

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 11TH DAY OF SEPTEMBER 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

John J. McGlennon, Chairman, Roberts District
Mary K. Jones, Vice Chairman, Berkeley 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 - Nicholas Gall, a sixth-grade homeschooled student, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATIONS

1. 125th Anniversary of James City County Board of Supervisors - Ms. Martha McCartney

Ms. McCartney thanked the Board for inviting her to speak in commemoration of this very special event. She stated that it was September 10, 1887, when the James City County Board of Supervisors held its first recorded meeting. In October 1869, the State of Virginia ratified its new constitution and in that new constitution there were provisions for the election of County Boards of Supervisors and they in turn assumed many of the decision-making duties that had previously been performed by the Counties' Justice of the Peace. She stated that the first recorded minutes dated back to 1887, however there were probably meeting minutes from earlier that have been lost or destroyed. Ms. McCartney stated that in 1887, when the Supervisors first met, they represented the Jamestown, Powhatan, and Stonehouse districts. She stated that prior to 1891; the Supervisors met on an as needed basis and did not adhere to any regular schedule. It was not until 1904 that Board members decided to begin meeting on the fourth Monday of every month, except for January when State law dictated that they meet on the first Monday. A lot of the Supervisors' time was dedicated to making decisions about road maintenance and many of their funds were spent on road maintenance. Each Supervisor served as their district's Superintendent of Roads and was paid to make sure that the roads in the district were repaired and kept in good condition. She stated that local citizens could be hired by the Supervisor to make road repairs and to shore up and rebuild bridges.

Mr. McGlennon thanked Ms. McCartney for coming and giving the history of the Board. He stated that several former members of the Board of Supervisors were in attendance this evening and he invited them to come up to the dais and join the current Board members for a photo. He also stated that the Board was commissioning a plaque listing all the names of the former Board members for as far back as can be found. Mr. McGlennon asked Mr. Jack Edwards, Mr. David Sisk, Mr. Perry DePue, Ms. Judy Knudson, Mr. Ron Nervitt, and Mr. Bruce Goodson to come up to the podium to be recognized.

2. Virginia Association of Counties (VACo) Achievement Award

Mr. Larry Land, from the Virginia Association of Counties (VACo) presented the County with an Achievement Award. He stated that this is the sixth Achievement Award that James City County has won and the fourth in the last five years. James City County won the award in the Information Technology category. He stated that the title of James City County's entry was *Comprehensive Plan Implementation Tracking Tool*. He stated that to streamline the process of reporting progress on Goals, Strategies, and Actions (GSAs) the Planning Division developed an innovative web-based tracking tool that allows updaters to sort the GSAs by reporting agencies and instantly see only the GSAs that they need to update. He stated that the site also archives all previous data, so specific GSAs can be tracked over time. Data can be exported to Excel spreadsheets or print pre-packaged reports.

Mr. Land stated that citizens could read the complete entry at VACo's website, at www.VACo.org. He stated that four staff members deserved recognition for their efforts in achieving this award: Mr. Jason Purse, Ms. Leanne Reidenbach, Ms. Brigitte White, and Ms. Tammy Rosario. He congratulated the County on achieving the award and stated that VACo looks forward to seeing what James City County submits next year.

3. National Association of Counties (NACo) Awards

Mr. Middaugh addressed the Board stating that the National Association of Counties (NACo) has awarded James City County an Achievement Award. He stated that the 2009 Comprehensive Plan was selected from hundreds to receive an Achievement Award which recognizes an effective or innovative program. He stated that NACo takes all of the Achievement Award winners and from that small group NACo will select a "best-of" category. James City County was selected as Best Rural Program, which NACo considers as 75,000 people or under. James City County was one of 16 picked out of 569 total national submissions. He stated that this is a very high honor and demonstrates the caliber of the Planning Division.

