

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 9TH DAY OF JUNE 2009, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

James G. Kennedy, Chairman, Stonehouse District  
Mary Jones, Vice Chair, Berkeley District  
Bruce C. Goodson, Roberts District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

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

**C. PLEDGE OF ALLEGIANCE** – Kailey Porter, a second-grade student at Clara Byrd Baker Elementary School, led the Board and students in the Pledge of Allegiance.

**D. PRESENTATIONS**

**1. Neighborhood Day – June 13, 2009**

Mr. Kennedy presented the Neighborhood Day resolution to Ms. Anita Taylor and Mr. Sherrod Jimmison, a sixth-grade student at James Blair Middle School, for their work in strengthening neighborhoods in James City County.

**2. Employee and Volunteer Outstanding Service Awards**

Mr. Kennedy and the members of the Board of Supervisors presented the Employee and Volunteer Outstanding Service Awards to the following individuals and teams: Dr. Perry for working with Olde Towne Medical Center; Ms. Sharon Baker, Ms. Shelia Jones, Mr. Rob Vance, Ms. Jackie Jones, Mr. Jeremy Johnson, Ms. Darlene McCoy, Mr. John Whitley, Mr. Keith Ingram, Ms. Carolyn O'Brien, Ms. Susan Whitley, Mr. David Bauernschmidt, Ms. Anita Taylor, Mr. Randy Hisle, Mr. Eric Williams, Ms. Eletha Davis, and Ms. Doris Heath for the 2008 Historic Triangle Neighborhood Conference, nominated by Ms. Tressell Carter; Ms. Kitty Hall and Mr. Mark Rogers, Jr., for the Free Bay Surplus Program, nominated by Ms. Stephanie Luton; Ms. Melissa Brown, Ms. Vicki Sprigg, Ms. Eletha Davis, Ms. Anita Taylor, Ms. Doris Heath, and Mr. Scott Whyte, members of the Neighborhood Liaison Team nominated by Ms. Caroline Rhodes; Mr. David Bauernschmidt, Mr. Jeremy Keeler, Ms. Tara Woodruff, and Ms. Sandy Hale, nominated by Mr. Tom Pennington for Implementation of New Human Resource and Payroll Software; Senior Police Officer Sean Gormus nominated by Officer Stephen Humphries for the GREAT Program; Mr. Rick Hall nominated by

Ms. Fran Geissler for Dam Restoration; Mr. Scott Johnson nominated by Lt. Eric Peterson for Service Above and Beyond; Ms. Stephanie Luton nominated by Mr. John McDonald for Shaping Our Shores; Mr. David Rochard nominated by Lt. Eric Peterson for drug recovery; Ms. Gennie Smith nominated by Lt. Eric Peterson for Service Above and Beyond; and the Lifesaving Award for Mr. Seth Benton, Ms. Gerenda Robinson, Mr. Jason Jackson, Ms. LaShawnda Ruttley, Ms. Michelle Riordan, and Mr. Michael Wilson, nominated by Mr. John Carnifax.

#### **E. PUBLIC COMMENT**

1. Ms. Debra Siebers, 3504 Quail Hollow, requested delaying adoption of the Shaping Our Shores Master Plan to allow for the properties to remain greenspace and proposed a survey to be sent to each neighborhood.

2. Dr. John Whitley, 110 Governor Berkeley, thanked Ms. Tressell Carter for her organization of the 2008 Neighborhoods Conference, stated his opposition to the Surry Coal-Fired Power Plant, and requested a formal statement of opposition from the Board.

3. Mr. Ed Oyer, 139 Indian Circle, commented on the number of foreclosures in Virginia and revenue shortfalls in FY 2010 and FY 2011.

#### **F. CONSENT CALENDAR**

Mr. Goodson made a motion to adopt the items on the Consent Calendar.

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

1. Minutes –
  - a. May 26, 2009, Work Session
  - b. May 26, 2009, Regular Meeting
2. Neighborhood Day – June 13, 2009

### **RESOLUTION**

#### **NEIGHBORHOOD DAY – JUNE 13, 2009**

WHEREAS, Neighborhood Connections' vision is that every neighborhood has the opportunity to succeed in realizing its full potential for contributing to a quality community in James City County; and

WHEREAS, Neighborhood Connections works with connected neighborhoods to:

- Empower citizens through training, information sharing, and use of resources.
  - Facilitate direct linkages between neighbors and their government.
  - Foster independent problem solving and sharing of assets within and among neighborhoods.
  - Involve all community assets in expanding and sustaining safe and healthy neighborhoods;
- and

WHEREAS, Neighborhood Connections provides valuable assistance in helping connected neighborhoods to:

- Organize and act on issues or ideas.
- Identify resources to help address neighborhood problems.
- Recognize neighborhood assets and strengths to build upon.
- Organize special events and projects.
- Improve communications between neighbors.
- Access information available on County and community issues and services; and

WHEREAS, during the past 15 years:

- 150 neighborhoods have been connected.
- 90 neighborhoods have received Matching Grants.
- 5,600 plus citizens have attended Neighborhood Conferences and 18 different training programs.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby proclaim June 13, 2009, as Neighborhood Day.

3. Grant Award – Chesapeake Bay Restoration Fund – \$5,953

### **RESOLUTION**

#### **GRANT AWARD – CHESAPEAKE BAY RESTORATION FUND – \$5,953**

WHEREAS, the Chesapeake Bay Restoration Fund, which is funded through the sale of Chesapeake Bay license plates, has made funds available for the restoration and education of the Bay; and

WHEREAS, funds are needed to provide an enriching environmental component to the Division's REC Connect Camp Program.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, accepts the \$5,953 grant awarded by the Chesapeake Bay Restoration Fund to help with the additions to the summer camp program.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Projects/Grants fund:

#### **Revenue:**

From the Commonwealth	<u>\$5,953</u>
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#### **Expenditure:**

Chesapeake Bay Restoration Fund	<u>\$5,953</u>
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4. Grant Award – National Rifle Association Foundation – \$964.90

**RESOLUTION**

**GRANT AWARD – NATIONAL RIFLE ASSOCIATION FOUNDATION – \$964.90**

WHEREAS, the National Rifle Association (NRA) Foundation has awarded the James City County Police Department a grant in the amount of \$964.90; and

WHEREAS, the funds are to be used to purchase firearm safety educational materials and gun locks for the Department's crime prevention and educational efforts; and

WHEREAS, the grant requires no match.

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

Revenue:

NRA Foundation	<u>\$964.90</u>
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Expenditure:

NRA Foundation	<u>\$964.90</u>
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5. Grant Award – Virginia Wireless E-911 Services Board – \$150,000

**RESOLUTION**

**GRANT AWARD – VIRGINIA WIRELESS E-911 SERVICES BOARD – \$150,000**

WHEREAS, the Virginia Wireless E-911 Services Board has awarded the James City County Fire Department's Emergency Communications Center a grant for \$150,000; and

WHEREAS, the grant funds are to be used to continue a project that creates a fixed backup for the primary items of the Public Safety Answering Point (PSAP) operation; and

WHEREAS, the grant requires no match.

