

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 14TH DAY OF AUGUST 2012, 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

Mary K. Jones, Chairman, Berkeley District
John J. McGlennon, Vice Chairman, Roberts District
W. Wilford Kale, Jr., Jamestown District
James G. Kennedy, Stonehouse District
James O. Icenhour, Jr., Powhatan District

Robert C. Middaugh, County Administrator
Leo P. Rogers, County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE - Jocelyn Fellows, a rising fourth-grader at Matoaka Elementary School, led the Board and citizens in the Pledge of Allegiance.

Ms. Jones recessed the Board at 7:03 p.m. in order to conduct the James City Service Authority (JCSA) Board of Directors Meeting.

Ms. Jones reconvened the Board of Supervisors Meeting at 7:05 p.m.

E. PRESENTATIONS – None

F. PUBLIC COMMENT

1. Mr. John Pottle, 4233 Teakwood Drive, Williamsburg, Pastor of Crosswalk Community Church, led the Board and citizens in an invocation.

2. Mr. Keith Sadler, 9929 Mountain Berry Court, Toano, addressed the Board with concerns over Greenspace/Land Acquisition Program dollars that are not necessary for the County to spend at taxpayer's expense. He expressed concern over the United Nations Agenda 21 and the Wildlands Project.

3. Mr. Henry Denning, 4315 Audley Green Terrace, Williamsburg, addressed the Board, on behalf of the residents of Colonial Heritage, concerning the Dominion Virginia Power (Virginia Power) proposed Surry-Skiffes Creek power lines. He stated that the Board only supports the route if it goes under the river and respectfully requested that the Board support the route proposed by Virginia Power. He presented the Board

with a signed petition supporting the current route proposed by Virginia Power. Mr. Denning also invited Mr. Kennedy, Mr. Middaugh, and Mr. Rogers to attend Colonial Heritage's upcoming Homeowners Association (HOA) meeting.

Mr. Middaugh stated that he and Mr. Rogers would be attending the Colonial Heritage HOA meeting. Mr. Middaugh noted that the first resolution passed by the Board in regards to this issue was for rejecting the Chickahominy Route proposed by Virginia Power. The Board has recommended the route go under the James River for a variety of reasons including economic, aesthetic, and tourism. The route needs to be the best result for the whole County. Mr. Middaugh stated that he looked forward to explaining these reasons in more detail at the Colonial Heritage HOA meeting.

4. Ms. Sue Sadler, 9929 Mountain Berry Court, Toano, addressed the Board and thanked Ms. Jones for her service as Chairman of Board. She noted that under Ms. Jones' leadership, the James City County Bond Rating has gone up while the Federal government's has gone down. Ms. Sadler also addressed the Board concerning property owners' right to raise and keep chickens on their property.

5. Ms. Mary Leedom, 6119 Wildey, Seaford, a member of Concerned Citizens of Historic Triangle addressed the Board with citizen concerns regarding the loss of property rights under the guise of sustainable development. Limitations have been put on aqua-culture, rural lands, and farms and the ability to raise chickens on your own property.

6. Ms. Rosanne Reddin, 2812 King Rook Court, Williamsburg, addressed the Board concerning effective leadership traits. She stated that Ms. Jones exhibits these leadership traits. Ms. Reddin said that Ms. Jones has led the County to national recognition for its bond rating. She commended and thanked Ms. Jones for her service.

7. Mr. Russ Gibbons, 117 King William Drive, addressed the Board on behalf of Backyard Chicken Keeping. He stated that he would be willing to pay for a special permit if that would allow him and his family to keep their chickens that they see as pets.

Mr. Middaugh stated that the Planning Commission will be taking up this issue to determine how it can be inserted into the Code. Mr. Middaugh told Mr. Gibbons to contact Mr. Allen Murphy, Director of Development Management, on how to deal with this issue in the interim until the Planning Commission can address the issue.

8. Ms. Janet Casenave, 3404 Waterview Road, Toano, addressed the Board and thanked Ms. Jones for her service as Chairman.

9. Mr. John Mateer, 107 Tanbark Lane, Williamsburg, addressed the Board and stated his admiration and respect for the outgoing Chair, Ms. Jones. He stated that Ms. Jones has been steadfast in supporting property rights and lowering the budget.

10. Ms. Marjorie Ponziani, 4852 Bristol Circle, Williamsburg, addressed the Board and thanked Ms. Jones for her leadership, for her explanation of Agenda 21, and for not renewing membership in the International Council for Local Environmental Initiatives (ICLEI).

11. Ms. Linda Reese, 511 Spring Trace, Williamsburg, addressed the Board concerning a complete ban of the tethering of dogs in James City County. She requested that the Board follow in the footsteps of the City of Hampton and add this issue to the agenda in the future for Board consideration.

12. Ms. Linda Rowe, 122 Winterset Pass, Williamsburg, addressed the Board concerning the tethering of dogs. She provided a picture of a dog that had been tethered in a field and the collar had grown into the dog's neck. She stated that she strongly supports an ordinance that bans tethering of dogs.

13. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, addressed the Board and asked for remembrance of our troops overseas. Mr. Oyer spoke about declining property values and real estate assessments. He mentioned that cluster homes are bad for property values, but also pose a risk in case of a fire.

G. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon stated that he, Ms. Jones, and Mr. Icenhour attended a groundbreaking for Habitat for Humanity on August 13, 2012. He said that this new project is a partnership that will benefit the Morriset family and that Anheuser Busch is the main sponsor of funding for the project.

Mr. Icenhour noted that he attended the groundbreaking for the Grove Community Outreach Center on August 8, 2012.

H. CONSENT CALENDAR

Mr. McGlennon made a motion to approve the Consent Calendar.