4. Chairman's Presentation

Mr. McGlennon stated that Ms. Jones served as Chairman of the Board from January 2011 through August 2012. He stated that in recognition of her efforts as Chairman and her distinguished service to the County and citizens, he had a plaque to present to her with a gavel commemorating her time as Chairman.

F. PUBLIC COMMENT

1. Mr. Hank Denning, 4135 Winthrop Circle, spoke on behalf of Colonial Heritage Housing Association and addressed the Board concerning the proposed Dominion Virginia Power Transmission Line. He stated that Colonial Heritage recognizes that the County is in need of additional power. He stated that the population is growing and that the Dominion Power Plant in Yorktown is scheduled for shutdown. He stated the Colonial Heritage believes the question is not whether a new line should come to the County, but which proposed route best leverages the County's financial resources and minimizes the visual impact on the largest number of our County's residents. Mr. Denning stated that the proposed James River Route is the most responsive route because it is 59 percent less expensive and 72 percent shorter than the proposed

Chickahominy Route. He stated the James River Route affects 1/10th of the private homes that the proposed Chickahominy Route affects. Mr. Denning stated concern over the County using taxpayer dollars to lobby the State Corporation Commission (SCC) to have Dominion run the lines under the James River. The estimated additional cost of running the lines under the James River would be \$100-200 million. He stated that he respectfully asks that during this time of economic austerity and limited County resources, that additional monies not be spent on studying the possibility of aqueous power lines.

2. Mr. Nathan Walker, 101 Locust Place, Williamsburg, addressed the Board concerning articles and discussions concerning bringing in a "Green Czar." He stated that he hopes that in these economic times, that this County would not go into debt to hire another high-priced person or contractor. He stated that these are tough times and that we were all raised to not spend a dollar until we had it.

3. Ms. Marjorie Ponziani, 4852 Bristol Circle, Williamsburg, addressed the Board concerning the land acquisition program and the large sum of money borrowed to implement it. She stated that she understands there is an option to borrow an additional \$14 million for this program. She stated that she is wondering how this money will be repaid. She asked if taxes will be raised. She asked if it was necessary for local government to acquire all of this land. She asked what is meant by strategic acquisition. She stated that she had read in The Virginia Gazette that there are plans to hire a "Green Czar." She asked if the program is so beneficial why does it need to be pushed.

4. Ms. Sue Sadler, 9929 Mountain Berry Court, Toano, addressed the Board and quoted an August headline from The Virginia Gazette, "James City County Eyes Land Czar." She stated that she would like to know what the goal is. She said that 36 percent of the land in James City County is already protected by some form of conservation and now the County wants to hire a "Land Czar" because the land acquisition program has apparently not been very successful. She asked why there is a need to spend \$20 million on land acquisition. She stated that perhaps it is because there is a view by some that land cannot be treated like an ordinary asset, controlled by individuals and subject to the normal pressures of the market. She asked if spending this kind of money in these economic times furthers the fiscal leadership that led James City County to its first ever triple A bond rating.

5. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, displayed a map depicting where the United States Navy is currently located throughout the world. Mr. Oyer addressed the Board concerning property values.

6. Ms. Roseanne Brennan, 106 Dundee, Williamsburg, addressed the Board stating that she would like to echo comments made by two previous citizens. She stated that she is part of a small group that is walking on Saturday at an event called Walking to Honor the Constitution. She stated that one of the major points is property rights. She stated that she believes there is enough open space here for conservation.

G. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon noted that in discussions over the years between the City of Williamsburg, James City County, and the Williamsburg-James City County School Division there has been a consensus that James Blair, the school currently being used as the School Board offices, should eventually be turned back into a school site. In recognition of this, Mr. McGlennon stated that it is important to recognize that within the not too distant future, the building will need to be turned back in to a school. He stated it is then necessary to begin planning for the move of the School administrative offices. He stated that he would like the Board to support

his request that the County Administrator meet with the City Manager and the School Superintendent for the purpose of beginning to formulate a working group to identify the needs of the School administrative offices and possible locations.

