

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 11TH DAY OF DECEMBER 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, Absent
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 - Elijah Cordell Onks, a fifth-grade student at Matoaka Elementary School led the Board and citizens in the Pledge of Allegiance.

D. RECOGNITION

1. Chairman's Awards

a. Employee

Mr. McGlennon presented the Chairman's Award to the Public Safety Planning Team, consisting of Police Chief Emmett Harmon, Fire Chief Tal Luton, Major Stephen Rubino, Major Bradley Rinehimer, and Captain Alton Catlett for their efforts to create a safe and secure atmosphere for the events of the 400th Anniversary Commemoration including the visits of various dignitaries and public events in the County.

b. Citizen

Mr. McGlennon presented the Chairman's Award to all those who participated as volunteers for the 400th Anniversary Commemoration. The award was accepted by Linda James and Mary Sue Bunting on behalf of those who helped to staff the events of the Commemoration.

E. HIGHWAY MATTERS

Mr. Jim Brewer, Virginia Department of Transportation (VDOT) Residency Administrator, noted work on a speed study for News Road and indicated that it would take 60-90 days to complete. He stated the "Watch for Children" signs in Forest Glen had been approved and would be installed shortly.

Mr. Icenhour thanked Mr. Brewer for installing “Stop” signs and “Watch for Children” signs in Forest Glen, and asked for recommendations of safety improvements to be considered for the Warhill High School students walking on the sides of Centerville Road.

Mr. Bradshaw thanked Mr. Brewer for acting promptly at the Station in Norge, off Croaker Road, and asked for a briefing on this intersection.

Mr. Brewer said the contractor had redesigned the entrance of the apartment complex and put a dip in the travel lane. He stated that VDOT has worked to eradicate the unsafe area by utilizing the left-turn lane into the complex. He stated the contractor would be required to restore the roadway to its original condition until it can be redesigned to be safer.

Mr. Bradshaw asked that motorists take extra caution in that area.

Mr. Brewer stated this was correct and noted that this area would be evaluated in the coming week.

Mr. McGlennon stated there were still problems in Rolling Woods at Lake Powell Road and Rolling Woods Drive, and noted that further on Lake Powell Road toward the dam, there were significant holes in the road.

F. PRESENTATIONS

1. Annual Financial Report – Goodman and Company

Ms. Sue Mellen, Financial and Management Services Assistant Manager, introduced Mr. Fred Westphal, a senior partner at Goodman and Company, to give the annual report for the James City County and James City Service Authority financial statements.

Mr. Westphal introduced Bob Murray and Sheronda Burton, who participated in the engagement and thanked them for their efforts during the audit. Also thanked were Sue Mellen, John McDonald, Tara Woodruff, and other staff for their assistance. Mr. Westphal stated the report was a clean audit report and in the opinion of the firm, General Standard Accounting Principles were followed. He stated that Goodman and Company also did an audit on Federal and State grants to ensure compliance and those three opinions were that the County was in compliance. He drew attention to the Management’s Discussion and Analysis included in the report, which was management’s perspective of the financial status of the year. He noted that the financial statements included the James City Service Authority, Williamsburg-James City County Schools, and the Economic Development Authority, and outlined all the financial activities and fund balances of the year.

2. Historic Triangle Substance Abuse Coalition

Ms. Gina Thorne of the Historic Triangle Substance Abuse Coalition (HTSAC) gave a brief overview of the organization and the goals it has established. She highlighted relationships with the County’s Youth Services Strategic Plan and the Comprehensive Plan and programs offered by the organization. She gave an overview of the Needs Assessment Data report, as well as housing and transportation assistance to those in need.

Mr. McGlennon asked about the future funding source for grants and other monies.

Ms. Thorne stated there has been assistance from Federal partners for prevention funding for youth

substance abuse prevention equally matched money and smaller State grants and some fund-raising.

Mr. Harrison stated local government departments also partner with the organization for grant monies.

Ms. Thorne stated that County departments would apply for funding through the Coalition and her organization would oversee the grant and report back.

Mr. Wanner stated Ms. Thorne was leaving HTSAC at the end of the month to take a role in the private sector.

Mr. McGlennon thanked Ms. Thorne for her presentation.

3. Planning Commission Annual Report

Mr. McGlennon noted the attendance of Planning Commissioners and Supervisors-elect Mr. James Kennedy and Ms. Mary Jones.

Ms. Shereen Hughes, Planning Commission Chair, thanked the Board and wished Mr. Bradshaw and Mr. Harrison good fortune. She stated this would be her last presentation as Chair of the Planning Commission. She presented the Annual Report of the Planning Commission for FY 2007. Ms. Hughes highlighted Planning Commission activities including Development Plan Review, Policy and Ordinance revisions, Capital Improvements Program, Comprehensive Plan update process, and participation in community planning forums, committee studies, and planning seminars.

Mr. McGlennon thanked Ms. Hughes for her service on the Planning Commission and thanked her for her presentation. He asked for copies of the presentation for the Board.

G. PUBLIC COMMENT

1. Mr. Terence Elkins, 105 Lothian, on behalf of the James City County Citizens Coalition (J4C), stated approval and support for the civil action in the New Town Settler's Market area. He asked for consideration for the requirement of discouragement of any revenue for the sale of timber by the developer.

2. Mr. Ed Oyer, 139 Indian Circle, thanked those for contributing service to the County and wished Mr. Harrison and Mr. Bradshaw well; he commented on citizen disapproval of the Hampton Roads Transportation Authority; traffic on Route 60 East; the need for Workforce Training Center; and the cost of the greenspace master plan study.

H. CONSENT CALENDAR

Mr. Icenhour asked to pull Items 3 and 4 for separate consideration.

Mr. Bradshaw asked to pull Items 9 and 10.

Mr. Harrison made a motion to approve Items 1, 2, 5, 6, 7, 8, 11, and 12 with corrections.

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

1. Minutes –
 - a. November 27, 2007, Work Session
 - b. November 27, 2007, Regular Meeting
2. Dedication of Streets - Landfall at Jamestown, Phases 1a, 4, and 5

RESOLUTION

DEDICATION OF STREETS IN LANDFALL AT JAMESTOWN,

PHASES 1A, 4, AND 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.

5. Contract Award – Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park

RESOLUTION

CONTRACT AWARD – MASTER PLAN FOR JAMESTOWN BEACH CAMPGROUND,

JAMESTOWN YACHT BASIN, AND CHICKAHOMINY RIVERFRONT PARK

WHEREAS, a Request for Proposals (RFPs) to develop a Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park was publicly advertised and staff reviewed proposals from seven firms interested in performing work; and

WHEREAS, upon evaluating the proposals, staff determined that Vanasse Hangen Brustlin was most fully qualified, and submitted the proposal that best suited the County's needs as presented in the RFPs.

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the \$240,000 contract to develop a Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park to Vanasse Hangen Brustlin.

6. Contract Award – Purchase of Human Resource Management and Payroll Software

RESOLUTION

CONTRACT AWARD – PURCHASE OF HUMAN RESOURCE MANAGEMENT

AND PAYROLL SOFTWARE

WHEREAS, a Request for Proposals (RFP) for the purchase of an integrated Human Resource Management and Payroll software to replace the software that has been in use for the past ten years was publicly advertised and staff reviewed proposals from four firms interested in performing work; and

WHEREAS, upon evaluating the proposals, staff determined that PDS was most fully qualified and submitted the proposal that best suited the County's needs as presented in the RFP.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the \$296,047 contract to implement an integrated Human Resource Management and Payroll software to PDS and authorizes the County Administrator to execute the contract.

7. Award of Contract – Design of Community Gymnasium Facility

RESOLUTION

AWARD OF CONTRACT – DESIGN OF COMMUNITY GYMNASIUM FACILITY

WHEREAS, competitive proposal requests were advertised and received for the design of the James City County Community Gymnasium Facility to be located at the Warhill Sports Complex; and

WHEREAS, nine proposals were received and evaluated with the preferred proposer being Hopke and Associates; and

WHEREAS, staff has negotiated a satisfactory scope of services and fees that are appropriate for the work to be performed; and

WHEREAS, previously authorized Capital Improvements Program (CIP) budgeted funds are available to fund this design contract.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator or his designee to execute the necessary contract documents for the schematic design of the James City County Stadium Facility at the Warhill Sports Complex in the total amount of \$280,667.

8. Contract Award - James City/Williamsburg Community Center Partial Re-Roofing Project- \$174,750

RESOLUTION

AWARD OF BID – JAMES CITY/WILLIAMSBURG COMMUNITY CENTER

PARTIAL RE-ROOFING PROJECT - \$174,750

WHEREAS, competitive bids were received for the James City/Williamsburg Community Center Partial Re-Roofing Project located at 5301 Longhill Road; and

WHEREAS, AAR of North Carolina, Inc. was the lowest responsive and responsible firm submitting a bid of \$174,750 out of the eleven firms submitting bids for the project; and

WHEREAS, previously authorized Capital Improvements Program (CIP) budget funds are available to fund this project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract in the amount of \$174,750 and authorizes the County Administrator or his designee to execute the necessary documents with AAR of North Carolina, Inc. for the James City/Williamsburg Community Center Partial Re-Roofing Project.

11. Appointment to the Colonial Community Criminal Justice Board

RESOLUTION

COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD APPOINTMENT

WHEREAS, the Board of Supervisors of James City County appointed Mr. Michael McGinty to serve as one of the County's representatives on the Colonial Community Criminal Justice Board (CCCJB); and

WHEREAS, in accordance with the Code of Virginia and the Joint Exercise of Powers Agreement, Mr. McGinty no longer qualifies to serve on the CCCJB; and

WHEREAS, Mr. McGinty's term was set to expire on July 31, 2008.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby appoint Williamsburg/James City County General District Court Judge, The Honorable Colleen Killilea, to an unexpired term on the CCCJB, set to expire on July 31, 2008.

12. Establishment of a Full-Time Regular Groundskeeper I Position for Grounds Maintenance

RESOLUTION

**ESTABLISHMENT OF A FULL-TIME REGULAR GROUNDSKEEPER I
POSITION FOR GOUNDS MAINTENANCE**

WHEREAS, an agreement between James City County and the Williamsburg-James City County (WJCC) Public Schools allows the County to request the establishment of a Groundskeeper I position and an appropriation of the needed funding, if necessary when a WJCC Groundskeeper position becomes vacant. WJCC will then eliminate their vacant Groundskeeper position, but retain the funding to use for another purpose; and

WHEREAS, the resignation of a WJCC groundskeeper was effective October 12, 2007, and funds are available within the Grounds Maintenance budget to fund this position for the remainder of this fiscal year.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes one full-time (2,080 hours/year) regular Groundskeeper I position effective January 1, 2008.

3. Erosion and Sediment Control Violation – Civil Charge – Busch Properties, Inc.

Mr. Scott Thomas, Environmental Director, gave an overview of the location of the violation which consisted of a disturbance of land in excess of 25 feet, removal of trees, and clearance of soil outside spectrum of work for Spencer's Grant subdivision in Kingsmill. He stated the owner has abated the violation with staff and has accepted a civil charge of \$2,000 under the County's Erosion and Sediment Control Ordinance.

Mr. Icenhour asked if this was something that the developer could apply to do under the correct permit.

Mr. Thomas stated this was correct.

Mr. Icenhour asked if there was a history of this kind of conduct.

Mr. Thomas stated there was not a recurring problem. He noted that this behavior was observed through routine compliance monitoring.

Mr. Goodson stated this was not an environmental issue, but the fact that the work was done before the permit was received.

Mr. Thomas stated this was correct.

Mr. Goodson stated he understood the fine was accepted by the developer without question.

Mr. Thomas stated this was correct.

Mr. McGlennon stated that this was not an issue requiring mitigation or restoration because this type of work would have been done anyway.

Mr. Pat Menichino stated this was correct, indicating that the clearing would be done for the future homes.

Mr. McGlennon stated the need for this process is to ensure that this type of work is done once proper permits were in place and the proper process is followed.

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).

RESOLUTION

EROSION AND SEDIMENT CONTROL ORDINANCE VIOLATION – CIVIL CHARGE –

BUSCH PROPERTIES, INC.