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

1. Minutes-
 - a. July 24, 2012, Work Session
 - b. July 24, 2012, Regular Meeting
2. Contract Award – Architectural Services For Fire Station 1, Renovation/Reconstruction – \$425,000

RESOLUTION

CONTRACT AWARD – ARCHITECTURAL SERVICES FOR FIRE STATION 1,

RENOVATION/RECONSTRUCTION – \$425,000

WHEREAS, a Request for Proposals (RFP) for Architectural Services for Fire Station 1 was publicly advertised and staff reviewed proposals from nine firms interested in performing the work; and

WHEREAS, upon evaluating the proposals, staff determined that Guernsey-Tingle Architects was the 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, hereby awards the \$425,000 contract for Architectural Services for Fire Station 1 to Guernsey-Tingle Architects.

3. Dedication of Streets in the Marywood Subdivision - Phases One and Three

RESOLUTION

DEDICATION OF STREETS IN THE MARYWOOD SUBDIVISION –

PHASES ONE AND THREE

WHEREAS, the streets described on the attached 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 Residency Administrator 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 in 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 Residency Administrator for the Virginia Department of Transportation.

I. PUBLIC HEARINGS

1. Case No. ZO-0014-2011. Exterior Signage

Ms. Jones noted staff was requesting a deferral.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones kept the Public Hearing open until September 11, 2012.

Mr. McGlennon made a motion for deferral until September 11, 2012.

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

2. Case No. Z-004-2012. Walnut Grove Proffer Amendment

Ms. Jones noted that the applicant was requesting a deferral.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones kept the Public Hearing open until September 11, 2012.

Mr. McGlennon made a motion for deferral until September 11, 2012.

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

3. Case No. SUP-0008-2012. Chickahominy Baptist Church Day Care

Ms. Leanne Reidenbach, Planner III, addressed the Board regarding Ms. Alice Wilson's request for a Special Use Permit (SUP) to operate a child day-care center in the existing accessory building on the Chickahominy Baptist Church property for up to 30 children and staff. Ms. Reidenbach noted that while the 2009 Comprehensive Plan does not recommend commercial facilities as primary uses in Rural Lands, it does note that certain low intensity uses may be appropriate if they are compatible with the natural and rural character of the area. She stated that staff finds the proposed day care to be compatible with the existing church site and does not negatively affect agricultural or forestall uses. The proposal is also compatible with the surrounding zoning and development. Ms. Reidenbach also noted that the Department of Social Services would have oversight of the proposed day care and stated that the Planning Commission had unanimously approved the SUP.

Mr. Icenhour noted that there is a significant distance between the day care and the existing playground on the church property and asked if this was something for the Department of Social Services to consider.

Ms. Reidenbach stated that having a playground is a requirement by the Department of Social Services and it would be making the determination if it is an acceptable distance.

Ms. Jones opened the Public Hearing.

1. Ms. Alice Wilson, 236 Bush Springs Road, Williamsburg, owner of Alice's Wonderland Playhouse, addressed the Board and requested that it approve the SUP. She stated that the day care would be monitored by the Department of Social Services. Ms. Wilson noted that the day care would be open until 7 p.m. and on Saturdays. She stated that these extended hours would meet the needs of parents that work in Hampton Roads who struggle to pick up their children by 6 p.m. Ms. Wilson thanked the Board for its time.

Ms. Jones asked if anyone else would like to speak about this case.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made a motion to approve the SUP.

Ms. Jones asked Mr. Middaugh to call the role.

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

RESOLUTION

CASE NO. SUP-0008-2012. CHICKAHOMINY BAPTIST CHURCH DAY 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. Alice Wilson has applied for an SUP to allow a child day-care center in an existing accessory building on the site of the Chickahominy Baptist Church (the "Center"); and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-0008-2012; and

WHEREAS, the proposed Center is depicted on the plan prepared by the James City County Planning Division, dated June 21, 2012, and entitled "JCC Case No. SUP-0008-2012, Chickahominy Baptist Church Day Care;" and

WHEREAS, the proposed Center is located in its entirety on property zoned R-8, Rural Residential, further identified as Parcel No. (1-9B) on James City County Real Estate Tax Map No. (22-3); and

WHEREAS, the Planning Commission, following its Public Hearing on July 11, 2012, voted 7-0 to recommend approval of Application No. SUP-0008-2012.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve SUP Application No. SUP-0008-2012, as described herein, pursuant to the following conditions:

1. **Master Plan:** This SUP shall be valid for the operation of a child day-care center. The Center and play areas shall be generally located as shown on the master plan titled "JCC Case No. SUP-0008-2012, Chickahominy Baptist Church Day Care" drawn by the James City County Planning Division dated June 21, 2012.
2. **Occupancy:** The total number of occupants at any time, including, but not limited to, staff and children, shall be determined by regulations of the Virginia Department of Social Services and by James City County Building Safety and Permits, whichever regulations are more restrictive. In no case shall the occupancy exceed 30 individuals at any time.
3. **Site Plan:** A site plan shall be submitted to the James City County Planning Division and shall be approved by the Planning Director.
4. **Drainfield Capacity:** Prior to final site plan approval, the applicant shall receive full approval from the Virginia Department of Health for septic tank and drainfield capacity in an amount sufficient to handle the Center.
5. **Lighting:** Should a new exterior site or building lighting be installed for the operation of the day care, such fixtures shall have recessed fixtures with no lens, bulb, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light source in such a manner that all light will be directed downward and the light source is not visible from any side. No glare greater than 0.1 footcandle shall extend beyond the property line unless it is lighting an adjacent pedestrian walkway or road.