Mr. Kale made a motion to so direct the County Administrator.

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

H. CONSENT CALENDAR

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

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

RESOLUTION

NATIONAL PREPAREDNESS MONTH, SEPTEMBER 2012

WHEREAS, "National Preparedness Month" creates an important opportunity for every resident of James City County to prepare their homes, businesses and communities for any type of emergency including natural disasters and potential terrorist attacks; and

WHEREAS, investing in preparing ourselves, our families, businesses, and communities can reduce fatalities and economic devastation in our communities and in our nation; and

WHEREAS, the Federal Emergency Management Agency's (FEMA) *Ready* Campaign, the Ready Virginia outreach program sponsored by the Virginia Department of Emergency Management, and other Federal, State, local, tribal, territorial, private, and volunteer agencies are working to increase public activities in preparing for emergencies and to educate individuals on how to take action; and

WHEREAS, emergency preparedness is the responsibility of every citizen of James City County and all citizens are urged to make preparedness a priority and work together as a team to ensure that individuals, families, and communities are prepared for disasters and emergencies of any type; and

WHEREAS, all citizens of James City County are encouraged to participate in citizen preparedness activities and asked to review the *Ready* campaign's websites at Ready.gov or Listo.gov (in Spanish) and ReadyVirginia.gov and ListoVirginia.gov and become more prepared.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby proclaims September 2012, National Preparedness Month in the County of James City, Virginia, and encourages all citizens and businesses to develop their own emergency preparedness plan and work together toward creating a more prepared society.

I. PUBLIC HEARINGS

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

Ms. Leanne Reidenbach, Planner III, addressed the Board regarding the Exterior Signage Ordinance. She stated that at its meeting on June 12, 2012, the Board deferred consideration of the exterior signage ordinance so that staff could address several Board concerns related to sign mounted lighting in Community Character Corridors (CCCs), Community Character Areas (CCAs), and the overall size of freestanding sign mounting structures.

Ms. Reidenbach stated that the amendment for sign mounted lighting may have been misrepresented at the last meeting. Sign mounted lighting in CCCs and CCAs is already permitted and staff provided pictures of a few signs that currently use this type of lighting in Board packets. The proposed amendment is to clarify the wording of this option in the ordinance and does not allow a new type of sign lighting.

Ms. Reidenbach stated that in regards to setting maximums for the overall size of freestanding signs, staff researched signage best practices in localities in the area and nationwide and determined that these sorts of caps are not typically included in sign ordinance regulations. Sign massing is typically regulated through things such as height limitations. The current ordinance already sets either an 8-foot or 15-foot maximum height limit depending on the type of sign, which includes the height of the sign structure. As a result of this research, staff recommends that the Board not pursue regulations pertaining to the overall size of sign structures.

Ms. Reidenbach stated that if the Board still wishes to pursue structure size regulations, staff has included an alternative sign ordinance which says that sign structure ratios must be greater than 14 percent. The sign structure ratio is the sign text area divided by the overall sign area, with the smaller the ratio, the larger the empty space on the sign structure. Staff based the 14 percent figure on a survey of existing signs in the County. In conjunction with the sign structure ratio, staff also added a requirement that the structure and measurements be provided as part of the sign permit application, a definition and graphic for sign structure ratio and a procedure for exemptions when signs are mounted to walls or fences. If the Board wishes to pursue the alternative ordinance, the County Attorney's office has determined that the changes are significant enough that the ordinance should be remanded to the Planning Commission. Additionally, the amendment includes sections of the ordinance that have not previously been advertised so the Board could not adopt this alternative amendment at this meeting.

Ms. Reidenbach stated that at its meeting on May 2, 2012, the Planning Commission recommended approval of the original ordinance by a vote of 6-1. Staff recommends that the Board approve the original exterior signs ordinance that was presented on June 12 and keep sign mounted lighting as permitted in CCCs. If the Board wishes to pursue the sign structure ratio cap, staff recommends that the Board remand the alternative ordinance back to the Planning Commission.