WHEREAS, on or about June 26, 2007, Busch Properties, Inc., Owner, violated or caused a violation of the County's Erosion and Sediment Control Ordinance by disturbing land without a permit at 210 Wareham's Pond Road East, Spencer's Grant, Williamsburg, Virginia, identified by property identification numbers 5130100004 and 5130100005 within the James City County Real Estate System and hereinafter referred to as the "Property"; and

WHEREAS, Busch Properties, Inc. has abated the violation at the Property; and

WHEREAS, Busch Properties, Inc. has agreed to pay \$2,000 to the County as a civil charge under the County's Erosion and Sediment Control Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the civil charge in full settlement of the Erosion and Sediment Control Ordinance violation, in accordance with Section 8-7(f) of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$2,000 civil charge from Busch Properties, Inc. as full settlement of the Erosion and Sediment Control Ordinance violation at the Property.

4. Chesapeake Bay Preservation Ordinance Violation – Civil Charge – AIG Baker Williamsburg, LLC

Mr. Scott Thomas, Environmental Director, gave an overview of the location of the violation and stated there was unauthorized grading and removal of vegetation within a Resource Protection Area (RPA) at the Settler's Market at New Town. He stated the owner is replanting vegetation in the area of disturbance and agreed to a civil charge of \$15,000 to the County. He stated the total impact to the buffer was 14,283 square feet.

Mr. Icenhour stated the \$15,000 fine has to do with the clearing in the RPA, while the other fines have to do with acreage that will be handled separately.

Mr. Thomas stated the other encroachments were in the small whorled pagonia buffer zone and the wetland easements by the Army Corps of Engineers and the Department of Environmental Quality (DEQ). He stated the County's civil charge is only associated with the RPA encroachment.

Mr. Icenhour stated as part of the agreement, this will be mitigated and asked how much this would cost the developer to replant vegetation and soil disturbance.

Mr. Pat Menichino stated the restoration of the buffer would be replanting of trees and shrubs and achieving a native grass groundcover. The calculation was \$25,000.

Mr. Icenhour stated the ability to restore area's water quality will remain degraded until the replantings become mature.

Mr. Menichino stated this was correct. He stated the function of the buffer has been lost and it will take years to restore that function.

Mr. Icenhour asked what discussion has been held about restoring the grade of the buffer.

Mr. Menichino stated no discussion has been held about expanding the buffer.

Mr. Icenhour asked about the value of the timber removed in this process and stated that he understood that the developer did not receive any compensation for the timber.

Mr. Menichino stated the subcontractor hired to do the clearing would profit from the timber and establishing a possible dollar amount in this case would be difficult.

Mr. McGlennon asked the status of the Federal violations.

Mr. Thomas stated there has been no change, and an environmental consultant for the applicant is present. He stated he was not aware of any charges, but there were active investigations for the small whorled pagonia and wetland buffers.

Mr. Icenhour asked how this situation came about.

Mr. Thomas stated this was observed during acts of compliance monitoring by an environmental inspector, and in this area there was an error in construction stakeout that resulted in an incorrect line being cleared.

Mr. Harrison asked what the process would be for expanding the buffer.

Mr. Thomas stated the Chesapeake Bay Board would need to give approval.

Mr. Harrison asked for confirmation that the current buffer was adequate, but the construction encroached.

Mr. Thomas stated this was correct.

Mr. McGlennon stated he understood that the Federal agencies might require an expansion of the buffers and asked for any information about this.

Mr. Menichino stated he has not heard anything in the last two weeks, and noted that it would be difficult to find other areas that could be used as a buffer.

Mr. Thomas asked Ms. Guthrie from Williamsburg Environmental Group to give an update on this matter.

Ms. Susan Guthrie, Williamsburg Environmental Group, stated she has offered a proposal to the Army Corps of Engineers and State DEQ to replant at a one-to-one ratio, but no additional buffer can be offered.

Mr. McGlennon asked what the status was with Federal agencies.

Ms. Guthrie stated there have not been additional comments at this point.

Mr. McGlennon asked about the potential penalty that could be imposed.

Ms. Guthrie stated permits could be withdrawn, but this could cause more environmental damage than moving forward. She stated there were no impacts for development, and other issues dealt with water quality.

Mr. McGlennon asked which company was responsible for this portion of the development.

Mr. Thomas stated the developer was AIG Baker, the contractor was E.B. Williams, and the clearing was subcontracted out to a local clearing organization.

Mr. Rich Costello, AES Consulting Engineers, stated his company was the responsible party for this error. He stated when staked, clearing limits were not removed when additional areas were cleared. He stated that his company was working with the agencies and they would be paying to get this violation corrected.

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).

RESOLUTION

CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATIONS - CIVIL CHARGES –

AIG BAKER WILLIAMSBURG, L.L.C.

WHEREAS, AIG Baker Williamsburg, L.L.C. is the owner of a certain parcel of land commonly known as 5224 Monticello Avenue, Williamsburg, VA, designated as Parcel No. 3840100003, within James City County's Real Estate system and commonly known as Settler's Market, New Town, Section 9, SP-74-06, herein referred to as the ("Property"); and

WHEREAS on or about October 10, 2007, AIG Baker Williamsburg, L.L.C. caused the removal of vegetation from within the Resource Protection Area on the Property; and

WHEREAS, AIG Baker Williamsburg, L.L.C. agreed to a Restoration Plan to replant 36 canopy trees, 72 understory trees, and 108 shrubs on the Property in order to remedy the violations under the County's Chesapeake Bay Preservation Ordinance and AIG Baker Williamsburg, L.L.C. has posted sufficient surety to guarantee the installation of the aforementioned improvements and the restoration of the Resource Protection Area on the Property; and

WHEREAS, AIG Baker Williamsburg, L.L.C. has agreed to pay a total of \$15,000 to the County as civil charges under the County's Chesapeake Bay Preservation Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the restoration of the impacted area and the civil charges in full settlement of the Chesapeake Bay Preservation Ordinance violation in accordance with Sections 23-10 and 23-18 of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$15,000 in civil charges from AIG Baker Williamsburg, L.L.C., as full settlement of the Chesapeake Bay Preservation Ordinance Violations.

9. Virginia Department of Transportation (VDOT) Enhancement Grant – Norge Depot Relocation and Restoration - Phase III
10. Transportation Enhancement Program Amendment to Project Development and Administration Agreement for the Norge Depot Relocation and Restoration (Phase III), EN01-047-120, P101, R201, C501-UPC#59767

Mr. Shawn Gordon, Capital Projects Coordinator, stated VDOT awarded a grant for Phase III for the hiring of the architect and contractor. He stated the resolution allows for appropriation of funds to move forward on construction.

Mr. Bradshaw asked about nomination as a historic landmark.

Mr. Gordon stated that it has been considered by the State Registry of Historic Places.

Mr. McGlennon thanked Mr. Gordon for his work on this project.

Mr. Bradshaw made a motion to adopt Items 9 and 10 simultaneously.

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

RESOLUTION

VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) ENHANCEMENT GRANT -

NORGE DEPOT RELOCATION AND RESTORATION – PHASE III

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, the Virginia Department of Transportation (VDOT) has allocated \$340,000 in Federal STP Transportation Enhancement Grant funds for the relocation and restoration of the Norge Train Depot, Phase III.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the previously adopted capital budget for the fiscal year ending June 30, 2008, and appropriates the following sum in the amount and for the purpose indicated.

FY2008 Capital Budget

Revenue:

| | |
|---|------------------|
| VDOT STP Transportation Enhancement Grant | <u>\$340,000</u> |
|---|------------------|

Expenditure:

| | |
|-------------------------------|------------------|
| Norge Train Depot Restoration | <u>\$340,000</u> |
|-------------------------------|------------------|

RESOLUTION

TRANSPORTATION ENHANCEMENT PROGRAM AMENDMENT TO PROJECT

DEVELOPMENT AND ADMINISTRATION AGREEMENT FOR THE NORGE DEPOT

RELOCATION AND RESTORATION (PHASE III), EN01-047-120, P101, R201, C501-

UPC#59767

WHEREAS, James City County, Virginia has expressed its desire to administer the work of the Norge Depot Relocation and Restoration (Phase III) EN01-047-120, P101, R201, C501–UPC# 59767 project in the Stonehouse District; and

WHEREAS, the Virginia Department of Transportation requires a signed resolution agreement by the locality's governing body, the James City County Board of Supervisors, stating the official signing the Agreement has the authority to enter into this legal agreement on behalf of the locality.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Transportation Enhancement Program Amendment to Project Development and Administration Agreement for the Norge Depot Relocation and Restoration (Phase III).

I. PUBLIC HEARINGS

1. Case No. SUP-0021-2007. Tiki Climbing and Grinding Professional Tree Services.

Ms. Ellen Cook, Planner, stated Timothy Soderholm has applied for a Special Use Permit (SUP) for a contractors office and storage facility on property located at 6293 Centerville Road, further identified as Parcel No. 2340200001 consisting of 0.94 acres. The property is zoned A-1, General Agricultural, and is designated by the Comprehensive Plan as Low-Density Residential.

Staff found the proposal inconsistent with the Comprehensive Plan designation, the location would create difficulty in prevention of similar uses in the area, and it is not complementary to the uses in the surrounding area.

At its meeting on November 7, 2007, the Planning Commission's motion to approve failed by a vote of 3-3. On a subsequent motion, the Planning Commission voted 6-0 to send the item to the Board with a neutral recommendation.

Staff recommended denial of the application.

Mr. McGlennon opened the public hearing.

Mr. Timothy Soderholm, owner of Tiki Climbing and Grinding Professional Tree Service, introduced Kevin Grady to speak on his behalf.

Mr. Kevin Grady, 400 Richardson Run, on behalf of Mr. Solderholm, stated the applicant operates his business from the home and no work is done on-site. He stated equipment was stored at the site and employees meet there to go to job sites. He stated that once the applicant was made aware of the noncompliance, he made an application for the SUP. He stated there was approval from the neighbors and noted environmental efforts including a drainage ditch installed by the applicant. He stated that a BMP for stormwater management would be a financial burden for the applicant and he felt that it was excessive for the type of operation.

Mr. McGlennon asked how the determination was made that a stormwater management facility was excessive for the property.

Mr. Soderholm stated he felt that the stormwater management regulations were being enforced not based on the business, but on the A-1 zoning and residential use of the property.

Mr. McGlennon stated this would be due to the utilization of a storage facility on the property.

Mr. Soderholm stated this was not necessary since there were only small trailers.

Mr. McGlennon asked how the conditions of the SUP would be taken by the applicant.

Mr. Soderholm stated that he was willing to comply.

Mr. McGlennon noted the cost prohibition caused by installing a BMP.

Mr. Soderholm stated he was willing to comply, but asked that it be adequate but not excessive of the small equipment that he is storing at his property.

Mr. McGlennon asked how a determination would be reached to establish an adequate treatment of

stormwater rather than basing this on opinions.

Mr. Soderholm stated that he was willing to comply and asked that the scale of the operation be taken into account.

Mr. Harrison asked what process was used to determine that a stormwater facility was necessary.

Mr. Thomas stated the business use would require a site plan and would trigger the need to look at drainage and stormwater management. He stated the need for stormwater management was more due to gravel and impervious cover rather than the location of vehicles. He stated this would be evaluated at the time of the site plan submission.

Mr. Harrison asked about recommended impervious covers.

Mr. Thomas stated this was in the site plan process to include impervious pavers rather than further BMP measures.

Mr. Soderholm stated this property is a new home where landscaping and improvements were still being installed.

Mr. Harrison asked the applicant to work closely with staff on the paving process.

Mr. Soderholm stated he would.

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

Mr. Goodson asked how intensive a home-based business would be allowed in this zoning.

Ms. Cook stated this exceeds a permitted home business by having employees come to the site and storing equipment on the site.

Mr. Goodson asked if there was anything in the Code or in the covenants regarding the equipment storage.

Ms. Cook stated there were no covenants identified to this parcel based on staff's research, and if there were, then it would be a private matter.

Mr. Goodson stated if it were not a business, it would have been acceptable to store the equipment.

Ms. Cook stated this was correct and the problem was that it was for the business and employees come to the site.

Mr. Goodson stated there was a garage and storage shed on the property. He asked if they were built to Code.

Ms. Cook stated that this would be evaluated at the site plan level.

Mr. Goodson stated they could be on the property if it were only a private home.

