREAS, there has been described to the Economic Development Authority of James City County, Virginia (the James City County Authority), the plans of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Industrial Development Authority of Mathews County, Virginia (the Mathews Authority), of its revenue and refunding bond (the Bond) in an amount not to exceed \$6,200,000 to assist the Borrower in (a) currently refunding adjustable rate bonds issued by the James City County Authority to finance the construction, renovation and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the Bond; and

WHEREAS, the above facilities are owned by the Borrower; and

WHEREAS, a public hearing with respect to the Bond as required by Section 15.2-4906 of the Code of Virginia of 1950, as amended (the Virginia Code), and the Internal Revenue Code of 1986, as amended (the Code), was held by the James City County Authority on October 16, 2007; and

WHEREAS, the Mathews Authority also held a public hearing with respect to the Bond on September 20, 2007, and adopted an approving resolution (the Mathews Authority Resolution) with respect to the Bond on that date; and

WHEREAS, the James City County Authority has adopted a resolution (the James City County Authority Resolution) recommending that the Board of Supervisors of the County of James City, Virginia (the Board), concur with the Mathews Authority Resolution; and

WHEREAS, Section 15.2-4905 of the Virginia Code provides that the Board must concur with the adoption of the Mathews Authority Resolution prior to the issuance of the Bond; and

WHEREAS, the Code provides that the highest elected governmental officials of the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of a private activity bond is located shall approve the issuance of such bond; and

WHEREAS, the Bond will refinance property located in the County of James City (the County) and the members of the Board constitute the highest elected governmental officials of the County; and

WHEREAS, a copy of the James City County Authority Resolution, the Mathews Authority Resolution, a summary of the comments made at the public hearing held by the James City County Authority and a statement in the form prescribed by Section 15.2-4907 of the Virginia Code have been filed with the Board.

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

1. The Board concurs with the adoption of the Mathews Authority Resolution, and approves the issuance of the Bond by the Mathews Authority to the extent required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code.
2. The concurrence with the Mathews Authority Resolution, and the approval of the issuance of the Bond, as required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code, do not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Borrower or the project being refinanced and the Bond shall provide that no political subdivision of the Commonwealth of Virginia, including the County and the James City County Authority, shall be obligated to pay the Bond or the interest thereon or other costs incident thereto and neither the faith or credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the County and the James City County Authority, shall be pledged thereto.
3. The County, including its elected representatives, officers, employees, and agents, shall not be liable and hereby disclaims all liability for any damage to the Borrower, direct or consequential, resulting from the Mathews County Authority's failure to issue the Bond for any reason.
4. This resolution shall take effect immediately upon its adoption.

6. Appropriation of Funds – Dominion Virginia Power - Five Forks Project - \$500,000

Mr. John Horne stated this project will take overhead utilities at Five Forks intersection underground, one of five projects approved several years ago, and this project was the most complex and most expensive job. He said the Verizon and Cox costs and the funding were available for the Dominion Virginia Power costs in 2007 but due to a delay in acquiring right-of-way, the non-departmental operating funds went away at the end of the year. Mr. Horne said that the County has since acquired right-of-way and will take carryover funds from 2007, if approved, to fund this project. He stated there would be an additional \$65,000 in expense in FY 2008. He explained that if this item was approved and funding comes through, construction would start in January 2008.

Mr. Icenhour asked what underground utility projects were in the future.

Mr. Horne stated that the most expensive project coming up would be through the widening of Ironbound Road near Ironbound Square to put the utilities underground when it is able to be financed.

Mr. Icenhour asked if it would be funded in the next two-year budget cycle.

Mr. Horne stated actual expenses would be reflected in the 2009-2010 budget.

Mr. Icenhour made a motion to adopt the resolution.

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

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the James City County Board of Supervisors are hereby authorized to be included as employees for the purpose of the Workers' Compensation Act of the Commonwealth of Virginia, and entitled to all coverage provided under said Act.

F. PUBLIC HEARINGS

Mr. McGlennon recognized Planning Commissioners Rich Krapf and Shereen Hughes in attendance.