Mr. Icenhour questioned if the Planning Department was recommending a height limitation for 7-15 feet.

Ms. Reidenbach stated that it is an overall height limitation. She stated that the limitation would apply to the overall size of the structure, not just to the sign text area.

Mr. Icenhour stated that the County's control is over the sign text area itself. He stated that other than the fiscal constraints, the only thing keeping someone from building a large monument with a small text area is the height limitation.

Ms. Reidenbach stated that is correct.

Mr. Icenhour stated that the only place the large signs are seen is in front of some of the subdivisions, and those are usually large brick walls. In those cases, the ratio of text area to overall size is around the 14 percent mark, but most other business signs are in the range of 30-40 percent.

Ms. Reidenbach stated that yes that was about the average.

Mr. McGlennon opened the Public Hearing.

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

Mr. Icenhour made a motion to approve the original sign ordinance.

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

2. Case No. SUP 0012-2011. nTelos, Route 199 Wireless Communication Facility

Mr. Luke Vinciguerra, Planner, stated that Ms. Gloria Frye, on behalf of nTelos, has applied for a Special Use Permit (SUP) to allow the construction of a 172-foot-tall wireless communication facility (WCF) to be located on the east side of Route 199 north of New Town Sections 7 and 8, adjacent to Eastern State Hospital. Tower mounted communication facilities with a designation other than residential on a Board adopted master plan in the R-4, district require an SUP. The proposed WCF would be a "slick stick" with no visible external antennas.

Mr. Vinciguerra stated that based on a publicly advertised balloon test the proposed tower would be highly visible from eastbound Route 199 between Ford's Colony and Eastern State Hospital. Additionally, the proposed WCF would be partially visible through the trees at a few locations along Heritage Pointe within Ford's Colony. Staff was unable to see the balloon from any existing locations within New Town; however, it is likely that the proposed tower would be visible to future residential developments in New Town, particularly from the main entrance road in Section 8.

Mr. Vinciguerra stated that at 172 feet, the proposed tower is higher than other recent WCF applications submitted in developed areas of the County. The recently approved Ingram Road tower, which was also adjacent to a CCC was approved at 124 feet. Approving applications for higher towers may encourage future applicants to request higher tower heights than necessary. Staff has found that towers that are only minimally visible above the tree line are often able to satisfy the coverage needs of wireless providers.

Mr. Vinciguerra stated that due to the proposed height of the tower, which is significantly higher than the adjacent tree canopy, the application is not in compliance with the adopted Performance Standards for Wireless Communications Facilities. On July 11, 2012, the Planning Commission voted 4-3 to recommend denial of the application and to furnish a computer generated image illustrating the view of the tower from the future New Town Section 8. Staff recommends the Board deny the application. Should the Board application of the application, staff suggests such approval be contingent upon the conditions listed in the resolution in the staff report.

Mr. McGlennon opened the Public Hearing.

1. Ms. Gloria Frye, the attorney representing the applicant, nTelos, addressed the Board. She stated that the applicant originally applied for an SUP for a tower of 194 feet to increase performance, but has revised the application for a tower of 174 feet. She stated that the applicant made this compromise because they believed at that height there was minimal impact on existing homes, minimal impact on New Town, and

minimal visibility from Route 199. She stated that the applicant now sees that there is the potential for impact on the development of New Town Section 8 and the applicant is willing to amend the application to a lower height to reduce that visibility. She stated that she is going to go through the case with willingness to compromise in mind. She stated that nTelos needs a new tower in this area to offer better coverage to subscribers within the search ring that she posted for the Board and the public. She stated that the need for this new facility was established back in 2005 and is necessary to provide indoor reception for subscribers in the area. She stated that there is no other tower or structure within the search ring that nTelos could co-locate on, thus the need for a new facility. Ms. Frye stated that nTelos feels that the current site is the best suited to meet the goals of the County and meet the needs of the applicant. She stated that the applicant has gone above and beyond in their search for a site that could meet as many of the County goals and standards as possible.