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

Revenue:

E-911	<u>\$150,000</u>
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Expenditure:

E-911

\$150,000

6. Mutual-Aid Agreement for Fire and Rescue and Emergency Medical Services between the U.S. Navy, Navy Region Mid-Atlantic and the County of James City

**RESOLUTION**

**MUTUAL-AID AGREEMENT FOR FIRE AND RESCUE AND EMERGENCY MEDICAL  
SERVICES BETWEEN THE U.S. NAVY, NAVY REGION MID-ATLANTIC AND THE  
COUNTY OF JAMES CITY**

WHEREAS, James City County and the U.S. Navy, Navy Region Mid-Atlantic ("Navy") desire to provide mutual-aid to each other on a regular operating basis; and

WHEREAS, the County and the Navy are authorized to enter into a mutual-aid agreement pursuant to Section 27-1 et seq., and 44-146.20, Code of Virginia, 1950, as amended; and

WHEREAS, a mutual-aid agreement has been created between the two parties; and

WHEREAS, the mutual-aid agreement provides for efficient and effective use of resources for each jurisdiction; and

WHEREAS, James City County and the Navy have reviewed the mutual-aid agreement to ensure that it reflects current practices and policies.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is authorized to execute all necessary agreements with the U.S. Navy, Navy Region Mid-Atlantic for provision of fire and rescue and emergency medical services.

7. Code Violation Lien – Trash and Grass Lien

**RESOLUTION**

**CODE VIOLATION LIEN - TRASH AND GRASS LIEN**

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

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

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

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

ACCOUNT: Washington Mutual Bank, FA  
7749 Bayberry Road, 1st Floor  
Jacksonville, FL 32256  
Attn: Custodial Liaison, Mailstop BBCL 3

DESCRIPTION: Trash and Grass Lien – 2516 Manion Drive

TAX MAP/PARCEL NOS.: (46-3)(02-0-0020)  
James City County, Virginia

FILING FEE: \$10.00

TOTAL AMOUNT DUE: \$750.00

8. 2009 County Fair Committee

**RESOLUTION**

**APPOINTMENT – 2009 COUNTY FAIR COMMITTEE**

WHEREAS, annually the Board of Supervisors appoints the James City County Fair Committee; and

WHEREAS, the 2009 County Fair will be held Thursday, June 25 through Saturday, June 27.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby appoint the attached list of volunteers to the 2009 James City County Fair Committee for the term of June 25, 2009, through June 27, 2009.

Dwight Beamon, Andy Bradshaw, Richard Bradshaw, Nancy Bradshaw, Jim Bradsher, Tony Dallman, Rob Davis, Ann Davis, Amy Fiedor, Loretta B. Garrett, Mike Garrett, Sylvia Hazelwood, Doris Heath, Alex Holloway, Ken Jacovelli, Jeremy Johnson, Katie Jones, Sandra Kee, Tal Luton, Lynn Miller, Craig Nordeman, Diana Perkins, Doug Powell, John Richardson, Mary Rupe, Charlie Rupe, Angie Sims, Sandy Wanner, and Shirley Webster

**G. PUBLIC HEARINGS**

Mr. Kennedy recognized Mr. Reese Peck in attendance on behalf of the Planning Commission.

1. Case No. SUP-0004-2009. Dee's Day Care

Mr. Jason Purse, Planner, stated that Ms. Darlene Ingram has applied for a Special Use Permit (SUP) to allow for the operation of a children's day-care facility in an existing single-family detached house located at 156 Indian Circle. This property is zoned R-2, General Residential, which requires an SUP for the operation of a children's day-care facility. A day-care service is currently operating from the residence for a maximum of five children. Child day-care facilities with five children or less are permitted by-right as a home occupation. The hours of operation are from 6 a.m. to 6 p.m., Monday through Friday. Ms. Ingram currently has a conditional license from the State Department of Social Services allowing her to operate a child day-care operation for 12 children or less if this SUP is approved. There are no expansions proposed for the residence; the only change would be in the number of children served. Ms. Ingram's existing day-care facility has been a valuable asset to the community and references from clients stating their support have been included for your reference. Furthermore, Ms. Ingram has shown excellent stewardship towards her operation by attending multiple trainings and certification programs for day-care facilities around the County and has obtained all of the necessary licenses to operate her day-care facility.

At its meeting on May 6, 2009, the Planning Commission recommended approval by a vote of 5-2.

Staff recommended denial of the case due to the County Attorney's opinion indicating that the application was in conflict with the covenants of the neighborhood. Staff stated that a recommendation of approval was submitted from a land use perspective prior to the opinion being provided on the covenants, and staff provided a resolution if the Board wished to approve the application.

Mr. Icenhour asked about State requirements for licensing.

Mr. Purse stated that he was not aware of that information.

Mr. Kennedy opened the Public Hearing.

1. Ms. Darlene Ingram, 156 Indian Circle, applicant, stated that the Planning Commission recommended approval by a vote of 5-2 of her application. She noted that she spent \$1,000 to apply for this application. She stated that the covenants were not enforced because there was no homeowners association in Poplar Hall and were outdated. She stated that approval of the application would assist working families in her community. She stated that 12 children did not constitute a center as noted in the covenants. She stated that denial of the case threatened small businesses in Poplar Hall. She requested the Board's support. She displayed a photograph indicating the parking capacity at her residence and a photograph displaying the play area in the back yard. She commented that the neighbors who complained about noise from the children lived a distance away from her house.

2. Mr. Keith Ingram, 156 Indian Circle, applicant, commented that he researched the restrictive covenants and how they may have been used for segregation purposes. He commented that if the covenants were enforced against them, they should be enforced against other businesses in Poplar Hall.

Mr. Icenhour asked about State licensing requirements.

Ms. Ingram stated that she was licensed by the Virginia Department of Social Services. She stated that there was an inspection and they determined that many children can be accommodated in the facility.

Mr. Icenhour asked if there was a licensing requirement for fewer than five children.

Ms. Ingram stated that there was no requirement to be licensed to care for five or fewer children, but she voluntarily obtained a license.

Mr. Icenhour asked if there were other child-care businesses that were being operated out of the home.

Ms. Ingram stated that she was aware of many legal and illegal businesses operating in Poplar Hall.

Mr. Kennedy asked about Ms. Ingram's qualifications.

Ms. Ingram stated that she was an American Red Cross instructor and that she was certified to conduct Red Cross classes in several jurisdictions.

Mr. Kennedy asked if traffic has been mentioned before to her.

Ms. Ingram stated that in two years it had not been mentioned. She stated that neighbors brought this up once the SUP application came forward.

Mr. Ingram stated that the child drop-off and pickup did not cause congestion.

Mr. Kennedy asked when the children were dropped-off and picked up.

Ms. Ingram stated that people needed to be at work before 7 a.m., so her hours were 6 a.m. to 6 p.m.

Mr. Kennedy asked Mr. Rogers about potential covenant violations in the past where a recommendation of denial was not made.