1. Case No. S-0065-2007/SUP-0028-2007. Raymond Minor One-Acre Family Subdivision

Ms. Kate Sipes, Planner, stated Mr. Raymond N. Minor has applied for a Special Use Permit (SUP) to allow for a family subdivision of a parent parcel of 3.352 acres. The proposed subdivision would create a new lot of 1.000 acre, leaving a parent parcel of 2.351 acres. The subject parcel is zoned A-1, General Agriculture, and is located at 6111 Riverview Road. The parent parcel may be further identified as Parcel No. (1-4A) on James City County Real Estate Tax Map No. (16-3).

Staff found the proposal to be compatible with surrounding land uses and consistent with Section 19-7 of the James City County Subdivision Ordinance.

Staff recommended approval of the application.

Mr. McGlennon opened the public hearing.

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

Mr. Goodson 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

CASE NO. SUP-0028-2007. RAYMOND MINOR ONE-ACRE FAMILY SUBDIVISION

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

WHEREAS, the applicants have requested an SUP to allow for a family subdivision on a lot zoned A-1 (General Agriculture), located at 6111 Riverview Road, further identified as James City County Tax Map Parcel No. 1630100004A; and

WHEREAS, a public hearing was advertised, adjoining property owners notified and a hearing was held on Case SUP-0028-2007; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0028-2007 as described herein with the following conditions:

1. This SUP is valid for a family subdivision that creates one new 1.000 acre lot, with one parent lot of approximately 2.351 acres remaining, generally as shown on the preliminary subdivision plat submitted with this application.
2. Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the permit shall become void.
3. Only one entrance shall be allowed onto Riverview Road. A shared driveway agreement for these parcels shall be completed prior to final subdivision approval.
4. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Case No. Z-0009-2007, Michelle Point Proffer Amendment

Ms. Kate Sipes, Planner, stated Mr. Joel Almquist has applied on behalf of Health-E Communities Enterprises to revise language for Proffers No. 4, Affordable Housing, and No. 14, Cash Contributions for Community Impacts, to increase the sales price of the affordable housing units. The property is located at 9001 Barhamsville Road and can be further identified as Tax Map No. 1210100003, consisting of 38.58 acres. The parcel is zoned R-5 Multi-family Residential, Cluster Overlay, with proffers, and the proposed zoning would be R-5, Multi-family Residential, Cluster Overlay, with amended proffers. The property is designated by the Comprehensive Plan as Low-Density Residential and lies within the Primary Service Area.

Staff found the project generally consistent with the surrounding development and zoning and the Comprehensive Plan. Staff found the proposed revisions to represent positive measures. Staff did not believe it was prudent public policy to approve proffer amendments and rezoning proposals in a piecemeal fashion, more specifically in isolation from current school cash proffer policy.

At its meeting on October 3, 2007, the Planning Commission recommended denial by a vote of 6-0 with one member absent.

Staff recommended denial of the proffer amendment.

Mr. Goodson stated the cash proffer policy indicated that the County would give waivers for applicants proposing affordable or workforce housing components.

Ms. Sipes stated that the market rate units are still subject to the proffer policy.

Mr. Goodson asked if the proffer changes were for the affordable housing units.

Ms. Sipes stated the increase of the affordable housing unit costs were offset by the proffers.

Mr. Goodson asked why the exemption of the affordable housing component did not have an impact on the staff recommendation.

Ms. Sipes stated it was inconsistent with recently approved applications that met the cash proffer policy for schools for the market-rate units. Staff did not feel the case was comparable to recently approved cases.

Mr. Goodson stated that it was already approved prior to the policy.

Ms. Sipes stated this was correct, but staff did not feel comfortable recommending approval when the application was inconsistent with other cases.

Mr. Goodson stated there was difficulty with the cash proffer policy because the exemption was unclear until the applicant was well into the approval process.

Mr. McGlennon stated he did not understand this comment.

Mr. Goodson stated the proffer policy as a whole does not allow the applicant to be sure of whether or not a proffer will be received until well into the approval process.