Ms. Cook stated this was correct.

Mr. McGlennon stated there was a discussion about the types of equipment and asked if there was a maximum number of pieces that would be allowed.

Ms. Cook stated the number was limited by the gravel storage area which could not be exceeded.

Mr. McGlennon stated there was room for other vehicles.

Ms. Cook stated that there was additional space for maneuvering vehicles.

Mr. McGlennon stated there were no conditions relating to employees parking on the site.

Ms. Cook stated that there were limitations placed on this.

Mr. Harrison asked how many employees there were and asked if there were additions planned.

Ms. Cook stated the applicant indicated to staff that there were four employees including himself.

Mr. Soderholm stated there were two full-time employees and two part-time employees and noted that one employee drives, two employees walk, and one employee gets dropped off at work.

Mr. McGlennon asked what the summertime complement would be.

Mr. Soderholm stated that during the summer, he kept two part-time and two full-time employees each year. He stated that there was a maximum of two cars parked at the site during the summer.

Mr. Bradshaw asked about Condition 2.b and the relation to pervious pavers.

Ms. Cook stated the language would allow flexibility as long as it meets environmental requirements.

Mr. Icenhour stated the recommendation for denial was based on the property being in a platted residential subdivision, as other cases have been larger parcels in A-1 zoning district in more rural areas with natural screening and distance. He asked if there were similar businesses along Centerville Road with A-1 zoning.

Ms. Cook stated it was zoned A-1 to the east and mixed use to the west. She stated that generally the nearby businesses were non-conforming uses and have been there for some time.

Mr. Icenhour stated that a platted residential community differed from a five-acre parcel zoned A-1.

Ms. Cook stated the designation of being Low-Density Residential combined with the small lot size and buffers made this case different from other cases.

Mr. Icenhour stated that beside the issue of employees coming to the site, there was concern about the outdoor storage area, consisting of 335 square feet of gravel storage, a carport, garage storage, and open air storage where vehicles were parked.

Ms. Cook stated this was correct.

Mr. Icenhour stated the SUP limited storage to the size and location of the current area of storage. He stated it does not have a specific type of storage. He expressed concern that since this runs with the property, whoever buys it has the SUP and can run a business on this land. He asked that if this was approved, how to clarify the conditions.

Ms. Cook stated the condition as written refers to the photo as Attachment 3, and limits the storage to the specific items in the photograph.

Mr. Icenhour asked if this would provide adequate future enforcement.

Ms. Cook stated this was correct.

Mr. Harrison asked about a limit on the number of equipment vehicles.

Ms. Cook stated that could be a condition, but staff did not put that in because some equipment could change over time.

Mr. Harrison stated the amount of equipment was sufficient for the crew, and asked how much additional equipment would be needed and how this could be limited.

Mr. Soderholm stated the business was based in grass cutting and maintenance and tree work. He stated he runs one crew and has no intention of expanding the staff. He stated at the point he planned to expand, he would move the business away from his home.

Mr. McGlennon asked if there were a number of vehicles that would capture the maximum vehicles or equipment on the site.

Mr. Soderholm stated there were nine pieces of equipment if lawn mowers were counted as equipment.

Mr. Harrison asked if the potential future use of the business was in concern. He asked about what would be fair to include as equipment.

Mr. Soderholm stated that the equipment was what would fit within the square footage allotted.

Mr. Harrison asked if there was a comfort level with the SUP language.

Mr. McGlennon recommended board members give their feeling and opinion for staff's knowledge.

Mr. Harrison stated he favored the small business, but limitations should be set in place to maintain the size and use with clear limitations.

Mr. Icenhour thanked the applicant for clarifying and reassuring the Board to some of the concerns about setting precedence. He stated he could support this application with clarification of the type and number of pieces of equipment to be stored on the property.

Mr. Goodson stated he was uncomfortable with the SUP as it would continue with the property. He stated he felt it was not an appropriate use for a neighborhood parcel and at this point he could not vote for approval.

Mr. Bradshaw stated the Comprehensive Plan designation as Low-Density Residential complicated this case and noted that similar enterprises were in land designated Rural Lands which has set criteria that is different from Low-Density Residential.

Mr. McGlennon stated he has similar reservations and stated that the business is well maintained. He stated he has difficulty with the precedence which will be set and the previous business moved because of concerns from the neighborhood and concerns about the size of the parcel. He further stated that he could support the application with a change in conditions regarding equipment storage or he would vote to deny the application.

Mr. Bradshaw made a motion to deny the application.

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

The motion carried to deny the application.

2. Case No. SUP-0026-2007. Williamsburg Dodge Trailer Sales

Mr. Jason Purse, Planner, stated Mr. John Dodson, on behalf of Williamsburg Auto Group, has applied for an SUP to amend the existing SUP conditions to allow trailers to be sold at the Williamsburg Dodge Dealership located at 7101 Richmond Road and further identified as Parcel No. 2410100008. The property consists of 6.4 acres and is zoned B-1, General Business, with a Comprehensive Plan designation of Community Commercial.

Staff found the proposed amendment to sell utility trailers, in addition to selling automobiles at the existing Williamsburg Dodge dealership, is a valid commercial enterprise and complementary land use. Staff also found that the conditions placed on this SUP mitigate possible aesthetic concerns about the display of the trailers along Richmond Road.

At its meeting on November 7, 2007, the Planning Commission recommended approval by a vote of 6-0.

Staff recommended approval of the application.

Mr. Harrison asked why it was suggested not to allow trailer activities if it were warranted in the future at the Honda site.

Mr. Purse stated there were two different sites. He noted that the Dodge dealership is the focus of this application, and the Honda site has an SUP. He stated staff felt that it may not be appropriate to put conditions on a different site.

Mr. McGlennon stated the applicant said that he/she did not intend to use the other site, and this was not relevant to this case.

Mr. Icenhour stated it seemed like a request to transfer the use, but he was uncertain that it was not transferring from one to another. He indicated that he was comfortable with having the SUP in both locations, but he wanted to verify the intent.

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 approve the resolution.

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

RESOLUTION

CASE NO. SUP-0026-2007. WILLIAMSBURG DODGE TRAILER SALES

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

WHEREAS, Mr. John Dodson has applied on behalf of the Williamsburg Auto Group for an SUP to allow for a sale of trailers on approximately 6.4 acres of land on parcels zoned B-1, General Business; and

WHEREAS, the conditions for this application replace the originally approved SUP conditions (SUP-20-99) for this parcel; and

WHEREAS, the proposed site is shown on a conceptual layout, entitled "Master Plan for cargo trailer display and parking," and dated August 27, 2007; and

WHEREAS, the property is located at 7101 Richmond Road, and can be further identified as James City County Real Estate Tax Map/Parcel No. 2410100008; and

WHEREAS, the Planning Commission of James City County, following its public hearing on November 7, 2007, recommended approval of this application by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-26-07 as described herein with the following conditions:

1. This special use permit shall allow for vehicle and trailer sales and service and accessory uses thereto as shown on the Master Plan titled "Master Plan for cargo trailer display and parking Williamsburg Dodge" dated August 27, 2007 (the "Project"). Development of the Project shall be generally in accordance with the above-referenced Master Plan as determined by the Development Review Committee (DRC) of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the Project. The boundary of this property (the "Property") shall include the 6.4 acres of land for Parcel No. 2410100008 as shown on the Master Plan, for the purposes of the special use permit.
2. There shall be no more than twelve trailers displayed at any given time in the front bay of parking directly adjacent to Richmond Road. All twelve trailers shall be located in the parking bay closest to the northeast property corner of the site and the trailers shall be parked perpendicular to Richmond Road. All other trailers shall be stored in the parking area to the rear of the main building on-site as shown on the Master Plan. Of the twelve trailers displayed in front of the dealership in the spaces perpendicular to Richmond Road, no more than five shall be an enclosed trailer at any given time and none of the twelve

trailers on display shall be longer than twenty feet. No signs or banners shall be placed on any trailers. All trailers shall be placed on existing paved areas.

3. The applicant shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources. The water conservation standards shall be approved by the James City Service Authority within three months of adoption of this special use permit and shall apply to any future building construction or renovation and any new landscaping plans.
4. Any proposed changes to the previously approved landscaping plan and installed landscaping shall be submitted to and approved by the Planning Director prior to alterations being made.
5. No exterior loudspeaker system shall be installed.
6. Lights not needed for security purposes shall be turned off after 9:00 p.m. Lights left on during non-business hours shall be identified on the lighting plan.
7. An enhanced landscaping plan shall be submitted to, and approved by, the Planning Director. For the purposes of this section, "enhanced landscaping" shall mean landscaping which includes specimen trees along Richmond Road placed in such a way as to establish a streetscape effect.
8. Landscape areas along Richmond Road shall remain free of all signage (with the exception of one monument style sign that conforms with the sign ordinance), vehicles, and display structures. For the purposes of this section, a "monument" style sign shall be defined as a free-standing sign with a completely enclosed base not to exceed thirty-two square feet in size and not to exceed eight feet in height from grade.
9. A six-foot sidewalk shall be constructed along Richmond Road.
10. With the exception of one American flag and one State of Virginia flag, not to exceed 12 square feet each, no flags shall be permitted.
11. Vehicles for sale shall remain at grade (i.e., no elevated display structures shall be allowed).
12. No service bays shall face Richmond Road.
13. The height of all structures shall be limited to 35 feet.
14. The on-site car wash shall be used exclusively by the dealership during regular business hours. The car wash shall be of a type that uses recycled water. The car wash shall not be open to the general public.
15. Additional right-of-way shall be reserved along Richmond Road to accommodate a Class II bike lane.

16. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. Case No. ZO-0009-2007. Zoning Ordinance Amendment-Wireless Communications Facilities - Height Limits Amendment

Mr. Jason Purse, Planner, stated that staff has received a request from AT&T Cingular Wireless Communications to amend the Zoning Ordinance to allow for mounted wireless communication facilities atop water towers over the height of 120 feet. The request is coming forward at this time because the wireless towers are located atop water towers that are scheduled to be torn down. The new water towers have been approved but under the current language in the Zoning Ordinance, the towers would not be allowed to relocate onto the new water towers. The language change would allow alternative mounted structures over 60 feet, but not to exceed the already approved height with an approved height waiver. The only districts not affected are M-1, Limited Business/Industrial, M-2, General Industrial, and RT, Research and Technology, as they already allow alternative mounted structures over 120 feet with the approval of a height waiver.

Staff believes it is important to allow alternative-mounted structures on already approved structures in order to minimize the need for conventional Wireless Communication Towers in the County and to avoid visual intrusion wherever possible.

Staff recommended approval of the Zoning Ordinance amendments.

At its October 19, 2007, meeting, the Policy Committee unanimously recommended approval of amendments. At its November 7, 2007, the Planning Commission recommended approval of the amendments by a vote of 6-0.

Mr. Goodson asked if there was a separate height variance for the water tower and the cellular tower.

Mr. Purse stated the water tower would require approval and any subsequent antenna structure would require approval, but the variances could come forward simultaneously.

Mr. Goodson asked if this was a requirement of the ordinance

Mr. Purse stated the maximum height is increasing, but the procedure remains the same.

Mr. McGlennon asked if the antenna would be above any part of the structure.

Mr. Purse stated it would not.

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 ordinance amendment.

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

4. Case No. ZO-0008-2007. Zoning Ordinance Amendment-Residential Cluster Master Plan Consistency

Mr. Purse stated at its August 1, 2007, meeting, the Planning Commission recommended that staff look into amending the Residential Cluster section of the Zoning Ordinance in order to evaluate the Master Plan amendment process. Staff, working with the Policy Committee, looked at the other sections of the ordinance that deal with Master Plans, and on the recommendation of the Committee members, staff altered the Residential Cluster ordinance language to more closely mirror other sections of the ordinance (mixed-use and PUD) which allow for development plan consistency to be reviewed by the DRC. The section that allowed for an amendment to the Master Plan to be approved administratively was deleted and a section was added that allows the Planning Director to approve minor changes to the development plan if it meets certain criteria. Upon approval, the Planning Director will notify the chair of the Development Review Committee of the minor consistency determination.