Mr. Rogers stated that the County has not historically approved by legislative action any case that is in violation of the covenants. He stated that if the covenants are unknown, the County is not liable. He stated that covenants have to be brought to the County's attention. He stated that during the application process, staff is now going to require acknowledgement by the applicant of any covenants existing on the property.

Mr. Kennedy stated that no association was ever formed in this neighborhood.

Mr. Rogers stated that was correct. He stated that the association can be a unifying force.

Mr. Kennedy commented on some of the covenants' articles and asked about a possible rezoning from A-1 to R-2.

Mr. Rogers stated that was correct.

Mr. Kennedy asked if any property has been grandfathered with the A-1 zoning.

Mr. Rogers stated that there has not.

Mr. Kennedy stated that he felt that since the zoning had changed, the uses may have changed also.

3. Ms. Juanita Lee, 167 Howard Drive, stated that she was a close associate of Ms. Ingram's and helped her with the certification process. She commented that the program run by Ms. Ingram was very valuable to the community and the families to whom she provides services. She stated her support for Ms. Ingram's business.



4. Mr. George Drummond, 165 Indian Circle, stated that he was a neighbor and said that he never noticed noise or traffic problems as a result of the operation of the day care. He stated that he has purchased two homes in Poplar Hall and that he was never aware of the covenants. He commented that they were outdated and the children were not a nuisance. He stated his support of the day-care facility. He commented that several of his neighbors use the services. He requested support of the application.

5. Ms. Teira Elliott, 169 Howard Drive, commented on the value of the service of Dee's Day Care.

6. Mr. Elliott, 169 Howard Drive, commented that it was difficult for him to provide child care as a soldier for a lower cost than Ft. Eustis.

7. Ms. Nicole Hogan, P.O. Box 5091, commented on the quality of the child care from Dee's Day Care.

8. Ms. Juanita McWhite, 8853 Fenwick Hills Parkway, stated her support for Dee's Day Care. She commented on Ms. Ingram's beneficial work with children and noted that she had not noticed any traffic at the home.

9. Ms. Elizabeth Doran, 159 Indian Circle, commented that she lived across the street from Dee's Day Care and stated that the noise and traffic complaints had no merit. She stated that Ms. Ingram's facility was a benefit to the community. She stated that she purchased her home four years ago and no covenants were disclosed to her. She stated that she was surprised at the covenants since there was no homeowners association. She said the covenants were outdated and there were infractions in many homes in Poplar Hall because many people were unaware. She stated that there have been no complaints in two years and other businesses in that area have a larger impact. She requested approval of the application.

10. Ms. Rebecca Smith, 163 Indian Circle, stated that she took her son to Dee's Day Care and stated that the facility was convenient and safe. She requested approval of the application.

11. Ms. Mary Minor, Child and Family Connection Director, 5813 Hawthorne Lane, commented that there are family child-care facilities in every neighborhood and that "family, friend, and neighbor care" was generally unregulated care. She said that those care providers may have a business license or not, may provide liability insurance or not, and may provide enriching education or not. She stated that she has met with the Board to request a County licensing process that would enable the applicant to know if a homeowners association or covenants existed, which was the difficulty in this situation. She stated that she provides seminars every year and that information was included. She stated that Surry, Accomack, and Northampton Counties have more licensed child-care facilities than James City County. She stated that there was no difference in the licensing process than in other businesses, and so many facilities remain as unregulated care. She stated that the applicant in this case is one of two facilities that can be reimbursed for active-duty deployed military since the applicant is licensed, has an advanced degree, and is accredited nationally. She stated that there was selective enforcement of covenants. She commented that several families have been through her agency dissatisfied with the care they were provided. She stated that some of the unfit care was utilizing subsidy funds from the Department of Social Services for the child care provided. She questioned the early childhood care policy for the Board of Supervisors. She stated that this facility provided higher-quality care than 50 percent of child-care facilities in the County. She requested approval of the application.

12. Ms. Sharon Dennis, 100 St. George's Blvd., commented that she previously had a day-care center because of complications with opening a facility. She stated that commercial child care had limits and that family child care with five or less children did not have to be licensed. She commented that licensing was expensive and difficult. She requested approval of the application.

13. Ms. Deborah Jackson, 285 Merrimac Trail, commented that she was a volunteer at the Grove Christian Outreach Center, and that she had heard many stories about mothers who were unable to find adequate child care. She stated that there were a number of mothers who were struggling financially and were supported by Ms. Ingram's business. She requested approval of the application.

14. Ms. Kathy Dietrich, 110 Massacre Hill Road, stated that she moved into the neighborhood 15 years ago and that she had a difficult time finding child care and she appreciated the importance of the facility. She stated that she was a concerned homeowner and that the applicant should get to know his/her neighbors. She stated that she was aware of the covenants and thought they were outdated. She stated that the neighborhood was now aware of the outdated covenants that may promote change. She stated the applicant should have notified her neighbors of the application process.

15. Mr. John Gray, 2 Road Hole, stated his support of the Ingram's and the child-care facility.

16. Mr. Ed Oyer, 139 Indian Circle, stated that this case was a land use issue with long-range impacts on the entire County. He stated that the covenants have been tested and that they have been upheld in Court. He stated that 109 Plantation Road was denied a day care permit, which set a precedent. He stated that parents would likely speed when going to pick up and drop off children at the facility. He stated that the Planning Commission did not receive all the information that should have been presented and resulted in a split vote of 5-2. He said that the septic tank was close to capacity and that there have been many staff and Virginia Department of Transportation (VDOT) objections to day-care facilities in his neighborhood. He stated that Poplar Hall was an integrated and cooperative neighborhood. He requested that the Board uphold the rules of the covenants to avoid setting a precedent.

17. Ms. Latrice Forrest, 29 Jan Rae Circle, stated that she had two children in Dee's Day Care. She commented on the high quality of the child-care facility and the compassion of the applicant.

18. Mr. Richard Minor, 5813 Hawthorne Lane, stated that the SUP was based on public criteria and staff recommended approval from the land use perspective. He stated that there was only a conflict based on the private contract of the covenants. He stated that the Board should not selectively enforce private contracts such as this. He stated that there was a compelling public interest and benefit to approve the SUP. He requested approval of the application.

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

Mr. McGlennon asked Mr. Purse, Mr. Rogers, and Ms. Minor to be available to respond to questions.

Mr. McGlennon stated that the number of five was a recognized by-right use of a home for a day care. He asked if five children could be provided day care in this facility.

Mr. Purse stated that was correct.

Ms. Jones stated that was unless the covenants were not enforced.

Mr. McGlennon asked if a home occupation made a home non-residential. He stated that he had a problem with a clear violation of covenants, even outdated, unless they were discriminatory. He stated in this instance, it seems to be County policy that there was no problem with home occupations in a purely residential neighborhood. He stated that there were home occupations in this neighborhood and others. He stated that if the day-care center was not expected to close if there were five children, the covenants can be seen differently.

Mr. Rogers stated that he did not wish to give an opinion on the operation of the facility with five or less children. He stated that it was viewed only from the zoning perspective and did not want to make an interpretation of the enforcement of restrictive covenants.