Mr. McGlennon stated he felt the policy was clear, but the issue was that the application was approved before the cash proffer policy was in place and to open up the proffers would require staff to examine how it compares to current standards.

Ms. Sipes stated that staff was uncomfortable not reopening the whole case and reevaluating the entire package.

Mr. McGlennon stated that there are no cash proffers for affordable units and the cost for construction has increased and the applicant needed to adjust the cost of the affordable housing units. He explained that staff says that market-based housing cost changes have cash proffers for schools applied. He said it was the Board's decision if it agrees with staff, but the recommendation was that with all the proffers that relate to the price issue, reasons to look at current proffer policy on whether it should be higher or lower based on other concessions by the applicant.

Mr. Icenhour stated there had been 18 cases that required reopening proffers counting this one; of the other 17, 15 were approved and two were withdrawn. He asked if any of the other 17 were reopened over the change in the proffer policy.

Ms. Sipes stated that one case dealt with affordable housing prices, and when considering cost, particularly the purchase price of affordable housing, the only comparable case was Pocahontas Square. She said that this proposal was approved in 2005, right before the cash proffer policy for schools was adopted and that there was a cash contribution for the affordable units not included in this proposal.

Mr. Icenhour asked if the Planning Commission's denial was based on the lack of the soft second mortgage for the affordable housing units.

Ms. Sipes stated that the soft second mortgage was not in the proposal when it went to the Planning Commission, but the applicant verbally committed to these measures at that time.

Mr. Icenhour stated the Planning Commission requested this commitment.

Mr. Sowers stated this was correct.

Mr. Icenhour asked if staff or the Planning Commission has established a reasonable compromise.

Ms. Sipes stated it has not been discussed.

Mr. Harrison asked about the negative net fiscal impact and asked what the figure would be with the changes.

Ms. Sipes stated she did not have that information readily available.

Mr. McGlennon opened the Public Hearing.

1. Mr. Joel Almquist, on behalf of the applicant, gave an overview of the Michelle Point project and noted that due to unanticipated delays for environmental inspection, costs had increased. He stated the application proposed to offset the cost by requesting the change from CPI to the Marshall-Swift Index. He asked what the policy would be for considering piecemeal proffer amendments.

2. Mr. Mike Ware, on behalf of the applicant, stated the County has adopted the Marshall-Swift Index to value other projects and if Michelle Point had not been delayed, the application would not be necessary. He stated the delay has caused increased and unanticipated costs and the developer cannot build the affordable units until the market-rate units are built. He stated the application requested the adjustment from CPI to Marshall-Swift and has added forgivable deeds of trust, new green building proffers, and new energy efficiency proffers.

Mr. Icenhour asked the applicants if this was a matter of timing. He asked what the impact would be on how the property would be built/delay affordable housing aspect if the application was denied.

Mr. Ware stated that the construction on market-rate units would have to be started and then the developer would implement the affordable units at a later time to compensate for unanticipated costs.

Mr. Icenhour asked if it was a viable project.

Mr. Ware stated it would be built, but affordable housing may not be done first as requested.

3. Mr. Jay Epstein, on behalf of the applicant, outlined the financial benefits of changing from the CPI to the Marshall-Swift Index and requested approval of the application.

4. Mr. Charlie Crawford, Toano, stated the County needs affordable housing, and these kinds of problems make implementing it more difficult. He requested approval of the resolution.

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

Mr. Goodson made a motion to adopt the resolution. He noted concern over applications such as this triggering the cash proffer policy though no additional units were added.

Mr. McGlennon stated he agreed that they need to look at the policy for future implications and noted that the County had an excellent relationship with the development company. He said he felt the developer addressed affordable housing well, but did not understand why staff was not provided the information in the applicant's packet to the Board. He said he could accept that it was a miscommunication, but would like to get the benefit of staff's reaction to the packet of information and did not feel that staff had enough time to evaluate it. He stated the application presented a negative net cash impact on the County since the development would likely have a number of schoolchildren in the schools and asked why the cash proffer policy would not apply to these units. He said the changes in the application since the Planning Commission meeting were significant and he would like to see it come back at a future meeting. He said he would like to get a better sense of the implication. He stated he did not wish to act on this item.