Mr. Purse stated that the new language is consistent with what is present in the other sections of the ordinance, except that it also allows flexibility for the Planning Director to review minor changes to the development plan. At the November 7, 2007, Planning Commission meeting, one Commissioner recommended the addition of the phrase "or classification of housing" to Section (d)(1) of the amendment. The rest of the Commission and staff concurred with the addition, and that language is represented in the ordinance provided.

Staff recommends approval of this ordinance amendment. At its October 19, 2007, meeting, the Policy Committee voted 4-0 to recommend approval of the amended language. At its November 7, 2007, meeting, the Planning Commission recommended approval of this amendment to the Board of Supervisors by a vote of 6-0.

Mr. McGlennon opened the public hearing.

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

Mr. Bradshaw made a motion to adopt the ordinance amendment.

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

5. Case No. ZO-0010-2007. Zoning Ordinance Amendment-Affordable Housing

Ms. Kate Sipes, Planner, stated staff was proposing a revision to the definition of affordable housing in the Zoning Ordinance which uses the Consumer Price Index (CPI) to adjust the cited affordable housing definition price. Ms. Sipes stated the revised language shall be those endorsed annually by the Board after receiving recommendation from the Office of Housing and Community Development based on local Housing and Urban Development (HUD) income limits. Ms. Sipes explained that this amendment was intended to make the definition of affordable housing more applicable to the current market.

At its meeting on November 7, 2007, the Planning Commission recommended approval unanimously.

Staff recommended approval.

Mr. McGlennon opened the public hearing.

1. Mr. Robert Duckett, Peninsula Home Builder's Association (PHBA) Public Affairs director, stated that his organization supported this ordinance amendment, and is looking forward to working toward workforce housing.

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

Mr. Bradshaw made a motion to approve the ordinance amendment.

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

6. A resolution to amend a conservation easement on approximately 98 acres of property located at 2875, 2945, and 2975 Forge Road

Mr. Adam Kinsman, Deputy County Attorney, stated the resolution amends the Perry easement, obtained July 2006. He stated in December 2006 there were amendments and at this time the Perrys have requested further amendments. He stated there were copies of the deed included in the Reading File, and there were a number of minor changes that further restrict actions on the property in order to help the property owner obtain IRS tax credits. He stated staff did not feel there was anything detrimental in these changes and recommended approval. He indicated that the attorney for the property owners was present for questions.

Mr. McGlennon opened the public hearing.

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

Mr. Bradshaw 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

AMENDMENT TO A CONSERVATION EASEMENT - 2945 AND 2975 FORGE ROAD

WHEREAS, on July 26, 2006, James City County (the "County") assigned its interest to purchase 88 acres of real property located at 2945 and 2975 Forge Road, designated as Tax Parcel Nos. 1230100021 and 1230100022, to Elwood and Sharon Perry (the "Perrys") in exchange for a conservation easement on the Property; and

WHEREAS, on July 26, 2006, a conservation easement designed to protect the agricultural nature of Tax Parcel Nos. 1230100021, 1230100022, and the adjacent Perry property identified as Tax Parcel No. 1230100022A (collectively, the "Property") was recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and the County of James City as Document No. 060018317; and

WHEREAS, on December 13, 2006, the conservation easement was amended to, among other things, reduce the number of permitted subdivisions of the Property and such amended conservation easement was recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and the County of James City as Document No. 060030931; and

WHEREAS, the Perrys have requested that the conservation easement be further amended to increase the likelihood that such easement will comport with applicable Internal Revenue Service and Treasury Department regulations relating to tax credits; and

WHEREAS, the proposed revision to the conservation easement on the Property will continue the County's purpose of protecting the rural and agricultural nature of the Forge Road corridor and will continue to prevent inappropriate development of the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize and direct the County Administrator to execute the necessary documents to amend the conservation easement.

7. An Ordinance to amend Chapter 20, Taxation, of the JCC Code Article IV, Transient Lodging Tax, Section 20-14, Tax Levied

Mr. Leo Rogers, County Attorney, stated this is an update to the County Code to delete the expiration date for the \$2 room tax for the Historic Triangle. He indicated that York County and the City of Williamsburg have deleted this as well. He recommended approval of the ordinance amendment.

Mr. McGlennon stated this was a removal of the sunset clause for the \$2 room tax based on General Assembly action.

Mr. McGlennon opened the public hearing.

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

Mr. Icenhour made a motion to approve the ordinance amendment.

Mr. McGlennon stated the room tax has allowed significant marketing in the area and helped to create a successful year for the hotel industry.

Mr. Bradshaw stated the Williamsburg Hotel Motel Association brought this forward and supports the action.

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

8. An Ordinance to amend JCC Code, Chapter 16A, Purchase of Development Rights Program

Mr. Ed Overton, PDR Administrator, recognized Bruce Abbott as chairman of the PDR Committee. Mr. Overton stated the PDR Committee, with staff concurrence, recommended amendments to the PDR code and PDR program for greater flexibility for future participants. Mr. Overton stated he believed this would result in additional applicants without compromising the integrity of the program. He stated the changes established more flexible restrictions on future dwellings, future subdivisions, restrictions on signage and commercial use of parcels. He stated the ordinance amendment removed signage, restrictions in order to apply the Comprehensive Plan sign ordinance. He said there would also be consideration of rural land uses and agricultural uses permitted by zoning uses on A-1 property. He said the other changes were housekeeping items related to approval.

Staff recommended approval of the amendments.

Mr. Bradshaw asked about guidelines, which may change from year to year and may be used in selection of parcels and easement, but guidelines would not change previously granted easement.

Mr. Overton stated this was correct.

Mr. McGlennon stated this was an issue addressed at a work session.

Mr. Overton stated this was correct.

Mr. McGlennon opened the public hearing.

Mr. Robert Duckett, PHBA Public Affairs representative, stated his organization supported the proposed amendments to the PDR ordinance, and stated PHBA believed public benefit should be paid to landowner by the public.

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

Mr. Bradshaw made a motion to adopt the ordinance.

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

9. An Ordinance to amend JCC Code, Chapter 23, Chesapeake Bay Preservation, Resource Management Area Buffers

Mr. Mike Woolson, County Engineer, stated the revisions to the Chesapeake Bay Preservation Ordinance were based on the Board approved Powhatan Creek Watershed Management Plan from 2002 and the 2003 Yarmouth Creek Plan. He said staff came back before the Board in a work session on June 27, 2006, and proposed how to implement priorities not adopted by the plans. He noted that foremost of those issues were intermittent stream buffers, non-RPA wetlands buffer, and an expanded main stem buffer. He said that on August 8, 2006, staff was back before the Board for more direction, and provided a Reading File item on September 11, 2006, outlining the proposed changes for legislative and by-right cases. He stated on October 10, 2006, the Board readopted and reapproved both plans for those with the changes with buffers taking place on legislative cases only. He stated the ordinance amendment sought to codify the changes that were adopted. Mr. Woolson explained that there were three separate sections that were being changed: 11.a which provided for a 50-foot intermittent stream buffer and a 50-foot non-RPA wetland buffer; 11.b which provided for an automatic 175-foot main stem buffer that is variable based on an exception process that can be pursued by the developer and can be given administrative approval by staff; and 11.c which established a 25-foot outer buffer with no impervious cover. Mr. Woolson presented a map that outlined specific parcels affected by the ordinance amendments.

Mr. Thomas explained the exception process was to provide for flexibility in Zone 2 – 175-foot variable buffer zones based on features such as steep slopes, species, soil erosion areas, and ridges. He stated the new language provided ample flexibility and an enhancement of protection for main stems where there was none. He stated he felt the new flexibility preserved the intent of the chapter and would not be detrimental to water quality.

Mr. Bradshaw asked about the relief implied by the necessary minimum for relief.

Mr. Thomas stated that it would be relief for a 175-foot buffer to reduce the buffer based on characteristics of the site.

Mr. Bradshaw stated he did not interpret the language as what could be done to reduce the buffer, but that it was a minimum and therefore could not be reduced.

Mr. Thomas stated that is a guide for the administrative process, and it is intended to be flexible for the 175-foot buffer width.

Mr. Bradshaw asked for examples of the flexibility.

Mr. Thomas stated that provisions as applied to the Chesapeake Bay provision would be granted administratively, such as a deck on a non-conforming structure. He said staff would apply the same criteria when looking at a request to reduce that buffer.

Mr. Bradshaw stated that the provision is for undeveloped lots coming forward to be developed rather than existing lots.

Mr. Woolson stated this was correct, and noted that all single-family and all existing lots platted for single-family were exempted. He stated that there were existing practices to handle encroachments such as road crossing, stormwater outfalls, sanitary sewer, and this was still happening in variable width buffers. He stated the amendment was to allow for the process to be reduced to allow those impacts without going through the Chesapeake Bay Board.

Mr. McGlennon stated the rule was to have a 175-foot buffer, but when there was a request for an exemption to create the same conditions, and then it would be allowed administratively.

Mr. Woolson stated this was correct and those things which would maintain an easement, such as sanitary sewer easement, would be allowed.

Mr. Bradshaw stated three items were listed as exceptions, and asked if these were the only flexible matters.

Mr. Woolson stated this was for existing features. He said that if there was something that the developer wanted to preserve, such as rare and threatened species area or steep slopes, these could be maintained but could decrease buffer on another portion of the easement to allow for development on areas that may not have the features.

Mr. Bradshaw stated that the site characteristics were to maintain the buffer.

Mr. Woolson stated there was no intention to extend beyond the required 175 feet.

Mr. Thomas stated that the goal was to do a 175-foot buffer along the main stem, but if it crossed a ridge line then it was not necessary to go the entire 175 feet.

Mr. Bradshaw asked what other than ridge lines would be acceptable.

Mr. Thomas stated one feature would be a steep slope pocket beyond the 100-foot zone.

Mr. Goodson asked if any other localities are using this type of criteria.

Mr. Woolson stated other localities were researched and while none were in Virginia, some localities in Georgia were using something similar. He stated staff's intention was to simplify the process.

Mr. Goodson stated he felt it was a complicated issue.

Mr. Icenhour stated the original proposal is for a 300-foot fixed main stem buffer, which was a matter of discomfort for the Board, and so there was a compromise of a 100-foot buffer which was required and a variable width buffer including the three criteria.

Mr. Bradshaw stated he was not sure that this was the compromise that spoke of a variable width buffer with flexibility, which was the direction.

Mr. Woolson stated this has become very complicated for the 19 parcels that would be affected and noted that the variable width aspect would ensure flexibility.

Mr. Bradshaw stated he appreciated the simplicity. He asked about certain characteristics of the land, such as heavily wooded areas, that would allow for a decrease in buffer width.

Mr. Woolson stated he would agree with those types of characteristics.

Mr. Bradshaw asked how this fit into the ordinance.

Mr. Woolson stated the example of the ridgeline was the easiest to comprehend.

Mr. Bradshaw stated it was the only one mentioned.

Mr. Woolson stated a memorandum from October 10, 2007, cited a listing of examples.

Mr. Bradshaw asked how it would be incorporated in by-right development.

Mr. Thomas stated that it would be geared toward a 100-foot regulatory buffer, but this would be used for relief. He stated he could commit to flexibility in review of these buffer requirements. He stated he would work with developers to create a balance of restrictions and meet the intent of the ordinance.

Mr. Bradshaw stated that he would like the ordinance to provide the flexibility to provide that power.

Mr. Harrison stated he felt it would be important to see the language in writing to set a precedent.

Mr. Goodson stated he would feel more comfortable if more direction was requested at a previous work session. He also expressed concern that 40 adjacent property owners had not been notified.

Mr. Woolson stated that the Planning Commission also suggested that they were supportive of an ordinance overlay, a 10-percent impervious cover cap, and BMPs that promoted recharge. He stated staff did not get guidance from the Board on the other items.

Mr. Goodson stated at the work session last year he requested notification to adjacent property owners.

Mr. Harrison stated the notification process was important.

Mr. Icenhour stated he agrees, but he felt that this process has been going on for some time, and every property owner was notified of watershed adjustments. He stated this applies to cases in the legislative process and it was stated clearly that it would go further toward by-right development. He stated he felt there was ample opportunity for input.

Mr. Goodson stated the variable width buffer requirements were new business.

Mr. Icenhour stated it was part of the watershed plan.

Mr. Harrison stated this was not passed but was thoroughly discussed in work session.

Mr. Icenhour asked if there were buffer options for legislative cases in the watershed plans.