Mr. McGlennon stated that it was already identified as a by-right use for five or fewer children. He stated that once that number was exceeded, an SUP was required. He stated that SUPs are exceptions to rules. He stated that still did not define an enterprise as a commercial establishment when five children were exceeded.

Mr. Rogers stated that it was a land use issue and that five children was the defined limit of by-right use.

Mr. McGlennon stated that if the number was beyond five children, it was not a residential use.

Mr. Rogers stated that a residential use is a permitted use according to the covenants.

Mr. McGlennon stated that there were situations that seemed acceptable, but that it needed reviewed to evaluate what needed to be done to mitigate potential impacts.

Mr. Rogers stated that it was being viewed only from a land use perspective. He stated that he would defer to the court on that.

Mr. McGlennon asked if the covenants were relevant to the land use decision. He asked if the covenants specifically prevent what was proposed. He stated that he did not believe covenants should be ignored because of their age, but that he also had problems with denying outstanding day care in a residential area. He stated that in other cases, this led to the requirement of renewal of the SUPs. He stated that he was not sure that the covenants applied to this case. He stated that in the Planning Commission minutes, Ms. Ingram stated that she was comfortable with ten children. Mr. McGlennon stated that there should be ability for the impacts to be evaluated. He asked for confirmation that the covenants may not clearly apply to this situation.

Mr. Goodson stated that he was having difficulty understanding the argument.

Mr. McGlennon stated that the family day-care center may not be in flagrant violation of the covenants. He stated that there are other neighborhoods with similar stipulations.

Mr. Goodson stated that he looked forward to supporting this day-care center and that the process should be less expensive and easier to approve these cases. He commented that he was troubled by the comments of the covenants being out of date. He stated that he did not see how he could be in favor of a case in conflict with covenants.

Mr. McGlennon stated that if there was no change to the structure of the residence, it appeared not to have any signs of commercial activity, and it was not disruptive, he would not have a problem with the facility.

Mr. Goodson stated that the covenants and the courts have declared that it has to be a family living in the home.

Mr. McGlennon stated that the residential requirement was satisfied in this application and there is also a by-right privilege of having a day-care facility in the home with up to five children, with an SUP required for

more children at the facility. He stated that the home occupation did not change the residential nature of the building.

Mr. Goodson asked if a court has ruled that there could be other residential uses aside from living in a home.

Ms. Jones asked if residential was defined the same way in 1968. She commented on the covenant guideline that allows for livestock.

Mr. Goodson stated that there were residential lots with livestock, so the covenants were not necessarily outdated.

Ms. Jones asked if there would be a different interpretation from when the covenants were instituted in 1968.

Mr. Rogers stated that what should be evaluated was if it was a commercial establishment, or was it in violation of the covenants. Mr. Rogers reiterated that as a policy, the County did not knowingly approve legislative cases that violate neighborhood rules or covenants.

Mr. McGlennon stated that as a policy that a person in his/her home is entitled to pursue a home occupation that does not adversely affect the neighborhood, that the scale was defined, and that a higher standard of an SUP was required. He stated that it was not necessarily a commercial activity.

Mr. Rogers stated that a home occupation permit does not define between commercial or residential. He stated that the focus was use and a home occupation permit was administratively permitted.

Mr. Kennedy stated that two cases came forward in 2001 in Kristiansand and Stanley Drive, and that he should look at SUP waivers and fees for child care to support better licensing and better facilities. He stated that he appreciated the covenants, that he had experience with covenants in his neighborhood, and that the County does not enforce covenants. He stated that he wanted to be consistent. He commented that the definition of residential was not clear in the covenants. He commented on business licensing and that the citizens of Poplar Hall could challenge the use. He stated that he can support the application based on the applicant being licensed and compliant and without issues. He stated that the testimony of those who spoke during the hearing helped support his decision. He stated that he did not wish to dishonor covenants, but that he did not wish to address covenants as a Board.

Mr. Icenhour commented on Article 7 of the covenants. He stated that a simple interpretation of the words allowed some small businesses or trades in the neighborhood. He stated that the facilities approved should not have an adverse effect on the community. He stated that he believed there was a compelling public interest and stated his support of the application. He stated that he did not feel the covenants would necessarily restrict the use.

Mr. Kennedy stated his respect for the County Attorney's opinion, but that the covenants were very vague. He stated that safe child care was a valuable commodity and that the facility was an asset to the community.

Mr. Goodson stated that he supported the interpretation of the County Attorney. He stated that if another legal source had been consulted, he would consider that equally. He stated that he could not support the application because he did not see how it would be in compliance with the covenants.

Mr. Rogers stated that he believed Mr. Goodson and each other Board member were making a policy judgment. He stated that business licenses should not be considered as it was a land use issue and that what should be considered was consistency with zoning and how to interpret and uphold the covenants.

Ms. Jones stated her appreciation for Mr. Rogers's opinion and those who came to speak to the application. She stated that it was acceptable as a land use case. She stated that a land use permit took into account the input of the neighbors. She stated that she would not support something that was clearly in conflict with the covenants of the neighborhood, but that she was not convinced that it was in conflict with the covenants. She stated she interpreted that some commercial activities were allowed based on Article 7 of the covenants. She stated that the covenants should be considered and valued regardless of the date. She stated that significant participation would be required to change the covenants and stated her support of the application.

Mr. McGlennon stated that since there was a three-year sunset clause, he was not going to request to modify the 12-child limit.

Mr. Kennedy asked for a Board consensus to evaluate the ordinance to address child-care facilities' licensing process.

Mr. Icenhour made a motion to adopt the resolution.

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

## **RESOLUTION**

### **CASE NO. SUP-0004-2009. DEE'S CHILD CARE**

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

WHEREAS, Ms. Darlene Ingram and Mr. Keith Ingram have applied for an SUP to allow for the expansion of her existing child care operation to a maximum of 12 children on a parcel, totaling approximately 0.597 acres and zoned R-2, General Residential; and

WHEREAS, the subject parcel is located at 156 Indian Circle and can be further identified as James City County Real Estate Tax Map Parcel No. 5920200069; and

WHEREAS, the Planning Commission of James City County, following its public hearing on May 6, 2009, recommended approval of this application by a vote of 5-2.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0004-2009, as described herein with the following conditions:

1. Day Care Capacity: No more than 12 children shall be cared for at the child day care facility and no more than five of the 12 children shall be under the age of 2 ½.

2. Hours of Operation: Hours of operation shall be limited from 6 a.m. to 6 p.m., Monday through Friday.
3. Validity of Special Use Permit: This SUP shall be valid for a period of 36 months from the date of approval during which the day care owner shall maintain (and renew or obtain as necessary) all needed County and State permits to operate the day care facility. Should the applicant wish to re-apply, an application shall be submitted at least 90 days prior to expiration of this SUP.
4. Signage: No additional signage shall be permitted which relates to the use of the property as a child day care facility.
5. Lighting: No additional exterior lighting shall be permitted which relates to the use of the property as a child day care facility.
6. Food Preparation: No commercial food preparation or laundry services shall be provided as part of the operation of the child day care facility. For purposes of this condition, "commercial food preparation or laundry services" shall be defined as meaning any food preparation or laundry services provided at the facility that are not directly related to, and intended to serve the needs of, the children being cared for and/or the day care center staff.
7. Severance Clause: This SUP is not severable. Invalidity of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

At 9:10 p.m. Mr. Kennedy recessed the Board.