Mr. Harrison stated he had reservation on this application due to the fiscal impact and impact on school infrastructure. He said the two new benefits brought forward are worthwhile, but the proffers need to be evaluated.

Mr. Goodson stated the impact is not greater by the change; it is a loss of something that did not exist.

Mr. Icenhour asked Mr. Rogers if, since this was a conditional zoning R-5, it can be built as R-5 without the affordable housing component.

Mr. Rogers stated the builder has accepted through rezoning an R-5, with proffers; it would require affordable housing. He said if it needed to be amended it would require Board approval.

Mr. Icenhour stated if this was denied, the project would still have the impacts on infrastructure that have been projected, but without the benefits that have been added with the proffer amendments such as the soft-second mortgage. He said through this project he sees accuracy in the cash proffers for schools as adjusted. He stated he favors the proposal, but he is willing to give staff more time to evaluate the information.

Mr. Harrison stated that a 15-year new soft second mortgage is leverage for sustained affordable housing.

Mr. McGlennon stated he agreed with the benefits, but his concern is that the proposal is significantly different from that presented to the Planning Commission and that staff has not had time to adequately evaluate the additional information provided to the Board. He said he wants to know that the issues were considered before making a blanket determination never to apply the policy to something that comes back.

Mr. Home asked what information the Board was interested in receiving in order to bring it back before the Board.

Mr. Epstein stated the Farmer's Home Loan Bank has 100 percent financing for units starting at the \$245,000 opening price range with no mortgage constraints.

Mr. Bradshaw stated that this issue would be narrower than other cases and it would be an additional cost in purchase price of the affordable units. He said if cash proffers exceeded that, there is no reason to be before the Board. He said he does not see this case as the model for tougher issues to reconsider proffers. He said he would like to let staff take time to look at the proposal and evaluate what needed to be examined for more complicated issues.

Mr. McGlennon asked staff if the material can be analyzed for them to answer questions in time before the next meeting.

Mr. Home stated staff will need until December 11, 2007, due to turnaround time between meetings.

Mr. McGlennon stated the item would be deferred until December 11, 2007.

3. Z-0007-2007/MP-0005-2007/SUP-0020-2007. Powhatan Terrace

Mr. McGlennon stated the applicant for this project has requested an indefinite deferral of this item.

4. Case No. HW-0002-2007. New Cingular Wireless Height Waiver

Mr. Luke Vinciguerra, Planner, stated Lisa Murphy, on behalf of New Cingular Wireless, has applied for a height waiver from Section 24-261 of the Zoning Ordinance to co-locate a cellular antenna on an existing Dominion Virginia Power pole. The property is located at 90 Whiting Avenue and consists of 2.89 acres, further identified as Tax Map No. 5230200054. The parcel is zoned as R-2, General Residential, and is designated by the Comprehensive Plan as Low-Density Residential.

Staff found the proposal consistent with the zoning ordinance.

Staff recommended approval of the application.

Mr. McGlennon opened the Public Hearing.

1. Ms. Lisa Murphy, on behalf of the applicant, gave an overview of the New Cingular Wireless coverage under the application submitted, using a Dominion Virginia Power transformer pole rather than a tower.

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

Mr. Harrison made a motion to approve the resolution.

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

RESOLUTION

CASE NO. HW-0002-2007. NEW CINGULAR WIRELESS HEIGHT WAIVER

WHEREAS, Ms. Lisa Murphy of New Cingular Wireless has applied for a height limitation waiver to allow for the placement of a single cellular antenna on an existing Dominion Power Pole with a maximum antenna height of 117 feet from grade; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. HW-0002-2007; and

WHEREAS, the proposed antenna array will be located on property zoned R-2, General Residential, and is further identified as James City County Real Estate Tax Map No.5230200054; and

WHEREAS, after a public hearing the Board of Supervisors finds that the requirements of Section 24-261 of the James City County Zoning Ordinance have been satisfied in order to grant a 57-foot waiver to the height limitation requirements to allow for the erection of a wireless communications facility that will not exceed 117 feet from grade that utilizes an alternative mounting structure in excess of 60 feet in height.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. HW-0002-2007, as described herein.