Ms. Frye stated that when looking at the Comprehensive Plan, Route 199 is designated as a CCC and as such is subject to restrictions on development. The proposed site of the tower is 140 feet back from Route 199, providing almost three times the required amount of buffer. She also stated that the slick-stick tower, while visible, will not detract from the view of the woods. She stated that in comparison to the transmission lines located along Route 199, the slick stick tower is much less visible and more highly buffered, as can be seen from the simulation photos. On the photo simulation of the tower at 150 feet the slick stick is barely visible. She stated that cell towers must extend above the tree canopy in order to send and receive signal and to have a cell tower not extend above the canopy of the trees is an impossible standard. Ms. Frye stated that the Comprehensive Plan is a guide, not a requirement, and this proposed site exceeds the buffering stated in the Comprehensive Plan.

Ms. Frye stated that the other tool the County uses when looking at cell towers is the Performance Standards. They are to be weighed on a case-by-case basis. She stated that the co-location and Alternative Analysis Standard has been provided and accepted by staff. The Location and Design Standard states that a cell tower in a residential area should be a "slick stick" and be well buffered and be a minimal intrusion on residential areas. Ms. Frye stated that there are five towers that residents of New Town see on a daily basis at the entrance of New Town. She stated that it is difficult to conclude that one more tower would have that big of an impact on the view that New Town residents already see.

Ms. Frye stated that in the interest of compromise and at the pleasure of the Board, nTelos is willing to accept a resolution at a height of 150 feet. This compromise would address the staff concerns over visual impacts on the future development of New Town Section 8 while allowing nTelos to increase its service coverage.

2. Dr. Melissa Patrylo, 4303 Lydias Drive, Williamsburg, stated that as a former resident of Miami-Dade, Florida, she has seen the negative effects of cell towers going up. She stated that an increase in the number of cell towers had a direct correlation to a drop in test scores for high school students and property values decreased which lead to an increase in crime. She stated that she does not believe that this is what the founders of New Town had in mind when they developed New Town. She stated that New Town is an educated, vibrant community that demands high retail, high-quality schools, and that putting in a cell tower near New Town is a bad idea.

3. Ms. Kelly Mihalcoe, 4433 Lydias Drive, Williamsburg, addressed the Board stating that she is an nTelos subscriber and is against putting the tower in the back acreage of New Town. She expressed concern about the way that citizens were treated at a meeting held with Mr. Kale and Mr. Icenhour.

4. Mr. Larry Salzman, 1501 Harborough Road, Richmond, addressed the Board as the representative of the New Town Associates, LLC. He stated that the New Town Associates believe that this tower does not meet the standards of the Comprehensive Plan, does not meet the Performance Standards for Wireless Communication Facilities, and it affects New Town without benefiting New Town. He stated that

this application can be denied by the Board without being in conflict with the Wireless Communications Act. He stated that New Town Associates believes that this tower should be located closer to the segment of the population that this tower is intended to serve. He stated that if this application is to be considered, then no modeling has been done at 135 feet or 150 feet, both heights that have been discussed as possibilities.

Mr. Salzman stated that neither the residents of New Town nor staff had been notified of the possible reductions in height. He suggested, at the very least, that the application be deferred to allow for modeling to be done at these proposed heights. He also stated that perhaps another balloon test should also be done since changes in development of New Town have occurred. Mr. Salzman stated that the Standard of co-location has not been met. He stated that Mr. Granger, who owns the 400-foot radio tower in the area, would be interested in having nTelos co-locate on the radio tower. However, the applicant has stated that that location would not work, but has not provided any verifiable evidence as to why. He stated that when New Town Sections 7 and 8 are developed that this tower will be able to be seen by hundreds of homes and would be a negative impact. Mr. Salzman also stated that he wanted to clarify a rumor concerning New Town Associates desire to purchase the property that is the proposed site of the tower. He stated that New Town Associates would like to purchase the property, but that they would turn over that property to the developer of the adjacent property at no profit to New Town Associates. He stated that he believes that piece of property fits the character of New Town and would be an added addition to New Town, but not because of making a profit. He concluded by saying that the Board should support the recommendation of staff and the Planning Commission and deny the application or defer it until staff can assess the impact at the different proposed heights.