At 9:17 p.m. Mr. Kennedy reconvened the Board.

2. Case No. ZO-0003-2009. Zoning Ordinance Amendment – Setback Reductions in the B-1, General Business and M-1, Limited Industrial

Mr. Jason Purse, Planner stated that staff has received a request to amend the Zoning Ordinance to allow for front setback reductions in the M-1, Limited Business/Industrial District, with approval of the Development Review Committee (DRC). He said that similar language currently exists in the B-1, General Business District, and allows for a reduction to 25 feet. Mr. Purse stated that this request is coming forward at this time because certain M-1 parcels are located in Community Character Areas, where approved design guidelines suggest lessened front setbacks for business developments. He said that the Toano Community Character Area Design Guidelines recommends lessened setbacks for business uses in both the "Historic Toano" area and the "Transition Areas" in the Community Character Area. He said that under the current ordinance language, no reduction of front setbacks is permitted in M-1.

Mr. Purse stated that having consistency between the B-1 and M-1 ordinances is important and that staff therefore recommends that consistent language be used for both sections and the criteria for setback reductions in B-1 are important, as they deal with restricting reductions if a roadway appears on the Six-Year Primary Road plans, etc. Staff believes it is important to include that language in the M-1 district as well. Staff included a new section to both districts that allows further reduction of setbacks based on those specifically approved design guidelines by the Board of Supervisors. Mr. Purse said that staff has restricted setback reductions in M-1 to "commercial" uses. He noted that since there are commercial uses in the M-1 district, the Toano guidelines specifically state that commercial uses (not industrial uses) should have reduced

setbacks and that staff believes that this ordinance amendment will help further the recommendations of the approved guidelines. He said that while the B-1 district currently has reduction language, it does not allow for the minimum setbacks suggested by the Toano area study. The new language allows for reduction of setbacks to less than 25 feet in both districts, but only upon the DRC finding substantial compliance with approved design guidelines. Currently, the Toano Community Character Area is the only area in the County with approved design guidelines and therefore the only area that would be eligible for this additional reduction. Mr. Purse stated that at the request of the Policy Committee, staff also changed Section 24-393(1)(c), in the B-1 ordinance, to provide more clarity that the Development Standards in the Comprehensive Plan should be met or exceeded as a part of one of the criteria for receiving the reduction. Staff included that reworded language in the M-1 language as well.

At its April 15, 2009, meeting the Policy Committee voted 5-0 to recommend approval of this ordinance amendment to the Planning Commission.

At its May 6, 2009, meeting the Planning Commission voted 5-2 to recommend approval of this ordinance amendment.

Staff recommended adoption of the ordinance amendments.

Mr. Icenhour asked who requested the change.

Mr. Purse stated that it was a request from a developer with a potential case in the Toano area.

Mr. Icenhour clarified that it was a specific developer with a specific benefit from this.

Mr. Purse stated that was correct.

Mr. Icenhour commented on the definition of "meets or exceeds." He asked if this was a necessary statement. He stated the standards of the Comprehensive Plan would be a minimal acceptable requirement and asked the need to have the language in this.

Mr. Purse stated that this was discussed at the Policy Committee and Planning Commission meetings. He stated that only one of three standards was required to be met. He stated that he believed the logic was that the cases were different and may be evaluated differently. He stated that some standards may need to be met or some exceeded.

Mr. Icenhour stated that he did not understand why the language of "meets or exceeds" needed to be included.

Mr. Purse stated that he believed it was for flexibility.

Mr. McGlennon asked why it wouldn't be necessary to meet the standards.

Mr. Purse stated that some standards were easier to meet than others.

Mr. Allen Murphy, Planning Director, stated that the site plan guidelines may be applicable in some cases but not in others.

Mr. Kennedy opened the Public Hearing.

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

Mr. Icenhour asked about the layout of the ordinance.

Mr. Purse stated that this was due to how the current ordinance is structured. He stated that it was ordered differently for the ordinances and that he wanted to keep it consistent.

Mr. Rogers stated that the County Code was updated internally and that the zoning ordinance update has not been done in some time. He stated that staff would update the entire zoning ordinance for these types of changes.

Mr. McGlennon asked why this would not be done during the Comprehensive Plan update.

Mr. Purse stated that the Toano Design Guidelines were adopted in 2006 and that staff wanted to change the ordinance to implement the guidelines.

Mr. Goodson stated that many times these cases come forward because an applicant brings it to the Board's attention.

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

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

3. FY 2010-2015 Six-Year Secondary System Construction Program

Mr. Steven Hicks, Development Manager, stated that each year VDOT and the Board update the Six Year Secondary System Construction Program. He stated that for FY 2010-2015 the allocations total \$2.7 million. He noted that in FY 2009 alone, the allocation was \$1.7 million. He reviewed the recommended priorities of the construction program. Staff recommended approval of the resolution.

Mr. McGlennon asked about the Ironbound Road widening and asked if it included any grass median past Eastern State Hospital.

Mr. Hicks stated that some streetscaping and lighting were included.

Mr. McGlennon asked if there was any determination of connection into the Eastern State property.

Mr. Hicks stated that the project ended prior to the entrance of Eastern State.

Mr. Icenhour asked about the light at Jolly Pond and Centerville, and asked if the purpose was to decide if the traffic warranted a stoplight when the schools opened.

Mr. Todd Halacy, Williamsburg VDOT Residency Administrator, stated that was correct.

Mr. Hicks stated that despite the funding, there were also warrants required. He said that when the school is completed along with other residential development, a traffic count may trigger the warrants. He said at that point traffic safety improvement funds would be available for the signal.



Mr. Kennedy stated that he hoped to have the traffic signal up sooner than later.

Mr. Halacy stated that VDOT was working with the School Board to get the signal up when the school was built.

Mr. Kennedy opened the Public Hearing.

As no one wished to speak to this matter, Mr. Kennedy closed the Public Hearing. Mr. McGlennon made a motion to adopt the resolution.

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

## **RESOLUTION**

### **FY 2010-2015 VDOT SIX-YEAR SECONDARY SYSTEM CONSTRUCTION PROGRAM**

WHEREAS, Sections 33.1-23 and 33.1-23.4 of the 1950 Code of Virginia as amended, provides the opportunity for each county to work with the Virginia Department of Transportation (VDOT) in developing a Six-Year Secondary System Construction Program; and

WHEREAS, James City County has consulted with the VDOT Residency Administrator to set priorities for road improvements on the County's secondary roads; and

WHEREAS, a public hearing was advertised prior to the regularly scheduled Board of Supervisors meeting on June 9 so that citizens of the County had the opportunity to participate in said hearing and to make comments and recommendations concerning the proposed Budget Priority List.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves of the Budget Priority List for the Secondary System as presented at the public hearing.