Mr. Woolson stated this was correct.

Mr. Icenhour stated the process was done to allow for input, and there was a different set of criteria for by-right development over legislative cases.

Mr. Goodson stated the Board requested variable buffer, and this proposed amendment has exceptions but no variable width component.

Mr. Icenhour stated this was the intent.

Mr. Goodson stated he would like to see it in the ordinance.

Mr. Woolson stated the exception process for Section 11 is an administrative process and does not require notice or a Chesapeake Bay Board hearing.

Mr. Goodson stated there was no notice for the specific ordinance changes.

Mr. McGlennon stated he did not feel there was specific guidance for staff.

Mr. Goodson asked the Board not to rush to judgment.

Mr. McGlennon stated this has been an ongoing process.

Mr. Goodson stated he had not seen the exact language in adequate time.

Mr. Icenhour stated that a number of items were passed that were presented in the same amount of time. He stated he does not see the need to delay.

Mr. Goodson stated he thought that additional information would be presented before the ordinance.

Mr. McGlennon asked that objections be presented as direction to staff.

Mr. Goodson asked that the adjacent property owners be notified to allow for their input.

Mr. McGlennon stated that there were extensive public meetings to discuss the matter and receive input.

Mr. Goodson stated he did not feel that he was adequately informed.

Mr. McGlennon stated he supported the matter in the past.

Mr. Godson stated he supported a variable width buffer and he did not see that in the language presented.

Mr. Icenhour stated a legislative process is a long process and the Board will sit in judgment for a variable width buffer. He asked if by-right development should have to be put in this circumstance when there is an ability to do this administratively instead.

Mr. Goodson stated there would be no additional improvement with the buffer requirements.

Mr. Icenhour stated the by-right standard was a 100-foot buffer, which needed improvement.

Mr. Harrison commented that scientific data did not confirm this.

Mr. Icenhour stated the scientific data was not prohibiting the Board from evaluating the amendments.

Mr. Goodson stated he felt the matter could proceed, but he needed to understand the language.

Mr. Bradshaw asked that the County Attorney and environmental staff look at an amendment to read "or site characteristics otherwise adequately protecting water quality at the determination of the environmental director."

Mr. Goodson asked if the ordinance could be rewritten at this time.

Mr. Rogers stated the Board could amend the language as necessary.

Mr. Thomas quoted Section 23-5 of the Chesapeake Bay Preservation to cite land disturbing activities that were all handled administratively through the division and were routinely given administrative approval due to site characteristics. He noted that this was a similar example of a provision that is flexible administratively.

Mr. Bradshaw stated this has language "determined by manager".

Mr. McGlennon opened the public hearing.

1. Mr. Robert Duckett, on behalf of the PHBA Public Affairs office, stated that the buffer restrictions were significant and noted that the sediment control as a result of the buffers was not entirely evident from scientific documentation and testing.

2. Kensett Teller, on behalf of J4C, stated the Coalition supports legislative actions that protect the Chesapeake Bay and requested approval of the ordinance amendments.

3. Mr. Chuck Roadley, on behalf of Williamsburg Environmental Group, stated he was having difficulty explaining issues with respect to the buffers and the water quality improvement. He requested deferral of the item.

4. Mr. Vernon M. Geddy, III, on behalf of his position as a land use attorney, stated that notification of property owners would be the recommended action and requested a deferral.

5. Mr. Henry Stevens, 22431 Cypress Ford Road, stated he was unaware of the public hearing until earlier in the day; had mixed feelings about regulations; and requested flexibility and clear avenues for flexibility. He requested deferral of the item.

6. Mr. Drew Mulhare, on behalf of RealTec Incorporated, asked for a continuation of the public hearing until adjacent property owners could be notified.

7. Mr. Mike Ware, on behalf of the Michelle Point application, stated the criteria for intermittent and perennial streams is variable. He stated this is a long-term decision that he felt that was premature to act on it if there is still confusion from the Board.

8. Mr. Richard Costello, AES Consulting Engineers, 10020 Sycamore Landing Road, commented on different interpretations based on changes in staff. He requested a deferral.

9. Mr. Tim Cleary, 103 Lands End Drive, Powhatan Shores Homeowners Association President, commented that the language was difficult to understand and requested that the item be deferred until property owners are notified.

10. Ms Shereen Hughes, Planning Commission Chair, stated she discussed Code reform and making sure clarity is in the Code, but asked the Board not to trivialize plans such as those for the watersheds. She commented that the width requirements do not guarantee a good buffer. She stated if qualifying comments are required, that should be part of the process and requested special stormwater criteria to encourage a wider buffer. She recommended LID features associated with extended buffers and as agricultural properties change over to residential properties; there were different issues to be addressed such as runoff and fertilizers from lawns. She said there is no measurement of some of the water qualities from residential development and that the public should not assume that agricultural properties will always be a major contributor.

11. Mr. Lyon Hall, 147 Winston Drive, stated he was unaware until recently of this consideration and asked for a deferral for property owners to be notified.

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

Mr. Harrison made a motion to defer the ordinance amendment.

Mr. McGlennon asked for an advertisement for when the consideration will take place and asked that staff notify the property owners.

Mr. Goodson asked if further amendments would be made before the case is reconsidered.

Mr. McGlennon stated that is why he previously asked for more guidance where there were concerns.

Mr. Goodson stated he wanted more flexibility in the language and investigation of the requirements in other localities.

Mr. Horne stated that direction would be helpful. He confirmed that flexibility needed to be clearer and stated Mr. Bradshaw's suggested language was what was in mind, but clarity was most important.

Mr. Goodson stated he would prefer to write special language that provided for exemptions rather than follow the process outlined in Section 23-14.

Mr. Icenhour stated the public input was valuable and said that he could accept deferral. He stated there needed to be a clear plan of action, but he did not want to indefinitely prolong the decision.

Mr. Bradshaw stated he suggested a remedy and he is prepared to adopt it with the amended language to be clarified later if necessary.

Mr. Harrison stated he will not be on the Board to give further input, but he left that the public should be allowed to give some feedback and there should be a timeline. He stated his support for a deferral of the item until the property owners could be notified.

Mr. Wanner stated there were plenty of successful models and staff has participated in forums in regard to this matter. He stated that with a new Board in January there will be a number of items to handle immediately. He recommended taking approximately eight to nine weeks to allow time for advertisement and for staff to gather information and notify property owners.

Mr. Horne stated that February would likely be the earliest. He stated he could set the case up for the second meeting in February.

Mr. McGlennon stated the real issue is the variability of the buffer. He stated there should be enhanced buffers. He noted the question of focus is the clarity of the flexibility, which was the goal of the watershed study, work sessions, public hearings, and arguments of the development community. He stated that he did not want to redo the process. He said he would like to give people a chance to express their opinions, but he wanted to ensure the ordinance properly provided a vehicle for variability in clear terms. He said he was not interested in reopening the entire buffer issue.

Mr. Icenhour stated he was not interested in redoing this process. He stated he felt the public needed to be notified and allowed to comment, and that staff should clarify ordinance for a better definition of the flexibility. He proposed that staff draft language for the second meeting in February, and that language should be made available to the public earlier.

Mr. McGlennon asked if the general acceptance of enhanced buffers is supported by Mr. Goodson.

Mr. Goodson stated he supported it in legislative cases only.

Mr. McGlennon stated if there is concern about this issue, to adopt the amendment and then make revisions. He stated he did not support the motion to defer and asked for something to reflect the understanding of the consensus of the Board.

Mr. Harrison stated he did not want to dictate the actions of a future Board.

Mr. McGlennon stated a motion to defer did not have to be accepted.

Mr. Harrison stated the question was over clarity and flexibility.

Mr. Rogers stated the motion was to defer this item to the second meeting in February.

Mr. Icenhour asked if Mr. Goodson was comfortable with the concept.

Mr. Goodson stated that he was uncomfortable with the concept.

Mr. Icenhour stated that with additional information he would still have objections even though he supported the matter for legislative cases.

Mr. Goodson stated he would not vote for the ordinance tonight.

Mr. McGlennon stated he would vote against the motion to defer with a commitment to revisit the ordinance to clarify the amendment suggested by Mr. Bradshaw to clarify the issues.

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

The motion to defer failed.

Mr. Bradshaw made a motion to adopt the ordinance with the amendment of inserting the language in Paragraph 11.b after the second sentence "or site characteristics otherwise adequately protecting water quality at the determination of the environmental manager."

Mr. Goodson stated he will be voting in the affirmative to amend and revisit at the next meeting.

Mr. Rogers stated there could be a motion to reconsider, if made by a Board member who voted in the majority, which could bring the item back for reconsideration and readvertisement.

Mr. Goodson stated he would prefer the former.

Mr. McGlennon stated he did not understand this.

Mr. Goodson stated he would support it in order to request readvertisement for next year so he can vote against it.

Mr. McGlennon stated he felt there were significant improvements to be made, but he felt there needed to be something in place to work from on this issue. He supported efforts to revisit the issue to build in flexibility but he felt it was important to move forward tonight.

Mr. Harrison stated he did not have the opportunity to work on this item further as he would not longer be on the Board and requested not to rush into a decision.

Mr. Icenhour stated he could support a deferral on this item or reconsidering the item to allow for public comment.

Mr. Goodson asked why vote on something that requires further public comment.

Mr. McGlennon stated there has been a movement away from consensus that was though to be present.

Mr. Goodson stated he has made his objections clear through the whole process.

Mr. McGlennon stated Mr. Goodson supported the previous resolutions.

Mr. Goodson stated notification and more information was promised previously, and noted that he did not want to pass something that requires further adjustments. He requested that the item be taken to the first regular meeting in January.

Mr. Icenhour asked if the watershed plans would be reopened.

Mr. Goodson stated that was not in the motion.

On a roll call vote, the vote was: AYE: Bradshaw, Goodson, Icenhour, McGlennon. (5). NAY: Harrison (1).

10. Resolution authorizing the sale of a six-acre parcel of property located at 3100 John Tyler Highway and identified as RE Tax Map No. 4510100018

Mr. Adam Kinsman, Deputy County Attorney, stated the public hearing was advertised to consider the sale of the property and since then, the property owner has decided on other actions. Mr. Kinsman requested the Board take no action.

Mr. McGlennon opened the public hearing.

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

Mr. McGlennon recessed the Board for a brief break at 11:24 p.m.

Mr. McGlennon reconvened the Board at 11:33 p.m.

J. BOARD CONSIDERATIONS

1. Michelle Point Proffer Amendment (Deferred from November 13, 2007)

Ms. Kate Sipes, Planner, stated the case was deferred on November 13, 2007, for review of subsequent information. The recommendation has not changed, and though there is an improvement over the recommended proffers, staff does not believe this is consistent with other cases. Staff recommended denial on the basis that the proffer amendment should allow for consideration of a revised financial package for the case to evaluate further benefits.

Mr. Goodson stated the revised proffers offered more to the County and can support the resolution. He made a motion to approve the resolution.

Mr. Harrison asked about the most recent portion of the development that has an increase in affordable housing without a proffer toward schools and nothing proffered for the market-based housing. He said the development is further behind the costs now than when it did not meet the adequate public facilities test.

Mr. Jay Epstein, on behalf of the applicant, stated school proffers take into account the children that are already present, originally 49 and readjusted to 41. He stated that moving financing for affordable housing with the change to the Marshall Swift index will allow for more low-cost homes to come online more quickly.

Mr. Harrison stated that the number of affordable housing units would be moved from the other cases to this case.

Mr. Epstein stated SPARC (Sponsoring Partnerships and Revitalizing Communities) mortgages go to mixed-cost housing, and this money is applied for by the County's Housing office. He stated that without the units in this application, the money toward affordable housing would go unspent and the Housing office would likely suffer a loss in the future for this kind of funding.

Mr. Harrison stated his concern that there was not a future amendment request to change the number of affordable units in other locations.

Mr. Epstein stated this was not correct and this was just funds available. He stated that he is trying to fill a void of affordable housing being built.

Mr. Bradshaw stated he agreed with staff that it would not be prudent to recommend approval in this case and he stated this brings significant benefits to the County, but he would not want to reopen all proffers in order not to discourage those who want to improve proffers. He asked that the Board in the future be reluctant to reopen the proffers and improve based on current standards. He stated he felt this case was of significant benefit with the soft-second mortgages.