G. BOARD CONSIDERATIONS

1. Case No. ZO-0011-2007. R-4 (Residential Planned Community) Ordinance Amendment – Initiating Resolution (Deferred from October 23, 2007)

Ms. Kate Sipes, Planner, stated an initiating resolution to examine Sections 24-275 and 24-283 was deferred on October 23, 2007. She stated the initiating resolution would instruct staff to work on amendments to the sections and since the deferral the resolution has been modified to limit the scope of the revisions to Section 24-275. Staff has submitted an amended resolution in relation to Section 24-275 and a resolution relating to Section 24-283 may be brought before the Board at a later time.

Staff recommended approval of the initiating resolution.

Mr. Icenhour asked if the initiating resolution was for staff to evaluate Section 24-275.

Ms. Sipes stated this was correct.

Mr. Icenhour asked if a resolution to evaluate Section 24-283 would come forward at a later time.

Ms. Sipes stated this was correct.

Mr. Icenhour asked if this started the process and that the Board was intended to give direction to staff on this matter.

Ms. Sipes stated this is correct.

Mr. Goodson directed that he would like preservation of larger, stronger homeowners associations to protect the community at large and asked staff to modify the language so as not to deter expansion of homeowners associations.

Mr. McGlennon stated if homeowners want to be part of a larger association or not, it would be dealt with under the second ordinance section.

Mr. Rogers stated the combination of both of them would affect this, since Section 24-275 is the definition and Section 24-283 is where reference to additions could be found.

Mr. McGlennon asked if the homeowners association could expand without changes to Section 24-283.

Mr. Rogers stated the ordinance change dealt with a rezoning to R-4, and that an expansion of the community would be done under the community's declaration of covenants.

Mr. Icenhour stated he did not have a problem with the initiating resolution and that the definition provided by a citizen earlier in the evening clearly makes ownership understood and perpetuates ownership under 400 acres. He asked staff to start with the language provided by Ms. Kratter and asked that a definition not be included that could have an adverse impact on homeowners or homeowners associations when the subsequent part comes forward. He stated that the definition of an R-4 community requires it to be planned and several subsequent additions obviously are not planned.

Mr. Goodson stated this may be a larger change to zoning ordinance and asked to hold a work session on this before the final ordinance comes forward.

Mr. Rogers stated that Sections 24-275 and 24-283 interrelate and if they were to be evaluated piecemeal, the Board may not be addressing the real question. He said if there is an opportunity for further consideration, he would recommend both sections be on the work session agenda.

Mr. McGlennon asked if there would be an issue leaving the language as is for a time.

Mr. Rogers stated the interpretation by staff does not change leaving the language as is for a time; this is right for a clarification in the code.

Mr. McGlennon stated the Board should hold a work session prior to the ordinance amendment.

Mr. Rogers stated the normal process would be to send it to the Planning Commission Policy Committee, but the Board is welcome to send it to a work session and then the Planning Commission Policy Committee.

Mr. McGlennon stated there is a need to lay out the issues prior to changing the ordinance and that the work session should involve the Policy Committee.

Mr. Wanner stated the earliest work session available for this item would be in January 2008.

Mr. Goodson stated that there needed to be a work session with the new Board since they would make the decision.

Mr. McGlennon asked if the initiating resolution would be changed.

Mr. Rogers stated he did not think the Board should adopt the initiating resolution at this point, but if the Board were to adopt an initiating resolution, then it should adopt the initiation of changing both sections.

The Board deferred this item pending a work session to further discuss the issues related to the language change.

2. Development Recess

Mr. Wanner stated at the October 23, 2007, Board meeting, Mr. Harrison brought forward a resolution recommending a deferral of residential rezoning applications for one year. Staff explained at the meeting on October 23, 2007, that once a rezoning has been submitted and acted upon by the Planning Commission according to State Code, the Board is required to act on the application within 12 months.