#### **4. Ordinance to Amend Chapter 13, Motor Vehicles and Traffic, to Adopt State Law, Generally**

Mr. Rogers stated that this was an annual update to the County's Driving Under the Influence (DUI) laws to match the General Assembly's most recent actions. He noted the new laws would take effect July 1, 2009. Staff recommended approval of the ordinance amendment.

Mr. Kennedy opened the Public Hearing.

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

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

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

## **H. BOARD CONSIDERATIONS**

### **1. Shaping Our Shores Master Plan**

Ms. Stephanie Luton, Project Manager of Shaping Our Shores, stated that on May 26, 2009, the Board of Supervisors deferred the Shaping Our Shores Master Plan to allow for more time to review the documents. She stated that an index was provided of specific changes to the documents.

Mr. McGlennon stated that there was a possibility of offering slips for sale at the marina. He asked if this was considered.

Ms. Luton stated that she did not believe that scenario was examined.

Mr. McGlennon stated that it might be interesting to identify the benefits of the sale of some slips to generate revenue early on in the process.

Ms. Luton stated that the big driver that people were looking for was dry boat storage and that it is a good detail to add to the information that is entertained later on. She stated that she did not feel that consideration would have a major impact on what would result.

Mr. Goodson stated that there was nothing that restricted that with the dry boat storage.

Mr. Tingle stated that he was not aware that slips could be sold on a public water space. He stated that some arrangements may be made as in private arrangements, but that he believed the dry boat storage was the driving interest.

Mr. McGlennon stated that there was discussion about clear-enough guidance of the intentions of the master plan. He stated that some options that were eliminated remain in the conceptual master plan and some discussion was not well reflected in the minutes or conceptual master plan. He asked to be able to view guidance in a more systematic way.

Ms. Jones stated that she had requested the minutes added to the appendix of the reading file. She stated that she had concerns that the Board's guidance was not evident with the document. She stated that the minutes reflected a general Board consensus.

Ms. Luton stated that she reviewed the minutes and reviewed the video of the work session to make sure the guidance was clear. She stated that she felt clear guidance was provided at the work session and that the guidance was reflected in the minutes.

Mr. McGlennon stated that he felt that the broad master plan document provided for the interpretation that there were additional opportunities available for the property. He stated that a statement at the beginning of the plan may be more valuable than an appendix at the end of the document. He stated that there was a comprehensive document that has since been narrowed to reflect the Board's preferred options.

Ms. Luton stated that the five scenarios documented in the master plan were devised from the discussion from the work session and that none of the scenarios had a residential component. She stated that if the Board would like to reorder the documentation, it would be possible.

Mr. Goodson stated that he wanted to see some notation in the body of the document reflect the guidance from the Board.

Ms. Luton stated those revisions could be added into the text.

Mr. Goodson stated that it would be valuable to have the guidance in the document itself.

Ms. Jones stated that this was a long-range planning document and that the guidance of this Board may not be clear.

Mr. Goodson stated that he preferred to see the text in the document.

Mr. Kennedy commented on the statement in the resolution that notes that the master plan was a long-range, high-level planning document.

Ms. Jones stated that she agreed with that.

Mr. Goodson stated he just wished to give specific guidance based on the Board's discussion in the actual document.

Mr. Kennedy stated that video and other references could be made.

Mr. Goodson stated that he felt it needed to be in the document.

Mr. Goodson stated that he would move to adopt the resolution with the amendment that staff will add Board comments into the body of the documents.

Mr. Wanner stated that could be done.

Mr. Goodson stated that he wanted to see the guidance in the document where it was applicable.

Mr. Wanner stated that staff would see that it was done.

Ms. Luton stated that those comments could be added into the revisions table.

Mr. Goodson stated that in the future the Board would not know the current Board's intent if the changes were not documented in the text of the document.

Ms. Luton stated that the text would be included and it would be indexed as well.

Mr. Kennedy stated that there was a motion to adopt the resolution with the condition to insert the Board's guidance into the text of the master plan document.

Mr. McGlennon stated that there as a message from the Friends of the Powhatan Creek Watershed (FOPCW) raising concerns about how the marina would be treated during the Powhatan Creek Watershed Study. He stated that there was also concern about whether the conceptual plan would take into account the desire to reduce the amount of impervious cover on the campground site. He asked if the plan would remove more trees than necessary and whether it would infringe on camp conditions.

Mr. Hicks stated that the Environmental division and Ms. Luton worked together to address some of the concerns.

Ms. Jones stated that the proposals would go through the application process.

Mr. Goodson stated that the plan would not need to be amended.

Ms. Luton stated the FOPCW have been part of the public comment process and stated that the tree cover was removed for illustrative purposes. She stated that not all the trees would be removed and that the grant conditions would be taken into consideration.

Mr. Icenhour stated that the approximate impervious cover listed in the plan was 58.9 percent of the developable area. He asked if this was the amount under the most intensive development plan.

Ms. Luton stated that was correct.

Mr. Icenhour asked what the least intense impervious cover percentage would be.

Ms. Luton stated that the benchmark of the less intense development plan would not drastically change the current impervious cover.

Mr. Wanner stated that he would like to recommend two motions: one for the resolution and the other to direct staff to incorporate the guidance into the document.

Mr. Goodson agreed to amend his motion into two motions.

Mr. Icenhour stated that there was concern that the current document was not immediately clear to citizens. He stated that there was a broad range of things, many of which were not supported. He stated that he agreed with including the guidance.

Ms. Jones stated that she was comfortable with staff inserting the Board's guidance accordingly.

Mr. McGlennon stated that he was confident that it would be adequately reflected in the document, that choices had been made, and that he wanted to continue to illustrate that this was the first step in the process.

Mr. Kennedy stated the first motion was to adopt the resolution.

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

## **RESOLUTION**

### **ADOPTION OF THE SHAPING OUR SHORES MASTER PLAN FOR JAMESTOWN BEACH**

### **CAMPGROUND, JAMESTOWN YACHT BASIN, AND CHICKAHOMINY RIVERFRONT PARK**

WHEREAS, Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park were purchased by James City County to enhance the lives of its citizens by preserving greenspace, protecting environmental and cultural resources, and providing increased waterfront access and recreational opportunities; and

WHEREAS, these three sites required the development of a long-range conceptual plan to identify future uses, and the Shaping Our Shores Master Plan was developed in response to this need through a process that emphasized community input; and

WHEREAS, the recommended uses in the Shaping Our Shores Master Plan were developed to be feasible given the existing site constraints, match the community's vision, provide maximum benefits to the citizens, and offset operational and maintenance costs by developing appropriate and reasonable revenue-generating opportunities; and

WHEREAS, the Master Plan is a high-level planning document of a broad conceptual nature that is intended to guide and assist citizens, staff, commissions, and the Board of Supervisors in making future land use, planning, funding, maintenance, management, and administrative decisions about the three sites.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the Shaping Our Shores Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park.