6. **Licensure:** Prior to final site plan approval, the applicant shall provide evidence of licensure to operate a child day-care center from the appropriate State agencies.
7. **Enrollment Figures:** Beginning with the adoption date of this resolution and following at six month intervals, the Center shall provide the Zoning Administrator actual Center enrollment data for the previous six months. The Center enrollment data shall include, at a minimum, the total number of children enrolled and the age of each child at the time of the report. Enrollment shall be limited to children aged two years, six months, and one day or older unless a fire suppression system is installed in accordance with Building Safety and Permits requirements.
8. **Hours of Operation:** Hours of operation shall be limited to between 6 a.m. and 7 p.m. on Monday through Friday, and 7 a.m. and 5 p.m. on Saturdays.
9. **Water Conservation Guidelines:** The applicant shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority prior to final site plan approval. The standards may include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems, the use of approved landscaping materials including the use of drought-tolerant plants where appropriate, and the use of water-conserving fixtures to promote water conservation and minimize the use of public water resources.
10. **Commencement and Severance Clause:** Within 36 months of the issuance of this SUP, the Center shall receive a Certificate of Occupancy, or the SUP shall become void.

4. Case No. AFD-04-86-2-2012/AFD-04-86-3-2012. Pates Neck Agricultural and Forestal District.

Mr. Luke Vinciguerra, Planner I, addressed the Board concerning the Pates Neck Agricultural and Forestal District (AFD). He stated that according to the State Code, the County must review all established AFDs prior to their expiration. During the review, districts must be continued, modified, or terminated. The Pates Neck AFD is scheduled to expire in September 2012. Mr. Vinciguerra noted that two additional property owners have requested to join the AFD, bringing the total acreage up to 755 acres. Mr. Vinciguerra stated that staff recommends continuation of the AFD with the inclusion of the two additional properties.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Icenhour made a motion to approve the ordinance.

Ms. Jones asked Mr. Middaugh to call the roll.

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

5. Case No. SUP-0007-2012. Jim's Well Service.

Mr. Jose Ribeiro, Planner II, addressed the Board regarding the SUP requested by Jim's Well Service. Mr. Frederick Johnson applied for an SUP to operate a contractor's office on his property, which is zoned A-1. Mr. Ribeiro noted that the applicant does not propose any additional structures on the property, other than

expanding the covered storage area. Hours of operation would be Monday through Friday, 7 a.m. to 7 p.m., with two full-time employees picking up and returning materials and equipment. Mr. Ribeiro stated that staff finds the proposal to be consistent with the surrounding zoning and development and compatible with the 2009 Comprehensive Plan. All reviewing agencies recommend approval of the SUP.

Mr. Kennedy noted that two similar cases, Tiki Climbing and Grinding Professional Tree Service and Johnny Timbers Tree and Landscaping Service, both tree removal services, had been heard in the past. Mr. Kennedy asked if any similar requirements were being made concerning keeping equipment fenced.

Mr. Ribeiro stated that yes, there were similar requirements. However, this case is unique because the property is a 44-acre parcel that is surrounded by a Resource Protection Area (RPA). Hence it is very well buffered from other residents. Mr. Ribeiro noted that there is a condition of the SUP requiring equipment to be stored or covered.

Mr. Kennedy stated that he just wanted to make sure there was consistency since there are similar cases that were somewhat controversial.

Mr. Ribeiro also noted that there were restrictions on commercial signage which would distract from the residential character of the area.

Ms. Jones opened the Public Hearing.

As no one wished to speak to the matter, Ms. Jones closed the Public Hearing.

Mr. Kennedy made a motion to approve the SUP.

Ms. Jones asked Mr. Middaugh to call the roll.

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

RESOLUTION

CASE NO. SUP-0007-2012. JIM'S WELL SERVICE

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 (the "SUP") process; and

WHEREAS, Mr. Frederick Johnson has applied for an SUP to allow a contractor's office and accessory uses; and

WHEREAS, the proposed development is shown on a plan titled "Special Use Permit Exhibit for Jim's Well Service" dated May 24, 2012; and

WHEREAS, the property is located at 194 Racefield Drive and can be further identified as James City County Real Estate Tax Map Parcel No. 0320100005; and

WHEREAS, the SUP shall also include a shared driveway situated within existing 40-foot easement on a parcel located at 200 Racefield Drive and further identified as James City County Real Estate Tax Map Parcel No. 0340100012D; and

WHEREAS, the Planning Commission, following its public hearing on July 11, 2012, voted 7-0 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0007-2012 as described herein with the following conditions:

1. This SUP shall be valid for the operation of a contractor's office and accessory uses thereto (the "Proposal"), on approximately 0.25 acres of a property located at 194 Racefield Drive and further identified as James City County Real Estate Tax Map No. 0320100005 (the "Property"). The SUP shall also include a shared driveway situated within existing 40-foot ingress and egress easement on a parcel zoned A-1, General Agricultural, located at 200 Racefield Drive and further identified as James City County Real Estate Tax Map No. 0340100012D. Development of the Property shall be generally in accordance with the Master Plan titled "Special Use Permit Exhibit for Jim's Well Service" dated May 24, 2012 (the "Master Plan"), with such minor changes as the Planning Director determines does not change the basic concept or character of the development.
2. No work associated with the Proposal, except for clerical/office work, maintenance of equipment and vehicles, storage, and loading of materials on trucks shall be conducted at the Property.
3. The hours of operation shall be limited to 7 a.m. to 7 p.m. Monday through Friday.
4. Storage of equipment and machinery associated with the Proposal, excluding trucks and other vehicles, shall be located inside the "Outbuilding and Carport" or "Future Covered Storage Area" as shown on the Master Plan.
5. All vehicles associated with the Proposal shall maintain ingress/egress to Racefield Drive through one of two existing entrances (the "Entrance") located within a 40-foot access easement situated on adjacent parcel at 200 Racefield Drive.
6. Any improvements to the Entrance shall be reviewed and approved by the Virginia Department of Transportation (VDOT). During site plan review, the applicant shall provide evidence that all improvements to the Entrance required by VDOT will be contained within the existing 40-foot access easement, as shown in Exhibit A. Should improvements to the Entrance require work to be extended outside the access easement, the existing easement deed must be amended to contain all parts of the improved entrance within the access easement. Evidence of such amendment must be submitted to the Planning Director prior to final site plan approval.
7. No outdoor signage advertising the Proposal shall be allowed in the Property and elsewhere within or adjacent to the 40-foot access easement.
8. All new exterior light fixtures, including building lighting, on the Property shall have recessed fixtures with no lens, bulb, or globe extending below the casing. In addition, a lighting plan shall be submitted to and approved by the Planning Director or his designee, which indicates no glare outside the property lines. All light poles shall not exceed 20 feet in height unless otherwise approved by the Planning Director prior to final site plan approval. "Glare" shall be defined as more than 0.1 foot-candle at the boundary of the Property or any direct view of the lighting source from the adjoining properties.
9. An amendment to this SUP application shall be necessary should the number of vehicles associated with the Proposal exceed eight vehicles. Beginning with the adoption date of this resolution and following at 12 months intervals, the applicant shall provide the Zoning

Administrator a statement of compliance including the number of vehicles associated with the Proposal. This condition shall exclude employee's personal vehicles.

10. A site plan shall be required for this Proposal. Final approval of the site plan shall be obtained within 18 months of issuance of this SUP, or the SUP shall become void.
11. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

6. Case No. Z-0003-2012/MP-0001-2012. New Town Section 12.

Ms. Leanne Reidenbach, Planner III, addressed the Board in regards to the rezoning of New Town Section 12. She stated that Mr. Greg Davis of Kaufman and Canoles has applied to rezone Section 12 to allow development of 269 for-rent townhomes. Section 12 is currently zoned R-8 with proffers and is one of the last sections of New Town to be rezoned to MU, mixed-use. Section 12 is located in the west side of New Town near the end of WindsorMeade Way, bordered by WindsorMeade Retirement Community to the north and WindsorMeade Marketplace to the south. Both of which are zoned and designated as MU. She also stated that Section 12 is bordered by Route 199 on the east. Ms. Reidenbach explained that New Town was originally zoned R-8 with proffers as part of the overall Master Plan in 1997, which provided a sliding scale for residential and non-residential densities. Since then, the Board has approved each section going to MU with more specific master plans, specific proffers, and specific design guidelines. This process has resulted in a gradual buildout and development of New Town. It allows the Planning Commission and the Board of Supervisors to evaluate each phase of development and to mitigate any impacts of development.

Ms. Reidenbach stated that this applicant has proposed to shift unused development from the east side of Route 199 to the west side. Staff and the applicant have done a detailed inventory of development in New Town in comparison to the Master Plan and have determined that there is enough extra density to move 60 units to Section 12. After the transfer, revised density caps for New Town West still fall within overall ranges as defined in the original Master Plan with the exception of commercial square footage on the west side of New Town.

Ms. Reidenbach stated that a traffic study was submitted with the proposal and the Virginia Department of Transportation (VDOT) agreed that the project has minimal impact on Monticello Avenue and therefore no improvements are proposed along that corridor. A traffic study was also done for WindsorMeade Way and in accordance with VDOT and a third party consultant review, the applicant has proffered a 100-foot right-turn lane and a 100-foot taper at the entrance of the project. This is to ensure a safe entrance off WindsorMeade Way. The applicant has proposed other voluntary proffers to address impacts to the development. These include a natural resource study for endangered species, pre-construction meeting with residents of WindsorMeade Retirement Community, enhanced buffering along Route 199, ten workforce housing units, and cash proffers toward water, schools, public safety, and improvements at the Monticello Avenue/News Road intersection.

Ms. Reidenbach stated that the applicant's initial Master Plan has been reviewed and approved by the New Town Design Review Board (DRB). Any future plans, including building elevation and landscaping, will be required to be approved by the DRB. She stated that on July 11, 2012, the Planning Commission approved the project subject to the applicant providing enhanced landscaping along the side facing WindsorMeade Way. The Commission also asked the applicant to address resident concerns regarding security, construction hours/traffic, and potential visual impacts of buildings. In response, the applicant met with WindsorMeade Retirement Community and redesigned the area of the project closest to the WindsorMeade guardhouse to eliminate five residential units, relocated several buildings, provide a security fence, enhance landscaping along the property line, and plant enhanced landscaping along the stormwater pond near WindsorMeade Way to mitigate visual impacts. The applicant has added a proffer that limits construction hours and bulk deliveries.

Ms. Reidenbach stated that staff finds the proposal to be compatible with the 2009 Comprehensive Plan and the original New Town Master Plan and guidelines. Staff recommends that the Board approve the rezoning request and to accept the voluntary proffers.

Mr. Icenhour stated that he understood how square footage moved around from one section to another, but asked if this was the first time the Board has considered a conversion from residential to commercial or commercial to residential.

Ms. Reidenbach stated that was correct.

Mr. Icenhour stated that this is where seven residential units were taken out of Section 12 and converted to square footage in Section 11, which is the commercial section on the west side of New Town.

Ms. Reidenbach stated that was correct.

Ms. Jones opened the Public Hearing.