Mr. Icenhour proposed an amendment to the resolution, now therefore be it resolved, strike "applicants already in the legislative process" and made a motion to adopt the resolution with the deletion of the words.

Mr. Harrison agreed to delete the words.

Mr. Goodson stated this resolution did not functionally work but puts too much emphasis on staff to determine what public benefits are present. Mr. Goodson stated he did not wish to support this item.

Mr. McGlennon stated he appreciated the intentions and the urgency to slow down the pace of development, but he did not feel this was a tool that could do this. He stated that the result would be bringing those cases before the Board anyway. He said there was question on how to treat mixed-use development and that though this was a useful process to highlight the issue, he did not think it should be binding on the Board to take office in the upcoming year. He stated he could not support the resolution, but the applications that come before the Board need significant public benefits in order to be considered.

Mr. Bradshaw reiterated the concern of binding the future Board and stated he could not support the resolution.

Mr. Harrison stated there was a continuing need to send a message to the development community to have impact analysis studies complete.

On a roll call vote, the vote was: AYE: Harrison, Icenhour. (2). NAY: Bradshaw, Goodson, McGlennon. (3). The motion failed.

H. PUBLIC COMMENT

1. Mr. Dean Vincent, on behalf of JCC, LLC, developers of Liberty Ridge, East West Partners, expressed concern about the Board adopting a resolution requesting a public hearing for the DEQ groundwater withdrawal permits. He stated this would cause undue delay to the development and he requested denial.

2. Mr. Les Kratter, 113 Long Point, stated there were issues relating to interpretation that may be outdated due to increased development.

3. Mr. Michael Richardson, 2701 Jolly Pond Road, asked about the stormwater management fee.

4. Mr. Jay Goldstein, 108 Shinnecock, stated Ford's Colony handles stormwater management and that clarification was needed for the zoning ordinance.

5. Mr. Ed Oyer, 139 Indian Circle, commented on transportation funding, election results, and groundwater rights.

6. Mr. Vernon Geddy, III, on behalf of Realtec, commented on the DEQ groundwater withdrawal permit process and requested denial of the resolution to request a public hearing.

7. Ms. Deborah Kratter, 113 Long Point, stated staff has standards for applying language for Section 24-283, single ownership, and control by doing what has historically been done and she asked for consideration of the homeowners associations in this language.

Mr. McGlennon stated he felt that the County will not continue its current practice, but rather there has been a consistent interpretation in moving forward into change. He stated that the Board as a whole has been reminded that there are issues and concerns on these interpretation questions that need to be taken into account. He said that the Board would need to look at an ordinance that clarifies and takes changes into account while reflecting expectations and protecting the County. He stated that he has encouraged property owners to protect large parcels of land from development through the Agricultural and Forestal District or Purchase of Development Rights programs. He noted that for low-income residents, there is forgiveness of a share of property taxes for the elderly or disabled. He said that if property owners are interested in preserving large parcels of land in return for tax benefits, contact County offices because that has been an initiative of the County.

I. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated he and General Services Manager Steven Hicks met with the Newport News City Council to discuss the proposal for the Route 60 relocation project under the PPTA of 1995. He stated the purpose of the work session was to discuss a joint agreement for the County to design and construct the relocated Route 60 in accordance with PPTA guidelines. He stated the item would be on the Newport News City Council agenda on November 27, 2007, and would be on the Board's agenda on December 11, 2007. He stated that the Board should adjourn to 4 p.m. on November 27, 2007, for a work session with the General Assembly delegation for development of the Legislative Agenda. He noted that County offices would be closed on November 22-23, 2007, for the Thanksgiving holiday. He stated that the Closed Session would not be required, but the Board will need to take action on the Community Participation Team appointments for the Comprehensive Plan update.

J. BOARD REQUESTS AND DIRECTIVES

Ms. Shereen Hughes, of the Planning Commission, brought forward the Planning Commission's recommendations for the Community Participation Team (CPT): Vaughn Poller, William Spaller, Susan Sullivan-Tubach, Charlotte Jones, Robert Keith, Glendora James, and Thomas Fitzpatrick. She stated the Planning Commission representation may change due to election as the commission would prefer to have the most senior members on the Steering Committee. She stated Rich Krapf would stay on the Committee as a Planning Commission representative.