Mr. Goodson made a motion for staff to interject Board's consensus guidance comments into the electronic document and transmit it to the Board upon completion.

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

#### **2. Parks and Recreation Master Plan**

Mr. John Carnifax, Deputy Director of Parks and Recreation, stated that the Parks and Recreation Master Plan was deferred at the May 26, 2009, Board meeting and clarified that the six-year Capital Improvements Project (CIP) would drive improvements in the County, and stated that the national standards were a tool or guideline. He reassured the Board that the Master Plan would not result in constructing facilities based solely on the national standards. He clarified that the CIP considered other private facilities as well. He stated that there were many items in the matrix that were not related to funding.

Mr. Icenhour thanked Mr. Carnifax for meeting with him. He stated that he did not feel that the document was clear for citizens and that it was very conceptual. He stated that he supports the plan as a technical document and asked the Board to consider it as the Board goes forward with the Comprehensive Plan, a statement that needs to be made to citizens as a long-term policy for Parks and Recreation. He stated that the technical documents are not linked together for the public. He asked that staff make the

Comprehensive Plan a central document for the citizens to understand the County's Parks and Recreation goals.

Ms. Jones stated that she saw this document as a planning document for the Parks and Recreation division. She stated that the Comprehensive Plan was a vision or guide from the citizens. She stated that she felt this was achieved in the Comprehensive Plan.

Mr. McGlennon made a motion to adopt the resolution.

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

## **RESOLUTION**

### **ADOPTION OF THE 2009 PARKS AND RECREATION MASTER PLAN**

WHEREAS, the existing Parks and Recreation Master Plan was previously developed and adopted in 1993; and

WHEREAS, the plan has been updated several times as part of the James City County Comprehensive Plan process; and

WHEREAS, the 2009 Parks and Recreation Master Plan development process began in November of 2007 and includes several public meetings, three surveys, several focus group meetings and benchmarking and assistance from a national consulting firm, and

WHEREAS; the Master Plan is a planning document that is intended to guide and assist citizens, staff, commissions, and the Board of Supervisors in making future, planning, funding, management and administrative decisions regarding parks and recreation programs and facilities.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the 2009 Parks and Recreation Master Plan.

## **I. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, commented on the Dee's Day Care case and stated that the Board has set a precedent by passing the resolution.

## **J. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that when the Board completed its business, it should adjourn to 4 p.m. on June 23, 2009, for a work session and noted that no open comment meeting was scheduled. He stated that there were several Board appointments of individuals to boards, commissions, and committees; and the Hampton Roads Transportation Planning Organization alternate appointment. He stated that he did not feel these appointments were controversial and that the Board may forego a closed session if it desired to do so.

**K. BOARD REQUESTS AND DIRECTIVES**

Mr. Goodson commented that the Hampton Roads Metropolitan Planning Organization (MPO) has reorganized to become more in compliance with Federal rules and only elected officials have been able to be voting members of the new Hampton Roads Transportation Planning Organization (HRTPO). He stated that with the rule change, Mr. Wanner would no longer be able to serve as his alternate. He made a motion that Mr. Kennedy be selected as the alternate voting member.

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

Mr. Goodson commented that he viewed the most recent *Investor Business Daily* periodical which has Lumber Liquidators, a James City County business, highlighted.

Mr. McGlennon made a motion to appoint Ms. Tab Broyles to a four-year term on the Cable Communications Advisory Committee, term to expire on April 30, 2013; to amend the term of Ms. Diana Hutchens on the Colonial Community Services Board to be effective July 1, 2007, and expire on July 1, 2010; to appoint Deputy Chief Stan Stout to a four-year term on the Middle Peninsula Juvenile Detention Commission, term to expire on June 30, 2013; to appoint Mr. Dwight Dansby to a three-year term on the Peninsula Alcohol Safety Action Program, term to expire on June 30, 2012; to appoint Ms. Stephanie Slocum to a four-year term on the Social Services Advisory Board term to expire on July 1, 2013; to reappoint Ms. Carol Scheid to a four-year term on the Thomas Nelson Community College Board, term to expire on July 31, 2013; to reappoint Mr. Michael Kirby and Ms. Polly Bartlett to a three-year term, terms on the Williamsburg Area Arts Commission, terms to expire on June 30, 2012; and to appoint Mr. William C. Porter, Jr., to a four-year term on the Williamsburg Regional Library Board of Trustees, term to expire on June 30, 2013.

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

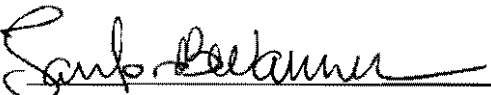
Mr. McGlennon stated that he attended the Teacher of the Year awards by the Williamsburg-James City County School System and GED graduation at Warhill High School where 120 students received GEDs.

**L. ADJOURNMENT to 4 p.m. on June 23, 2009.**

Mr. McGlennon made a motion to adjourn.

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

At 10:12 p.m., Mr. Kennedy adjourned the Board to 4 p.m. on June 23, 2009.

  
Sanford B. Wanner  
Clerk to the Board

JUN 9 2009

ORDINANCE NO. 31A-241BOARD 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 10, GENERAL BUSINESS DISTRICT, B-1, SECTION 24-393, SETBACK REQUIREMENTS, AND DIVISION 11, LIMITED BUSINESS/INDUSTRIAL DISTRICT, M-1, SECTION 24-415, SETBACK REQUIREMENTS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Section 24-393, Setback requirements, and Section 24-415, Setback requirements.

Chapter 24. Zoning

Article V. Districts

Division 10. General Business District, B-1

**Sec. 24-393. Setback requirements.**

Structures shall be located 50 feet or more from any street right-of-way which is 50 feet or greater in width. Where the street right-of-way is less than 50 feet in width, structures shall be located 75 feet or more from the centerline of the street.

(1) Setbacks may be reduced to 25 feet from any street right-of-way which is 50 feet or greater in width or 50 feet from the centerline of the street where the street right-of-way is less than 50 feet in width with approval of the development review committee.

A site shall not be considered for a setback reduction if it is located on a planned road that is designated for widening improvements. A planned road includes any road or similar transportation facility as designated on the Comprehensive Plan, Six-Year Primary or Secondary Road Plan, Peninsula Area Transportation Plan or any road plan adopted by the board of supervisors. The development review committee will consider a setback reduction only if the setback reduction will achieve results which clearly satisfy the overall purposes and intent of section 24-86 (Landscaping and Tree Preservation Requirements); if the setbacks do not negatively impact adjacent property owners; and if one or more of the following criteria are met:



(a) The site is located on a Community Character Corridor or is designated a Community Character Area on the Comprehensive Plan Land Use Map, and proposed setbacks will better complement the design standards of the Community Character Corridor.

(b) The adjacent properties have setbacks that are non-conforming with this section, and the proposed setbacks will better complement the established setbacks of adjacent properties, where such setbacks help achieve the goals and objectives of the Comprehensive Plan.