1. Mr. Greg Davis of Kauffman and Canoles, with his client, Mr. Bill Hall, from Oxford Properties, presented the project to the Board. He stated that the project is consistent with the 2009 Comprehensive Plan Goal H3, to increase workforce and affordable housing. He noted that projected rent of all units would fall within the Comprehensive Plan definition of "workforce housing" and 10 units are being proffered as "affordable housing." He stated that it was important to note that the units would be indistinguishable from the market rate units.

Per the Planning Commission's instructions, Mr. Davis stated that he and his team met with WindsorMeade on July 24, 2012. He stated that one area of concern is the area closest to WindsorMeade near the guardhouse. As a result of the meeting they have eliminated one building and moved the other. This allowed for much more buffering between Section 12 and WindsorMeade, approximately 60-80 feet of natural plant buffer between the properties. Mr. Davis stated that they had also agreed to enhance plantings around the stormwater pond and a tree-save area which would enhance and buffer the view from WindsorMeade Way. Oxford Properties proffered to build a security fence, which would extend onto WindsorMeade property to divide property and to prevent people from crossing over into the gated WindsorMeade community.

Mr. Davis went to explain the proffered construction hours. He stated that construction time would be from 7 a.m. -7 p.m., Monday through Friday, and 8 a.m. -7 p.m. on Saturday. There would be no construction done on Sundays. He stated that bulk deliveries would be limited from 8 a.m. - 5 p.m., Monday through Friday. He stated that they have also proffered to not use certain areas for construction parking or as staging areas. Mr. Davis said they plan to sequence the construction so that the area closest to WindsorMeade will be built out first for minimal disturbance of neighbors.

Mr. Davis stated that he wanted to talk about the density. He said that there would no negative impacts from the proposed density to the following:

- No traffic impact
- Overall positive fiscal impact
- No impact on public facilities, including schools
- No environmental impacts
- No safety impacts

He stated that these had been agreed upon by the applicant, staff, and a third party consultant.

Mr. Davis moved on to an explanation of the density transfer. For background purposes, he stated that the 1997 New Town Master Plan established unit allocations for each section as placeholders. Since 1997, planned density has decreased as each section has been rezoned and planned out. He stated that the numbers have decreased by 90,243 square feet of non-residential density, and 277 dwelling units. Unused, unsold density remains and has been routinely transferred around to the different sections of New Town. Mr. Davis stated that these transfers have been done at least 11 times. Mr. Davis reiterated that New Town density would not change or exceed the caps by virtue of this project. He said that New Town West was originally planned for up to 650 residential units. With the 269 units in Section 12, the total number built, planned, and projected is 612.

Mr. Davis explained that under the New Town Master Plan, there are density limits. If you maximize non-residential density then a limit is imposed on residential density. Conversely, if you maximize residential density, then a limit is imposed on non-residential density. He stated that under the Master Plan, the maximum of residential density for New Town is 2,345 units. If that many units were built, then the limit on non-residential density would 1,521,257 square feet. Conversely, if non-residential density was maximized, which for New Town is 2,148,000 square feet, the limit on residential density would be 1,597 units. Mr. Davis stated that the ratio between non-residential and residential density is fluid, as one increases the other decreases. There is a conversion factor of one residential unit for every 839 square feet of non-residential, commercial space.

Mr. Davis stated that currently there is 2,007,356 square feet of non-residential density built, planned, or projected in New Town per the inventory done by staff. He stated that there are currently 1,679 dwelling units built, planned, or projected in New Town and that includes the 209 units in Section 12. There is a gap between what will be built on the non-residential side and what the cap is. If that difference is transferred at one unit per 839 square feet to the residential density, then the maximum becomes 1,766 units. The bottom line is that transferring the unused density to the residential side and adding an additional 60 units to Section 12 does not exceed the density cap set forth by the 1997 New Town Master Plan.

Mr. Davis stated that area landowners have relied upon the master planned density. New Town is the area of the County where residential development and residential density are planned and desired. Mr. Davis said that staff, the Planning Commission, the DRB, and Mr. Paul Milana, the architect of New Town, recommend approval of this application.

2. Mr. Bob Spenski, 4627 Castleside Circle, WindsorMeade, addressed the Board and stated that they were advised to attend a meeting with Oxford Properties on July 24, 2012. He stated that only four of the nine members of the resident council were allowed to attend the meeting. Mr. Spenski stated that shortly after the meeting began, Mr. Davis stated that if the residents were going to pursue the issue of density then they could leave. Mr. Spenski said the Mr. Davis was only willing to discuss items in regards to the July 11, 2012, Planning Commission recommendations. He stated that density was excluded from that meeting. Mr. Spenski said that their only plea is in regards to density. WindsorMeade citizens have spent their lives working and saving to live here. Mr. Spenski stated that WindsorMeade is asking the Board to arbitrate density with the developer.

3. Mr. Lee Towle, 4260 Corbrige Course, WindsorMeade, addressed the Board in regards to the density issue. He stated that he was not sure if the Board had seen or was aware of a petition signed by 189 residents of WindsorMeade, 100 percent of the residents available at the time. He stated that a complete set of the petition was provided to the Secretary of the Board. The petition was directed to the Planning Commission and was submitted to the Planning Office on June 28, 2012. Mr. Towle said that the petition was not acknowledged or addressed at the Planning Commission meeting on July 11, 2012. The petition outlined the concerns of WindsorMeade residents including safety and security, density, and the location of the five buildings numbered 28, 29, 30, 31, and 32 on the applicant's plan. These buildings are close to the property

line of WindsorMeade. Mr. Towle stated that the petition asked that those five buildings be eliminated from the plan, which would somewhat reduce the density. He stated that the applicant has agreed to remove one building, which is a good first step. He stated that the 50-foot buffer proposed is a good small step; however, a 300-foot buffer like the wetlands buffer on the north side of the property would be better and preferable. Mr. Towle stated that they are asking the Board to have the applicant reduce the density and increase the land buffer between the properties. He stated that they are not against development, but are for a well-planned, unobtrusive development.