Mr. Icenhour made a motion to appoint the individuals named by Ms. Hughes to the CPT.

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

Mr. Icenhour stated he attended the VACo Annual Conference with Mr. Goodson and Mr. Wanner, and two staff members attended as speakers: John Horne and Steven Hicks. He said at the conference the delegation adopted the VACo Legislative Agenda. He also noted that the VACO/VML Legislative Day in Richmond was scheduled for February 7, 2008. He stated that Mr. McGlennon was voted chair of the High Growth Coalition.

Mr. Icenhour stated the J4Cs have made a formal request to the DEQ for a public hearing on the groundwater withdrawal permit and that whether the request is substantial or warranted it is for the DEQ to determine.

Mr. Icenhour made a motion to ask the County Administrator to send a letter to the DEQ to have it consider a public hearing for this issue. He explained that if there is not substantial reason, the request may be denied.

Mr. Goodson stated that disputed issues needed to be provided and he was unsure what information was intended to be provided by the County.

Mr. Icenhour stated he did not intend to do this.

Mr. Wanner stated the letter was to support the request of the J4Cs.

Mr. Goodson stated he understood.

Mr. Bradshaw asked what is accomplished by this.

Mr. Icenhour stated requests have been submitted.

Mr. Bradshaw asked what the letter would do.

Mr. Icenhour stated that the letter sends a message of support for the citizens to the DEQ.

Mr. Bradshaw stated the DEQ has received a request for a public hearing, so the agency is then obligated to consider the request. He stated he did not understand the necessity of the letter from the County.

Mr. McGlennon stated the letter simply adds the weight of the public body to the request and does not change the substance of the request. He said the nature of the public hearing process requires certain elevation of issues in contention rather than general concern. He said he was pessimistic about the DEQ's likelihood of calling a public hearing, but he felt no harm in asking the agency to look seriously at the request.

Mr. Harrison asked if the group should come before the Board prior to sending the letter forward.

Mr. Goodson stated he did not want to send conflicting messages in relation to the comments from staff.

Mr. Icenhour stated the Board needed to send a letter to reinforce support for the citizens' group.

Mr. Bradshaw stated he thought that if a request was sent by anyone, the DEQ had to consider a public hearing.

Mr. Icenhour stated that if a public hearing was requested and written comments were received, the DEQ would make the determination on whether to make that public hearing. He said the Board would be supporting the request of citizens and he did not feel it would hold any great weight or delay on the outcome, but the message communicated would be clear to constituents.

Mr. McGlennon stated the nature of the process was part of the issue. He stated that the County did not want permits issued until the public comment period had expired, which had a specific process. He stated the issue here would be communicating to the DEQ that it should take a close look at the request for a public hearing. He also noted that the public hearing involved was not one at which opinions are expressed, but rather a hearing for contesting sides to present evidence. He said he did not know if this would happen even if a public hearing was allowed. He felt there was no harm in this issue and he was inclined to support the matter.

Mr. Harrison stated he felt if the issues are at a level that the Board must partner with them; it should have been brought forward before the staff's opinion was submitted.

On a roll call vote, the vote was: AYE: Icenhour McGlennon. (2). NAY: Harrison, Bradshaw, Goodson. (3). The motion failed.

Mr. Bradshaw commented on letters received from Toano Middle School's sixth-grade English class which reflected on a number of County issues.

Mr. McGlennon commented on the wild turkey release at Freedom Park on November 13, 2007.

K. ADJOURNMENT to 4 p.m. on November 27, 2007.

Mr. Harrison made a motion to adjourn.

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

At 9:45 p.m., Mr. McGlennon adjourned the Board to 4 p.m. on November 27, 2007.

A handwritten signature in black ink, reading "Sanford B. Wanner". The signature is written in a cursive style with a horizontal line underneath it.

Sanford B. Wanner
Clerk to the Board

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