(c) The applicant has offered ~~extraordinary~~ site design which ~~better~~ meets *or exceeds* the Development Standards of the Comprehensive Plan.

*(2) In areas where the board of supervisors has adopted specific design guidelines that call for reduction of setbacks in excess of those permitted in sub-section (1), the development review committee can approve reductions upon finding substantial conformance with recommendations from the guidelines and compliance with the criteria from sub-section (1) above.*

Division 11. Limited Business/Industrial District, M-1

**Sec. 24-415. Setback requirements.**

(a) Structures shall be located 50 feet or more from any street right-of-way which is 50 feet or greater in width. Where the street right-of-way is less than 50 feet in width, structures shall be located 75 feet or more from the center line of the street. The minimum setback of any portion of a structure which is in excess of 35 feet in height shall be increased one foot for each two feet of the structure's height in excess of 35 feet.

(b) The minimum setback shall also be increased to a minimum of 75 feet from any street with a right-of-way 50 feet or greater in width and 100 feet from any street with a right-of-way of less than 50 feet of width when the property immediately across the street is zoned residential. The minimum setback of any portion of a structure across the street from property zoned residential which is in excess of 35 feet in height shall be increased one foot for each two feet of the structure's height in excess of 35 feet.

*(c) Setbacks for commercial uses may be reduced to 25 feet from any street right-of-way which is 50 feet or greater in width or 50 feet from the centerline of the street where the street right-of-way is less than 50 feet in width with approval of the development review committee.*

*A site shall not be considered for a setback reduction if it is located on a planned road that is designated for widening improvements. A planned road includes any road or similar transportation facility as designated on the Comprehensive Plan, Six-Year Primary or Secondary Road Plan, Peninsula Area Transportation Plan or any road plan adopted by the board of supervisors. The development review committee will consider a setback reduction only if the setback reduction will achieve results which clearly satisfy the overall purposes and intent of section 24-86 (Landscaping and Tree Preservation Requirements); if the setbacks do not negatively impact adjacent property owners; and if one or more of the following criteria are met:*

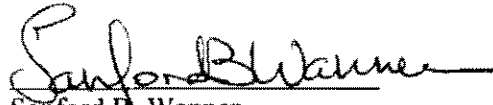
*(1) The site is located on a Community Character Corridor or is designated a Community Character Area on the Comprehensive Plan Land Use Map, and proposed setbacks will better complement the design standards of the Community Character Corridor.*

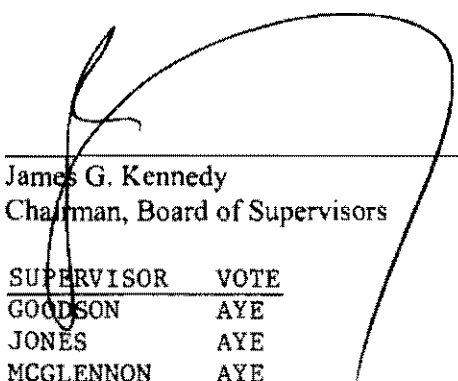
*(2) The adjacent properties have setbacks that are non-conforming with this section, and the proposed setbacks will better complement the established setbacks of adjacent properties, where such setbacks help achieve the goals and objectives of the Comprehensive Plan.*

*(3) The applicant has offered site design which meets or exceeds the Development Standards of the Comprehensive Plan.*

*(d) In areas where the board of supervisors has adopted specific design guidelines that call for reduction of setbacks in excess of those permitted in sub-section (c), the development review committee can approve reductions upon finding substantial conformance with recommendations from the guidelines and compliance with the criteria from sub-section (c) above.*

ATTEST:

  
Sanford B. Wanner  
Clerk to the Board

  
James G. Kennedy  
Chairman, Board of Supervisors

SUPERVISOR	VOTE
GOODSON	AYE
JONES	AYE
MCGLENNON	AYE
ICENHOUR	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of June, 2009.

M-1Setbacks\_ord

JUN 9 2009

ORDINANCE NO. 66A-64BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 13, MOTOR VEHICLES AND TRAFFIC, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 13-7, ADOPTION OF STATE LAW; AND ARTICLE II, DRIVING AUTOMOBILES, ETC., WHILE INTOXICATED OR UNDER THE INFLUENCE OF ANY DRUG, SECTION 13-28, ADOPTION OF STATE LAW, GENERALLY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 13, Motor Vehicles and Traffic, is hereby amended and reordained by amending Section 13-7, Adoption of state law; and Section 13-28, Adoption of state law, generally.

#### Chapter 13. Motor Vehicles and Traffic

##### Article I. In General

##### **Sec. 13-7. Adoption of state law.**

(a) Pursuant to the authority of section 46.2-1313 of the Code of Virginia, as amended, all of the provisions and requirements of the laws of the state contained in title 46.2 of the Code of Virginia, as amended, and in force on July 1, ~~2008~~2009, except those provisions and requirements the violation of which constitutes a felony, and those provisions and requirements which by their very nature can have no application to or within the county, are hereby adopted and incorporated in this chapter by reference and made applicable within the county. Such provisions and requirements are hereby adopted, mutatis mutandis, and made a part of this chapter as fully as though set forth at length herein, and it shall be unlawful for any person within the county to violate or fail, neglect or refuse to comply with any provision of title 46.2 of the Code of Virginia which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under title 46.2 of the Code of Virginia.

(b) It is the intent of the board of supervisors that all future amendments to sections of the Code of Virginia incorporated by reference in the provisions of this article be included in this article automatically upon their effective date, without formal amendment of this article by the board of supervisors.

**State law reference**-Authority to adopt state law on the subject, Code of Va., § 46.2-1313 and ~~§ 4-13.39.2.~~

Article II. Driving Automobiles, Etc., While Intoxicated or  
Under the Influence of any Drug\*

**Sec. 13-28. Adoption of state law generally.**

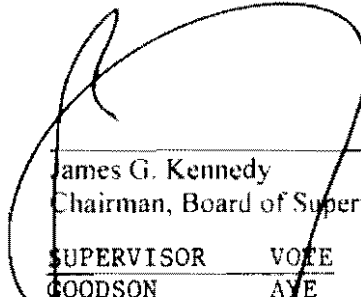
Article 9 (section 16.1-278 et seq.) of chapter 11 of title 16.1 and article 2 (section 18.2-266 et seq.) of chapter 7 of title 18.2, Code of Virginia, as amended and in force July 1, 2008~~2009~~, is hereby adopted and made a part of this chapter as fully as though set out at length herein. It shall be unlawful for any person within the county to violate or fail, neglect or refuse to comply with any section of the Code of Virginia as adopted by this section.

**\*State law reference** - Authority to adopt state law on the subject, Code of Va., § 46.2-1313.

This Ordinance shall become effective on July 1, 2009.

ATTEST:

  
Sanford B. Wanner  
Clerk to the Board

  
James G. Kennedy  
Chairman, Board of Supervisors

SUPERVISOR	VOICE
GOODSON	AYE
JONES	AYE
MCGLENNON	AYE
ICENHOUR	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of June, 2009.