4. Mr. H. Donald Nelson, 4312 Southbury Square, Windsor Meade, addressed the Board. He stated that he is the Vice President of the WindsorMeade Resident Association. He stated that WindsorMeade was developed on 105 acres, with 96 villas and 85 apartments. That calculates to a density of two units per acre. Adding the assisted living and the nursing care facilities brings the density up to 2.1 units per acre. He stated that they were surprised to learn that Oxford Properties intended to build rental townhomes with a density of eight units per acre, or ten units per acre on developed land. He stated that they were told that the community would be like The Point in New Town. Mr. Nelson stated that WindsorMeade residents currently number 238, and are served by 138 employees plus contract workers. That correlates to a lot of people using WindsorMeade Way, generally during daylight hours. All of the residents are very concerned about adding 269 townhomes and 500 parking spaces, in addition to all the construction vehicles using WindsorMeade Way. He stated that the Association believes the increase of 60 units is unacceptable. Mr. Nelson acknowledged the applicant moving the one building and increasing the buffer and said it was a good move. However, the Association believes that the construction traffic of Windsor Meade Way and the construction over several years will affect WindsorMeade's ability to fill existing empty units.

Ms. Jones asked Mr. Nelson if he was speaking for himself or the Association.

Mr. Nelson stated he was speaking for the Association. He stated that the Association is asking Oxford Properties to consider reducing the density. He stated it should be reduced and the residents of Windsor Meade have been blocked from discussing it. Mr. Nelson stated that they are asking the Board to arbitrate density on the resident's behalf.

5. Ms. Barbara Hildenbrand, 4223 Corbridge Course, WindsorMeade, addressed the Board. She stated that the Virginia United Methodist Homes of Richmond purchased Parcel 13 and developed a premiere continuing care residential community. She stated that at the direction of the Planning Commission, Oxford Properties addressed buffering and removed the most offensive building which reduced their density by five units. She stated that they have made other worthwhile moves and those decisions have not gone unnoticed or unappreciated. Ms. Hildenbrand stated that no one has made a compelling argument by relocating residents into the Oxford project, that it will make the New Town businesses more successful. She stated that it is not the Board's job to make businesses more successful; it is the Board's job to create a community that works. She said that there are many legal documents and there may be available density numbers to cram into Section 12, but questioned if 269 is the right figure for WindsorMeade Way. She stated that she hopes the Board will give serious thought to the reduction of density.

Ms. Jones recessed the Board for a five minute break at 8:35 p.m.

Ms. Jones reconvened the Board at 8:39 p.m.

6. Mr. Larry Salzman, 1501 Harborough Road, Richmond, addressed the Board as the President of the New Town Association, the developers of New Town. He stated that he is also the President of the New Town Commercial Association, which is akin to a homeowners association, but for businesses of New Town. He stated that he does not have a financial interest in the proposed apartments; in fact the proposed apartments will compete with the apartments of New Town. He stated that New Town Association is willing to transfer

some of the unused density to the developer for no compensation. He stated that they believe that it is good for the community. More dwelling units and more residents are good for the shops, restaurants, and medical offices in New Town. He stated that New Town was conceived as a small town, with a mix of shops and residents. He would suggest that the apartments will attract a diverse type of residents, which is healthy for the community. He stated that businesses in New Town have invested on the reliance of more dwelling units in New Town. More housing and more people in New Town will help make more goods and services available in New Town, which is good for everyone in the community. He stated that the New Town Association supports the proposal.

7. Mr. Marshall Warner, 5215 Center Street, New Town, stated that he has been a resident of New Town for five years. He stated that the businesses say that the main reason they relocated to New Town was because they believed in the resident component of the Master Plan. The residential buildout would help support their businesses. Mr. Warner requested that the Board support the proposal.

8. Mr. Scott Grafton, 803 Latern Place, Williamsburg, stated that he is the owner of Ironbound Gym, located in the heart of New Town. He said he fully supports the Oxford proposal. Mr. Grafton said that he relocated his business from the City of Williamsburg to New Town because of the New Town Master Plan where people could shop, work, and live. He stated that his business is dependent on local residents and many of them live in New Town. He asked that the proposal be approved so that businesses may thrive.

9. Mr. James Wattington, 4701 Dovedale Drive, WindsorMeade, stated that he was not opposed to Oxford's overall plan, but concerned with the density. He stated that he was one of the members of the WindsorMeade resident council that was not allowed to attend the meeting with Oxford on July 24, 2012. He said that any conception that the resident council agreed with plan from that meeting is wrong since not all of the council was present. He stated that many of the residents of WindsorMeade will more than likely have a longer tenure at WindsorMeade than the residents of the these rental apartments. He stated that he is concerned with the long-term plan of the proposal and concerned with the density. He said that he is wondering what Oxford's breakeven point is on the density. He said that he doesn't know what the right number is, but the residents of WindsorMeade are depending on the Board to adjudicate the right number.

Ms. Jones asked if anyone else wished to speak.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Ms. Jones stated that she had a few questions for Mr. Davis. She said there were several comments made by citizens about a meeting and that they were not allowed to attend. Ms. Jones asked Mr. Davis to clarify.

Mr. Davis said that after the Planning Commission meeting, they called WindsorMeade to arrange a meeting. WindsorMeade set the time and determined who would attend. He said they showed up with their team not knowing who would be there.