Mr. Icenhour stated the clear benefit was the soft-second mortgages. He expressed concern about the significant difference in funds per unit and stated the Board should not set a precedent of reopening proffers.

Mr. Goodson stated the project would still be built, but this was a chance for better design standards.

Mr. Icenhour stated density was changed.

Mr. Goodson stated this application does not change density and he can support this application. He noted that in by-right development, the applicant could be exempted from the school proffer policy for a better design.

Mr. McGlennon stated that there needed to be recognition of the reasonable increase of cost and the benefit to the County through the soft-second mortgages, but he did not know how well this proffer amendment would work. He said he would like to see more effort to recognize that reopening the proffers is creating a different type of situation. He said he felt this case would set a precedent for future cases. He asked staff what the potential would be for this type of case coming forward again.

Ms. Sipes stated relative to cost of affordable housing units increased, the other projects that have had affordable units included in proffers that are not unbuilt to look at this case would be possible. She stated Mr. Rick Hanson's office would not be able to qualify some of his applicants for a price range through a long-term qualification process because they could not determine sales prices.

Mr. Bradshaw asked if there were others that do not use Marshall Swift index.

Ms. Sipes stated that the County has been using Marshall Swift in proffer language for roughly 18 months so there would be applications that do not use this.

Mr. Ware stated that Liberty Crossing does not use Marshall Swift, but from this point forward, regarding converting to Marshall Swift, the only other case that would be applicable would be Liberty Crossing.

Mr. Harrison asked if these cases were prior to the cash proffer policy.

Mr. Ware stated that he was unsure about the Liberty Crossing, but the others were.

Ms. Sipes stated Jennings Way and Chestnut Grove were approved after the adoption of the cash proffer policy.

Mr. Icenhour stated those cases exceeded the policy at that time.

Mr. McGlennon asked if there was exceptional danger of precedent.

Mr. Icenhour stated if those come forward for adjustment of the proffer package, there is no definite action that can be established that would deter other cases coming forward for readjustment.

Mr. McGlennon stated he is unable to support this without some recognition of the school proffer policy.

Mr. Goodson stated there would be stale zoning in the County.

Mr. McGlennon stated that not many rezonings come forward. He stated that the proffers need not come in at current level, but there should be some kind of recognition of contribution to the school capital.

Mr. Harrison stated the taxpayers are going to be paying more for schools regardless of the increase of children.

Mr. Goodson stated there was already zoning for the number of units, and this application is not increasing the number of units.

Mr. Ware stated the objective is to provide affordable housing and the way to do that is to sell market price units first.

Mr. Harrison stated he supported affordable housing and he thought he voted against the original application due to impact on the schools.

Mr. Ware stated this project is already approved and there will already be school impact.

Mr. Harrison asked why it could not be focused on market-rate housing.

Mr. Epstein stated the market-rate homes in this application are below the market rate in James City County. He indicated that he could not add to price of homes.

Mr. Icenhour stated in other applications the proffers have been met. H asked if this means that since cash proffers for schools have been set, developers would be unable to do workforce housing.

Mr. Epstein stated there would not be any single-family affordable housing units with the current cash proffer policy and developers would commute affordable housing into townhomes at a lower cost.

Mr. Harrison stated that he felt this was a good project, but he felt it was the wrong time. He stated he did not agree with passing the impact of the schools onto the general public without any amount given by the applicant.

Mr. Epstein stated this does not cover costs and he is already contributing to the community with the soft-second mortgages.

Mr. Harrison asked if more of the project could come online quicker.

Mr. Epstein stated money allocations would be utilized now with Michelle Point to fulfill the obligations of the Office of Housing and Community Development. He noted that the County could be penalized if the mortgage financing was not utilized.

Mr. Harrison asked about moving the project forward more quickly.

Mr. Epstein stated eleven units could be built this year at Michelle Point and 16 units could be built at Chestnut Grove later in the year, so the increase would be eleven units.

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

The motion failed.

2. James City County Devolution Analysis – Secondary Roads Study (Route Nos. 600 and above)
(Deferred from November 27, 2007)

Mr. Steven Hicks, General Services Manager, stated this was a resolution of intent to assume the secondary roads system which staff has been studying for two years, and it clarifies a past resolution. He stated this allows the County Administrator to begin negotiations with VDOT to assume the secondary road system, and if these negotiations are acceptable from staff's perspective, this consideration will come before the Board. He indicated that the provision has been built in to allow the County to withdraw from the agreement even after the assumption of the responsibility of secondary roads. He asked for adoption with the intent of assuming responsibility and entering negotiations.

Mr. Bradshaw made a motion to adopt the resolution. He noted that the negotiations would be required to see how the process would work and make an educated decision.

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

RESOLUTION

RESOLUTION OF INTENT AND TO RESUME RESPONSIBILITY FOR THE SECONDARY SYSTEM OF HIGHWAYS

WHEREAS, Section 33.1-84.1 of the Code of Virginia permits a county to resume responsibility for any or all maintenance, construction, and operations functions of the secondary system of highways within its boundaries; and

WHEREAS, Section 33.1-84.1 of the Code of Virginia also requires that the County Board of Supervisors formally express the County's intent to resume the desired responsibility by resolution; and

WHEREAS, the Virginia Department of Transportation has published a *Guide to County Assumption of Secondary Roads* which describes the options available to counties and outlines the steps in the devolution or resumption process; and

WHEREAS, the Board of Supervisors of James City County, Virginia, requests that the Virginia Department of Transportation (VDOT) accept this resolution as indicative of its support and intent to resume responsibility for construction and maintenance functions on the secondary system of highways within James City County commencing with maintenance and construction functions on July 1, 2009.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to negotiate with VDOT to resume responsibility for construction and maintenance functions on the secondary system of highways within James City County.

BE IT FURTHER RESOLVED that James City County requests VDOT to initiate the transition period and implementation plan for the resumption of these referenced responsibilities.

3. Route 60 Relocation - 1) Memorandum of Agreement between James City County and Newport News, 2) Amend the Route 60 Project Administrative Agreement to Administer the Project for the City of Newport News

Mr. Steven Hicks, General Services Manager, stated this resolution allows the County Administrator to amend the current County/State agreement and go into execution of the Memorandum of Agreement (MOA). Staff recommended approval of the resolution.

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

AMEND ROUTE 60 EAST PROJECT ADMINISTRATION AGREEMENT TO ADMINISTER

THE PROJECT FOR THE CITY OF NEWPORT NEWS (0060-047-V11, UPC 13496)

WHEREAS, in accordance with the Code of Virginia to provide localities the opportunity to administer projects financed by the Virginia Department of Transportation (VDOT) and in accordance with the Guide for Local Administration of VDOT; and

WHEREAS, the Board of Supervisors of James City County, Virginia, executed the Project Administration Agreement for Project (006-047-V11) on September 29, 2006, and has expressed its desire to administer the work of the Route 60 Newport News Project (006-121-V14) and the proposed bridge crossing at Skiffe's Creek Project (0060-965-007), located in the Roberts District within James City County beginning at Blow Flats Road and ending at Route 105, Fort Eustis Boulevard; and

WHEREAS, the Board of Supervisors of James City County, Virginia, has expressed its desire to go into an administration agreement with Newport News to administer the Newport News Project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Memorandum of Agreement to administer the Newport News Project and to execute the amended Route 60 Project Administration Agreement.

4. Chesapeake Bay Preservation Ordinance Transition – Amendments and Grandfathering/Vesting Rules

Mr. Mike Woolson, County Engineer, stated this was a grandfathering resolution and recommended adoption of this under the same guidelines of the previous ordinance amendment, modeled after 2004 Chesapeake Bay Preservation Act revision. Staff recommended approval.

Mr. Bradshaw asked if this was a relatively smooth transition.

Mr. Woolson stated the majority of it was clear but some portions were problematic, such as New Town Section 7 and 8.

Mr. Icenhour made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Goodson, Icenhour, McGlennon. (5). NAY: Harrison (1).

RESOLUTION

CHESAPEAKE BAY PRESERVATION ORDINANCE TRANSITION -

AMENDMENTS AND GRANDFATHER/VESTING RULES

WHEREAS, the Board of Supervisors is considering amendments to Section 23-9, Performance Standards of Chapter 23, Chesapeake Bay Preservation, of the Code of the County of James City, Virginia, which would establish buffers to protect certain Resource Management Areas ("RMA"); and

WHEREAS, the orderly transition from the existing Chesapeake Bay Ordinance to the revised Ordinance requires transition rules to affect the changes in law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the grandfathering/vesting rules for the revised Chesapeake Bay Preservation Ordinance, which has an effective date of January 1, 2008, as set forth below:

All site and subdivision plans (conceptual or preliminary) must comply with the revised Ordinance unless the plans fall under one or more of the following criteria:

1. *Final Site and Subdivision Plans.* Approved final plans that are still valid in accordance with Chapters 19 and 24 of the County Code will not be subject to the revised Ordinance. However, revisions to such approved plans that impact protected RMAs (protected RMAs as set forth in Section 23-9(b)(11) of the County Code) will have to comply with the provisions of the revised Ordinance.
2. *Preliminary Site and Subdivision Plans.* Approved preliminary plans that are still valid in accordance with Chapters 19 and 24 of the County Code will not be subject to the revised Ordinance. However, revisions to such approved plans that impact protected RMAs (protected RMAs as set forth in Section 23-9(b)(11) of the County Code) will have to comply with the provisions of the revised Ordinance.
3. *Site and Subdivision Plans in the Review Process.* Plans already in the development review process and those accepted for review prior to the effective date of the Ordinance will not be subject to the revised Ordinance. However, "accepted" shall mean that the plan contains all the information required in the Zoning and Subdivision Ordinance at the time of submission. Any plan determined to be deficient will need to be resubmitted, and if submitted after the effective date, it will have to comply with the revised Ordinance. However, revisions to such plans after submission that impact protected RMAs (protected RMAs as set forth in Section 23-9(b)(11) of the County Code) will have to comply with the provisions of the exception process set forth in Section 23-14(e) of the County Code.

4. Conceptual Plans. Conceptual plans approved prior to the effective date of the Ordinance will not be grandfathered nor will they grandfather any subsequent site or subdivision plans.
5. Rezoning and Special Use Permits (SUPs). Approved rezoning and SUPs will have to comply with the provisions of the revised Ordinance unless the property cannot legally be developed to the proffered density, use, or square footage because of the new rules, or there is a specific feature (such as a house or other structure; a road, storm drain, or some other facility) shown on the proffered zoning plan that is located within the buffers protecting RMAs; in which case the landowner may develop to the proffered density, use, or square footage minimizing any intrusions into the buffers protecting RMAs, to the extent possible. The specific feature must be built consistent with all other applicable zoning and subdivision requirements. Once the specific feature is developed as shown on the proffered zoning plan, the provisions of the Ordinance buffers protecting RMAs shall apply in full to any future development.

K. PUBLIC COMMENT

1. Robert Duckett, PHBA Public Affairs, stated he has an awareness of the requirements of local elected officials to serve the public and commended Mr. Harrison and Mr. Bradshaw on their service on the Board.

L. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner thanked Mr. Harrison and Mr. Bradshaw for their service on the Board and respect for staff and effort on budgets. Mr. Wanner reminded citizens that County offices would be closed on December 24 and 25.

M. BOARD REQUESTS AND DIRECTIVES

Mr. Goodson stated he enjoyed serving with Mr. Harrison and Mr. Bradshaw.

Mr. Icenhour thanked Mr. Harrison and Mr. Bradshaw for their service on the Board.

Mr. Harrison expressed his thanks for the opportunity to serve the citizens for eight years and thanked his colleagues, staff, and citizens of Berkeley District. He indicated that he was moving from James City County and he felt he was able to give back to the community.

Mr. Bradshaw thanked the Board for its service and expressed his pride to be a part of the decision-making process. He thanked Mr. Wanner, staff, and the citizens for the opportunity to serve. He noted that he wanted to complete the Rural Lands ordinance, and he stated he hoped he has set a character for the County through nonpartisanship, openness, stability, and partnership.