Mr. Icenhour stated that he had some questions for staff and possibly the applicant. He asked about the retaining walls along the ponds.

Ms. Reidenbach stated that at this stage, no engineering details are available for the retaining walls. However, retaining walls of that size do require a building permit, so that would be under the purview of the Building Safety and Permit Division. Also, the walls would be required to be engineered by a licensed engineer that would be responsible for certifying that the retaining walls are built to the necessary specifications to support any adjacent buildings or roadways. She stated that discussions were held with the Engineering and Resource Protection Division early in the review process and they are aware of the retaining

walls being there conceptually. The applicant has been put on notice that it may become necessary to move or possibly eliminate buildings due to their proximity to the retaining wall.

Mr. Icenhour said his other question was in regards to the proffers. He stated that the amount listed on the proffer document is less than what is listed in the chart on page 82 of the agenda. The actual signed proffer in the package assumes those recreation trails will be built on the property.

Ms. Reidenbach stated that yes that was correct. She also stated that there was an additional cash proffer called out in the proffer document should those trails not be able to be built on the property.

Mr. Icenhour questioned that they would be added on later.

Ms. Reidenbach stated yes, that is correct.

Mr. McGlennon asked Ms. Reidenbach to tell about the section being taken off on this proposal and asked if there are any limitations on the use of that area at a later date.

Ms. Reidenbach stated that Section 12B will remain zoned R-8 and subject to 1997 New Town proffers. If the owner wants to develop it later, they will have to come back before the Board to rezone to Mixed Use in accordance to the 1997 Master Plan and request density unit allocations.

Mr. McGlennon questioned that there was no density remaining to be allocated to that section later.

Ms. Reidenbach stated that there is none called out on the density table now, based on the conversion ratio there are about 27 units remaining until the overall New Town cap is met. Theoretically some of those units they may request to transfer to Section 12B, but it is not currently part of the proposal.

Mr. McGlennon questioned that the applicant has not proffered any sort of limitation on use of that portion of the property at this point.

Ms. Reidenbach stated that no, that property is not included in this zoning.

Mr. Kennedy asked what the original proposed density was for WindsorMeade 2001.

Ms. Reidenbach replied that Section 13 was approved to have 343 residential units and 34,100 square feet of non-residential.

Mr. Kennedy questioned the current status.

Ms. Reidenbach stated that in terms of the buildout, she did not have the exact numbers in front of her, but that there is probably about 1,500 square feet remaining and they have not come close to reaching the residential cap yet.

Mr. McGlennon said that there is considerable disagreement over density, but a surprising level of acceptance and enthusiasm for the project overall. He stated that the developers should be given credit for having each section done individually; however in this particular instance, this is the piece of New Town he finds least appealing from the perspective of what New Town is supposed to be - a multi-use, mixed-use community which encourages people to take advantage of their workplace, retail opportunities, and their home. This is a townhome community that will require people to get in their cars in order to do anything. It will make it difficult for them to take advantage of the proximity to other aspects of New Town. He said the applicant

needs to think about the density necessary for this project to go forward. He stated that he was not ready to support a project at the level of density proposed.

Mr. Icenhour stated that he could agree and does not question the value of the project. He stated that everyone understands that this is a piece of property that will be developed and there is an acceptance of that, but he is not sure of the appropriate size. He said that New Town is close to being at maximum commercial rather than maximum residential. In the 1997 Master Plan, Mr. Icenhour said there was a nice mix of commercial and residential. Over the years, through rezoning, currently there is 37 percent more commercial on this side of New Town than in the original Master Plan. In the current mix for residential on this side of New Town, all of the residential was removed from Section 11 and moved mostly into Section 13, WindsorMeade, leaving 209 residential units for Section 12. Mr. Icenhour said that this is really different than how the rest of New Town evolved. In the history of New Town, only one transfer of residential units to commercial square footage has occurred and that was for Section 11. It was done at a conversion ratio of 7,200 square feet per residential unit. This transfer established a precedent for transfers at 7,200 square feet. Mr. Icenhour said he thought the conversion should be somewhere closer to the average of 1,196 square feet, which works out to an additional 36 units. This puts the density somewhere around 245 for both Section 12A and 12B according to Mr. Icenhour. He stated that this proposal transfer's density out of the eastern side into the western side at a ratio that he does not think is appropriate. He asked the applicant to try and find a number closer to what everyone could agree upon. He stated that he thinks there is a deal that can be done for less than 269.

Mr. Kale stated that Route 199 came up after the Master Plan of 1997 and divided New Town. He said that there is no way, after 9 p.m., that one can walk home from Center Street safely, crossing everything to get to home on the western side of New Town. He said he believes that Route 199 created a whole different project on the western side and finds it perplexing that we keep being shown this project as a whole when Route 199 goes right down the middle. This project, Section 12A, is an in-fill project. Developments already exist on the western side that have been built, the commercial section in front and this project in the middle. Mr. Kale said that the project has a density problem. Mr. Kale said he will not be satisfied in a month to be told five or 10 units were cut off. Mr. Kale said he wanted a substantial reduction and thinks that the project would be well supported.

Mr. Kennedy stated that in 2001, he was skeptical of New Town. He voted against WindsorMeade in 2001, because of density transfers from other parts of New Town that went into WindsorMeade. He had concerns about a senior community in a mixed-use area. He said that when he looked at the density and the transfers in, one of the things explained to him was that this was how New Town was supposed to be, that density was fluid and transfers were going to be the norm. He stated he had another dilemma with a gated community in a mixed-use area, one that is supposed to be mobile. Mr. Kennedy stated he thought there is value in the proposal by Oxford in the type of people that will live there, young people and working people. Mr. Kennedy said that the east/west connection that Mr. Kale made earlier is one he understands. He said that people may not be able to walk that area, but there is a trolley that runs through New Town, public transit, and bike paths. So there is availability to do things other than drive. Mr. Kennedy said he thought some concessions have been made and maybe the density is too high, but asked of his colleagues to make a target and make it known.

Ms. Jones stated that she shares many of Mr. Kennedy's comments and appreciates the concessions and changes already made by the applicant.

Ms. Jones asked Mr. Davis to address some of these comments and whether or not you think these are areas that could be worked on and brought back or not.

Mr. Davis stated that given the sentiment of the Board, he would request that the application be deferred. He stated that his request would be that this be deferred to the first meeting in October.

Ms. Jones stated that she did not object to the timeline and ultimately wants a deferral to be productive for all parties.

Mr. Davis asked if Development Management would be the contact for recommendations by the Board on density numbers.

Ms. Jones stated yes. She also stated that she would encourage that in communicating with WindsorMeade that it be clear and that WindsorMeade be clear with Oxford if WindsorMeade has some magic number, then they need to communicate that to Mr. Davis.

Mr. Kale asked Mr. Davis if he could be prepared to come forward for the second meeting in September.

Mr. Davis stated that if it was just a matter of communicating with the County, then yes, but in evaluating the changing of density he is not conceding it is possible, but if so, that would require changing plans. Those changes must go back before the DRB before coming to the Board, proffers must be revised and rewritten and a great deal of work between agreeing on a number and being back with a plan. He stated that they do not want to come back requesting another deferral with the idea that something nefarious is going on.

Mr. McGlennon made a motion to defer this case to October 9, 2012, at 7 p.m.

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

7. Ordinance to Amend and Reordain Chapter 9, Fire Protection, Article III, Fees, to Add New Section 9-12, Recovery of Expenses for Methamphetamine Lab Cleanup.

Mr. Rogers stated that this amendment is consistent with the recent amendment to the State Code, which provides for the collecting of fees for the cleanup of a methamphetamine lab as part of the criminal process or civil collection. He noted that previously collection was only done civilly. This should make collection easier should the County ever need to cleanup one of these facilities. Mr. Rogers recommended adoption of the amendment.

Mr. Kale asked if this amendment conforms to all of the aspects that the State allows counties to do under the new section.

Mr. Rogers responded in the affirmative.

Ms. Jones opened the Public Hearing.

As no one wished to speak, Ms. Jones closed the Public Hearing.

Mr. Icenhour made a motion to adopt the amendment.

Ms. Jones asked Mr. Middaugh to call the roll.

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

J. BOARD CONSIDERATIONS

Ms. Jones noted that during the work session, staff presented several options regarding transportation projects. Ms. Jones asked Mr. Middaugh to briefly explain what was discussed.

Mr. Middaugh stated that the result of the discussion was as follows:

- Perform Mooretown Road Extension Study
- Fully Fund Monticello Avenue Project
- Fully Fund Safe Routes to School-James River Elementary Project
- Fully Fund Longhill Road Widening to complete preliminary engineering and right-of-way to 85 percent
- Fully Fund Racefield Drive
- Fully Fund and cover deficit on Croaker Road Multi-Use Trail
- Fully Fund and advance construction of Richmond Road/199 West Ramp Improvements
- Fully Fund and advance construction of Centerville Road/News Road Intersection Improvements
- Fully Fund Pocahontas Trail Multi-Modal to full preliminary engineering and right-of-way, and partial construction

Mr. Kale made motion to approve.

Ms. Jones asked Mr. Middaugh to call the roll.

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

Mr. McGlennon and Mr. Icenhour noted that they did not support the Mooretown Road Extension Study.

K. PUBLIC COMMENT

Ms. Jones opened the Public Comment.

As no one wished to speak, Ms. Jones closed the Public Comment.

L. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh stated that the County is pleased to host the Ladies' Professional Golf Association (LPGA) at Kingsmill for the Kingsmill Championship to be held from September 3-9. He stated that he wanted to make special note that September 8 would be a day-long event geared towards families. Most of the events would be free. He stated that there will be a golf clinic sponsored by the County for any child from the age of 7 to 17. Any child that registers and participates would be given tee-shirts designed by the schools. Mr. Middaugh noted that registration can be done at www.kingsmillchampionship.com or there would be a link on the County website.

M. BOARD REQUESTS AND DIRECTIVES

Mr. Kale stated that the James City County Board of Supervisors celebrates its 125th anniversary on September 10, 2012. He suggested moving the next meeting to the anniversary date. He also stated that he would like to invite the County's unofficial Historian, Ms. Martha McCartney, to give a presentation at the next meeting.

Ms. Jones stated that she had concerns over changing the date of the next meeting. With it being short notice, it could cause confusion for the public who are used to the Board meetings being held on Tuesdays.

Mr. McGlennon stated that he hoped previous Board members that are available to join us at the next meeting would be invited to celebrate the anniversary.

It was agreed upon to keep the regularly scheduled meeting, but to invite Ms. McCartney to give a presentation in recognition of the anniversary.

Mr. McGlennon made a motion to elect Mr. Douglas Haller and Mr. Aaron Small to the Stormwater Program Advisory Committee and to elect Mr. David Gussman to the Chesapeake Bay Board and the Wetlands Board.

Ms. Jones asked Mr. Middaugh to call the roll.

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

N. ADJOURNMENT

Mr. McGlennon made a motion to adjourn the Board meeting.

Ms. Jones asked Mr. Middaugh to call the roll.

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

At 9:43 p.m., Ms. Jones adjourned the Board until 7 p.m. on September 11, 2012.


Robert C. Middaugh
Clerk to the Board