Mr. McGlennon stated that he has had a privilege to serve with Mr. Harrison and Mr. Bradshaw. He expressed his appreciation to Mr. Harrison and Mr. Bradshaw for their service to the Board and their careful deliberations that shaped public policy. He thanked the Board for the opportunity to serve in 2007. He reminded the Board about some activities of the year, and noted professional staff and increasingly active

citizens, raising development standards, water quality, transportation issues, land conservation, and the Cool Counties Initiative. He highlighted the redevelopment of Ironbound Square, removal of billboards, lowering the tax rate, revising the assessment schedule, increased relief for lower-income and elderly citizens, and relieving residential property taxes in favor of other sources of funding. He stated the County met the demands of a growing population for public safety, recreation, libraries, and social services, and noted that schools were provided a 16.5 percent increase for Warhill and Matoaka and enhanced technology and an improved program of education. He stated the County began the process for the creation of a 4th middle school and a 9th elementary school to stay ahead of enrollment, built a new stadium, acquired Anniversary Park and the marina, and improved Chickahominy Riverfront Park and Freedom Park. He noted the development of the Historic Triangle campus of Thomas Nelson Community College, the move and renovation of the Norge Depot, and a new facility for the Heritage Humane Society. He highlighted the offices of Economic Development, Administration, and Development Management for bringing commercial and industrial development to the County including Core Six, the Main Street Shops at New Town, Volvo Rents, Avid Medical, and Busch Gardens. He noted the events of Anniversary Weekend for commemorating the events in an embracing way for all the cultures involved so people are free to disagree and can look for common ground. He stated that all these things allowed for the community to recognize the importance of the County and how special it is. He stated his hope that the community would keep this feeling alive beyond 2007, improve policy, and continue in a collaborative spirit. He expressed his thanks for the opportunity to serve as Chairman during this time.

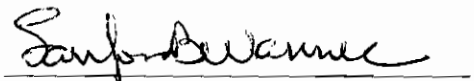
Mr. Wanner stated the Board should adjourn to 4 p.m. on January 2, 2008, for an Organizational Meeting.

N. ADJOURNMENT - to January 2, 2008, at 4 p.m.

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 12:42 a.m. Mr. McGlennon adjourned the Board to January 2, 2008, at 4 p.m.



Sanford B. Wanner
Clerk to the Board

DEC 11 2007ORDINANCE NO. 31A-232**BOARD 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 2, GENERAL AGRICULTURAL DISTRICT, A-1, SECTION 24-218, HEIGHT LIMITS; DIVISION 3, LIMITED RESIDENTIAL DISTRICT, R-1, SECTION 24-240, HEIGHT LIMITS; DIVISION 4, GENERAL RESIDENTIAL DISTRICT, R-2, SECTION 24-261, HEIGHT LIMITS; DIVISION 5, RESIDENTIAL PLANNED COMMUNITY DISTRICT, R-4, SECTION 24-293, HEIGHT LIMITS; DIVISION 6, MULTIFAMILY RESIDENTIAL DISTRICT, R-5, SECTION 24-314, REQUIREMENTS FOR IMPROVEMENTS AND DESIGN; DIVISION 7, LOW-DENSITY RESIDENTIAL DISTRICT, R-6, SECTION 24-335, HEIGHT LIMITS; DIVISION 8, RURAL RESIDENTIAL DISTRICT, R-8, SECTION 24-354, HEIGHT LIMITS; DIVISION 9, LIMITED BUSINESS DISTRICT, LB, SECTION 24-375, HEIGHT LIMITS AND HEIGHT LIMITATION WAIVERS; DIVISION 10, GENERAL BUSINESS DISTRICT, B-1, SECTION 24-397, HEIGHT LIMITS AND HEIGHT LIMITATION WAIVERS; DIVISION 14, PLANNED UNIT DEVELOPMENT DISTRICTS, SECTION 24-496, HEIGHT AND SPACING OF STRUCTURES; DIVISION 15, MIXED-USE, MU, SECTION 24-525, HEIGHT OF STRUCTURES; DIVISION 16, PUBLIC LAND DISTRICT, PL, SECTION 24-535.9, HEIGHT LIMITS.

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 24-218, Height limits; Section 24-240, height limits; Section 24-261, Height limits; Section 24-293, Height limits; Section 24-314 (j), Requirements for improvements and design; Section 24-335, Height limits; Section 24-354, Height limits; Section 24-375, Height limits and height limitation waivers; Section 24-397, Height limits and height limitation waivers; Section 24-496, Height and spacing of structures; Section 24-525, Height of structures, Section 24-535.9, Height limits.

Chapter 24. Zoning

Article V. Districts

Division 2. General Agricultural District, A-1

Sec. 24-218. Height limits.

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (2) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory or non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

Division 3. Limited Residential District, R-1

Sec. 24-240. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennae and home radio aerials and wireless communications

facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

Division 4. General Residential District, R-2

Sec. 24-261. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas and home radio aerials and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:
 - a. Such structure will not obstruct light to adjacent property;
 - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 - c. Such structure will not impair property values in the surrounding area;

- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

Division 5. Residential Planned Community District, R-4

Sec. 24-293. Height limits.

Structures may be erected up to 60 feet in height from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank, athletic field lighting, or other accessory functions, which are part of the structure. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. A structure in excess of 60 feet in height but not in excess of 100 feet, from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- a. Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- b. Such structure will not obstruct light from adjacent property;
- c. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- d. Such structure will not impair property values in the surrounding area;
- e. Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- f. Such structure will not be contrary to the public health, safety and general welfare.

Division 6. Multifamily Residential District, R-5

Sec. 24-314. Requirements for improvements and design.

(j) *Structure height.* Structures may be erected up to 35 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, monuments, penthouse, electrical, plumbing, elevator, athletic field lighting, water tank or other accessory functions which are part of the structure and accessory and non accessory wireless communications facilities that utilize alternative mounting

structures, or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. A structure in excess of 35 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, monuments, penthouse, electrical, plumbing, elevator, athletic field lighting, water tank, radio, television and microwave antennas and towers or other accessory functions, *and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 35 feet in height but not to exceed the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure will not obstruct light from adjacent property;
- (2) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (3) Such structure will not impair property values in the surrounding area;
- (4) Such structure is adequately designed and served from the stand point of safety and the county fire chief certifies that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and.
- (5) Such structure would not be contrary to the public health, safety and general welfare.

Division 7. Low-Density Residential District, R-6

Sec. 24-335. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (2) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed sixty feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:
 - a. Such structure will not obstruct light to adjacent property;

- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

Division 8. Rural Residential District, R-8

Sec. 24-354. Height limits.

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:
 - a. Such structure will not obstruct light to adjacent property;
 - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 - c. Such structure will not impair property values in the surrounding area;
 - d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
 - e. Such structure will not be contrary to the public health, safety and general welfare.

Division 9. Limited Business District, LB

Sec. 24-375. Height limits and height limitation waivers.

(b) Church spires, belfries, cupolas, athletic field lighting, chimneys, flues, monuments, flagpoles and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

1. Such structure will not obstruct light to adjacent property;
 2. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 3. Such structure will not impair property values in the surrounding area;
 4. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
 5. Such structure will not be contrary to the public health, safety and general welfare.
- (c) All accessory structures shall be less than the main structure in height.

Division 10. General Business District, B-1

Sec. 24-397. Height limits and height limitation waivers.

Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade, in accord with the following criteria:

- (1) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment

of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- a. The regulations of section 24-398 regarding building coverage, floor area ratio and open space are met;
- b. Such structure will not obstruct light from adjacent property;
- c. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- d. Such structure will not impair property values in the surrounding area;
- e. Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- f. Such structure would not be contrary to the public health, safety or general welfare.

Division 14. Planned Unit Development District

Sec. 24-496. Height and spacing of structures.

- (b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television, and microwave antennas and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- (2) Such structure will not obstruct light from adjacent property;
- (3) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (4) Such structure will not impair property values in the surrounding area;
- (5) Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the

building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and

Division 15. Mixed-Use, MU

Sec. 24-525. Height of structures.

(b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas, and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

(c) Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- (2) Such structure will not obstruct light from adjacent property;
- (3) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (4) Such structure will not impair property values in the surrounding area;
- (5) Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the structure is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- (6) Such structure would not be contrary to the public health, safety or general welfare.

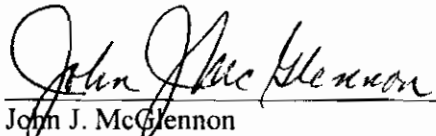
Division 16. Public Land District, PL

Section 24-535.9. Height limits.

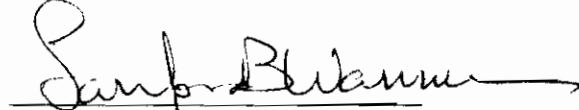
Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (2) Spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless Communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.


John J. McGlennon
Chairman, Board of Supervisors

ATTEST:


Sanford B. Wanner
Clerk to the Board

| SUPERVISOR | VOTE |
|------------|------|
| HARRISON | AYE |
| BRADSHAW | AYE |
| GOODSON | AYE |
| ICENHOUR | AYE |
| MCGLENNON | AYE |

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

AltWCFheight_ord

DEC 11 2007

ORDINANCE NO. 31A-233BOARD OF SUPERVISORS
JAMES CITY COUNTY

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE VI, OVERLAY DISTRICTS, DIVISION 1, RESIDENTIAL CLUSTER DEVELOPMENT, SECTION 24-554, REVIEW AND APPROVAL PROCESS.

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 24-554, Review and approval process.

Chapter 24. Zoning

Article VI. Overlay Districts

Division 1. Residential Cluster Development

Section 24-554. Review and approval process.

(a) *Review required.* A master plan ~~of development~~ for a residential cluster development proposed under this article shall be filed with the planning director, who shall submit it to the planning commission and board of supervisors in instances where a special use permit is required or to the development review committee in cases where a special use permit is not required. The planning director shall recommend action on the plan to the planning commission, and to the board of supervisors in instances where a special use permit is required. The planning commission and board of supervisors, where applicable, shall approve the *master plan of development* upon finding that:

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

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

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

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

~~—(d) *Amendment of master plan.* Upon application, an approved plan of development may be amended by the planning director; provided, however, that a proposed amendment does not:~~

- ~~(1) Alter a recorded plat.~~
- ~~(2) Conflict with the requirements of this article.~~
- ~~(3) Change the general character or content of an approved master plan of development.~~
- ~~(4) Impair the character of the surrounding area.~~
- ~~(5) Result in any substantial change of major external access points.~~
- ~~(6) Increase the approved number of dwelling units for any portion of the previously approved residential cluster development.~~

~~—Proposed amendments that do not meet these criteria shall be referred to the planning commission and board of supervisors, where applicable, for review and action.~~

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

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


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

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

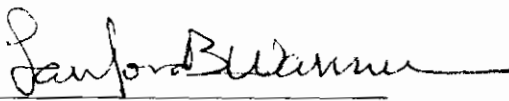
(~~e~~-f) Master plan review fees. Submittal of a master plan shall be accompanied by the fee charged for master plan review in accordance with section 24-7 of this chapter.

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

(~~g~~-h) Sectional plans-Action. Sectional plans submitted in accordance with subsection (d) shall be reviewed in accordance with and shall meet the requirements of, article III of this chapter or the county's subdivision ordinance, whichever is appropriate. However, all sectional plans submitted for moderate density cluster development shall be reviewed in accordance with and meet the requirements of article III of this chapter.


John J. McGleannon
Chairman, Board of Supervisors

ATTEST:


Sanford B. Wanner
Clerk to the Board

| SUPERVISOR | VOTE |
|------------|------|
| HARRISON | AYE |
| BRADSHAW | AYE |
| GOODSON | AYE |
| ICENHOUR | AYE |
| MCGLENNON | AYE |

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

ResidClust_ord

DEC 11 2007

ORDINANCE NO. 31A-231BOARD 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 I, IN GENERAL, SECTION 24-2, DEFINITIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article I, In General, Section 24-2, Definitions.

Chapter 24. Zoning

Article I. In General

Section 24-2. Definitions.

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

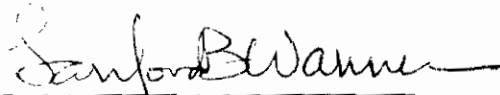
~~*Affordable housing.* Units with sales price at or below the allowable sales price for James City County as set by adjusting the 1998 Hampton Roads Regional Loan Fund Partnership sales price limit (\$90,000) as referenced in the Hampton Roads Regional Loan Fund Handbook (March 1998) by the cumulative rate of inflation as measured by the consumer price index (CPI) annual average change. The annual increase shall not exceed five percent.~~

Affordable housing. Units with sales prices targeted to low- and moderate-income households, as defined by the U.S. Department of Housing and Urban Development (HUD). Such sales prices shall be those endorsed annually by the board of supervisors after receiving recommendations from the James City County Office of Housing and Community Development based on the then-current HUD area-wide income limits and identified local need.



John J. McGlennon
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

| SUPERVISOR | VOTE |
|------------|------|
| HARRISON | AYE |
| BRADSHAW | AYE |
| GOODSON | AYE |
| ICENHOUR | AYE |
| MCGLENNON | AYE |

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

AffordHouse_ord

DEC 11 2007

ORDINANCE NO. 107A-53BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, TAXATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE IV, TRANSIENT LODGING TAX, SECTION 20-14, TAX LEVIED.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Taxation, is hereby amended and reordained by amending Article IV, Transient Lodging, Section 20-14, Tax levied.

Chapter 20. Taxation

Article IV. Transient Lodging Tax.

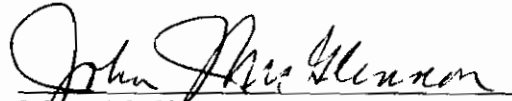
Section 20-14. Tax levied.

(a) There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by laws, on each transient a tax equivalent to five percent of the total amount paid for lodging by or for any such transient to any hotel. Such tax shall be collected from such transient at the time and in the manner provided by this article.

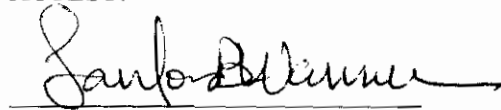
(b) In addition to the tax provided for in subsection (a) above, commencing July 1, 2004, ~~and continuing until January 1, 2008,~~ as provided in section 58.1-3823 C of the Virginia Code, there is hereby levied and imposed an additional transient occupancy tax of \$2.00 per room night for the occupancy of any overnight guest room rented by a transient. Such additional tax shall be collected from such transient at the time and in the manner provided by this article. The revenues collected from such additional tax

shall be designated and expended solely for advertising the Historic Triangle area and shall be distributed and expended as provided in section 58.1-3823 C of the Virginia Code.

State law reference-Code of Va., § 58.1-3819 and § 58.1-3823.


John J. McGlennon
Chairman, Board of Supervisors

ATTEST:


Sanford B. Wanner
Clerk to the Board

| <u>SUPERVISOR</u> | <u>VOTE</u> |
|-------------------|-------------|
| HARRISON | AYE |
| BRADSHAW | AYE |
| GOODSON | AYE |
| ICENHOUR | AYE |
| MCGLENNON | AYE |

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

Chp20-14_ord

DEC 11 2007

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIAORDINANCE NO. 194A-1

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 16A, PURCHASE OF DEVELOPMENT RIGHTS PROGRAM, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 16A-4, DEFINITIONS; SECTION 16A-6, PURCHASE OF DEVELOPMENT RIGHTS COMMITTEE ESTABLISHED; POWERS AND DUTIES; SECTION 16A-9, RANKING SYSTEM; AND SECTION 16A-10, CONSERVATION EASEMENT TERMS AND CONDITIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 16A, Purchase of Development Rights Program, is hereby amended and reordained by amending Section 16A-4, Definitions; Section 16A-6, Purchase of development rights committee established; powers and duties; Section 16A-9, Ranking system; and Section 16A-10, Conservation easement terms and conditions.

Chapter 16A. Purchase of Development Rights Program

Section 16A-4. Definitions.

Purchase of development rights (PDR) guidelines. The current guidelines document as approved by the purchase of development rights committee, the county administrator, the manager of development management, and the community services manager.

Section 16A-6. Purchase of development rights committee established; powers and duties.

(b) *Powers and duties.* The PDR committee shall have the powers and duties to:

(1) Promote the program, in cooperation and under the guidance of the administrator, by providing educational materials to the public and conducting informational meetings.

(2) Review the ranking of applications recommended by the administrator, and make recommendations to the administrator and the board as to which conservation easements should be purchased.

(3) Annually review the program's eligibility and ranking criteria and recommend to the administrator any changes needed to maintain the program's consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.

(4) A quorum shall consist of three members present and the committee shall operate on a "majority rule" basis.

(5) *Develop and annually update a purchase of development rights guideline document which shall guide the purchase of development rights committee in its review.*

Section 16A-9. Ranking system.

In order to effectuate the purposes of this chapter, parcels for which conservation easement applications have been received shall be evaluated by utilizing a ranking system. The initial ranking system and changes to the ranking system shall be approved by the county administrator, ~~and the director~~ *manager* of

development management, *and the community services manager*. The ranking system may be used to prioritize the acquisition of conservation easements.

Section 16A-10. Conservation easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act of 1966 (Virginia Code § 10.1-1700 et seq.) and this chapter. The deed of easement shall be in a form approved by the county attorney, and shall contain, at a minimum, the following provisions:


(a) *Restriction on ~~new dwellings and subdivision~~*. ~~No new dwellings may be constructed on a parcel except as provided hereafter; the deed of easement may allow one new dwelling per 100 acres, with the dwelling location specified by plat on or before the conservation easement is established. The PDR Guidelines shall apply on matters involving dwellings and future subdivision.~~

(b) *Conservation easement duration*. A conservation easement acquired under the terms of this chapter shall be perpetual.

(c) *Other restrictions*. In addition to the foregoing, the parcel shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions pertaining to: (i) accumulation of trash and junk; (ii) ~~display of billboards, signs and advertisements;~~ (iii) grading, blasting or earth removal; ~~(iv)~~ (iii) conduct of industrial or commercial activities on the parcel *that would make its use inconsistent with the intent and purposes of this ordinance*; and ~~(v)~~ (iv) monitoring of the easement.

(d) *Designation of easement holders.* The county shall be the easement holder, and if designated by the board, one or more other public bodies, as defined in Virginia Code Section 10.1-1700, or one or more organizations then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, shall also be an easement holder.

ATTEST:



Sanford B. Wanner
Clerk to the Board



John J. McGlennon
Chairman, Board of Supervisors

| <u>SUPERVISOR</u> | <u>VOTE</u> |
|-------------------|-------------|
| HARRISON | AYE |
| BRADSHAW | AYE |
| GOODSON | AYE |
| ICENHOUR | AYE |
| MCGLENNON | AYE |

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

DEC 11 2007

ORDINANCE NO. 183A-4BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 23-9, PERFORMANCE STANDARDS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-9.

Chapter 23. Chesapeake Bay Preservation

Section 23-9. Performance standards.

(a) *Purpose and intent.* The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most efficient in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters and infiltrates stormwater runoff. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces increases of stormwater runoff.

The purpose and intent of these requirements is also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development and development on previously developed land where the runoff was treated by a water quality protection best management practice; achieve a ten percent reduction in nonpoint source pollution from development on previously developed land where the runoff was not treated by one or more water quality best management practices; and achieve a 40 percent reduction in nonpoint source pollution from agricultural and silvicultural uses.

(b) *General performance standards:*

- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - a. In accordance with an approved plan of development, the limits of clearing and/or grading shall be clearly defined. These limits shall be clearly shown on submitted plans and physically marked on the development site in accordance with subsection (2)b. below.
 - b. Impervious cover shall not exceed 60 percent of the site unless it can be demonstrated that the project will have the same impact on water quality as the project would have if it were 60 percent impervious. Demonstration of equivalent water quality will be through compliance with guidelines developed by the manager. For projects with an approved stormwater master plan, compliance with this impervious cover provision can be demonstrated on a project basis

rather than an individual site basis. However, in no case shall impervious cover exceed the limits established in section 24-9(c)(4) of the zoning ordinance.

- c. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the manager.
- (2) Existing vegetation shall be preserved to the maximum extent practicable, consistent with the use or development permitted by an approved plan of development.
 - a. Existing trees over 12 inches in diameter at breast height shall be preserved except in impervious areas and as necessary to accommodate site grading. Upon approval by the manager, diseased trees or trees weakened by age, storm, fire or other injury may be removed; provided, that when such removal results in a 20 percent or greater reduction in existing tree canopy, a sufficient number of trees with a 1-½ inch caliper shall be planted to restore the full canopy.
 - b. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline of any tree or stand of trees to be preserved unless otherwise approved on the clearing plan. Protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris or fill shall not be allowed within the area protected by the barrier.
 - (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development permitted.
 - (4) All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development review process conducted in accordance with section 23-10 of this chapter.
 - (5) Any land-disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, and septic tanks and drainfields shall comply with the requirements of chapter 8 of this Code.
 - (6) All on-site sewage disposal systems not requiring a NPDES permit shall be pumped out at least once every five years. However, in lieu of requiring proof of septic tank pump-out every five years, owners of on-site sewage disposal systems can submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.
 - (7) A reserve sewage disposal site, with a capacity at least equal to that of the primary recorded prior to August 6, 1990, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board until the structure is served by public sewer.
 - (8) For any development or redevelopment, stormwater runoff shall be controlled by the use of BMPs that are consistent with the water quality protection provisions (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20). This consistency shall be

demonstrated by compliance with the criteria and BMP facilities contained in the latest version of the James City County Guidelines for Design and Construction of Stormwater Management BMPs. In addition, increases in the quantity of stormwater runoff resulting from development or redevelopment shall be addressed by the requirements of chapter 8 of the County Code.

- a. If compliance for a development is based in whole or part on the use of existing downstream onsite or offsite structural BMPs, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The manager may require a review of both the original design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this chapter;
- (9) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and county laws and regulations shall be obtained and evidence of such submitted to the manager. For those projects where no wetlands are proposed to be impacted or where the impacts do not require written authorization, documentation shall be submitted to the manager by a qualified wetlands professional attesting that the wetlands permitting process has been completed and no further documentation is necessary from the regulatory agencies.
- (10) All lands upon which agricultural activities are being conducted shall undergo a soil and water quality conservation assessment. Such assessment shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with this chapter. Plans of development or water quality impact assessments are not required for activities on agricultural lands except for land disturbing activities not related to food and/or fiber production.

(11) For any development or redevelopment, certain RMA's shall be protected as follows:

- a. *Intermittent streams and non-RPA wetlands shall have a 50-foot buffer. The 50-foot buffer shall begin from the edge of the resource.*
- b. *In addition to the RPA buffer, a 175-foot buffer shall be imposed along creek mainstems with a watershed management plan which has been approved by the Board of Supervisors. The 175-foot buffer shall begin at the edge of the RPA buffer. The 175-foot buffer may be reduced to a minimum of 75 feet in the event the topographical divide is less than 175 feet from the RPA buffer or site characteristics otherwise adequately protecting water quality as determined by the environmental manager. For the purposes of this section, topographical divide shall mean the high point in terrain, topography or elevation, otherwise known as a ridge line, by which a drainage area is defined, delineated or where there exists an origin of sheet flow.*

There shall be no encroachments into the 175-foot buffer except for the following:

1. *Stormwater management facilities;*
2. *Passive recreational facilities, such as boardwalks, trails, and pathways; and*
3. *Public utilities, railroads, public roads and related facilities, provided said utilities, railroads, public roads and related facilities meet the conditions and requirements as set forth in sections 23-13(a)(1) and 23-13(a)(2) of this chapter.*

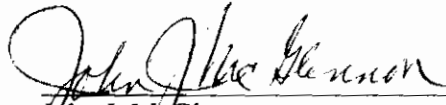
c. *A 25-foot buffer shall begin at the edge of the 175-foot buffer. The following items shall be prohibited from the 25-foot buffer, unless determined otherwise by the manager:*

1. *Septic tanks;*
2. *Primary or reserve septic fields; and*
3. *Impervious cover.*


This section shall not apply to the following:

1. *Lots or parcels created pursuant to and in accordance with section 19-17 of the county code.*
2. *Single family residences, and/or manufactured homes on a permanent foundation, on a lot or parcel recorded prior to January 1, 2008.*

This ordinance shall be effective as of January 1, 2008.


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 11th day of December, 2007.

Sec23-9_ord