5. Mr. Phil Chapman, 4335 Casey Boulevard, Williamsburg, addressed the Board stating that normally he is opposed to the "not in my backyard" attitude, however in this instance he supports it since no one in New Town will benefit from the tower. He stated that the Board should deny the application because it does not meet the standards of the Comprehensive Plan, it does not meet the Performance Standards, and does not meet the objectives of the County Code. He stated that in a letter from Mr. Granger, the owner of the Williamsburg Radio Tower, he stated that there is space available for co-location and that Sprint and AT&T are already co-locating there. Mr. Chapman encouraged the Board to verify those statements with Mr. Granger before accepting the applicant's word that co-location on the radio tower is not feasible.

6. Mr. Gregory Davis, 4801 Courthouse Street, Williamsburg, addressed the Board as the representative of Kaufman and Canoles. He stated that his law firm is representing the partnership which is developing Sections 7 and 8 of New Town. He stated that the visual impact of the application cannot be based on the lay of the land today. He stated when Sections 7 and 8 are completed, more than 400 homes will be negatively impacted by the proposed tower. He stated that Sections 7 and 8 are the single-family homes sections of New Town and these sections have been zoned and planned for this type of construction. He stated that the application does not meet the Performance Standard for minimal intrusion. The proposed application will be very intrusive and have a large visual impact on the development in Sections 7 and 8.

7. Mr. Robert Keith, 4600 Town Creek Drive, Williamsburg, addressed the Board on behalf of the future residents of New Town Sections 7 and 8, and urged the Board to deny this application on behalf of the future residents that will be most greatly impacted.

8. Mr. Drew Mulhare, 124 Henry Tyler Drive, Williamsburg, addressed the Board as the Managing Member of the Landowner. He stated that in 2010 he applied for limited access off Route 199 and the Board approved the application knowing that the property was being looked at as a site for a cell tower. He asked the Board to be consistent and approve the application for the cell tower. He stated that there are several cell towers around New Town and those cell towers have not affected New Town's development. He stated that a lot of money has been invested in this project, based off the Board's approval in 2010 and he asked the Board to approve the application.

Mr. Kennedy stated that he had questions for Mr. Salzman. He asked if the New Town Commercial Association Board had taken a vote against the cell tower.

Mr. Salzman stated yes, there had been a vote in opposition to the cell tower.

Mr. Kennedy asked how many times Mr. Salzman had approached Mr. Mulhare in regards to purchasing the piece of property for New Town and whether or not that was before or after the knowledge of the proposed cell tower.

Mr. Salzman stated that he approached Mr. Mulhare at least once, maybe twice, and once was with the knowledge of the cell tower. Mr. Salzman stated that the desire of New Town Associates is to bring this piece of property into New Town and have it eventually developed. Mr. Salzman stated that he is willing to facilitate the acquisition of this property at no profit for the New Town Associates.

Mr. Kale asked Mr. Salzman if the property was purchased by New Town Associates, would they then request more residential units for the property. Mr. Salzman stated that he cannot say what would be built on the land. He proposes this purchase as a solution for New Town and as the best natural use of this piece of property. Any development on this property would have to be zoned and then approved by the Design Review Board, so at this time, he cannot state what would be built there.

Mr. Kennedy asked Ms. Frye how we got to this piece of property.

Ms. Frye replied that the original plan was the Hospice House property, but after balloon tests there was a large impact on existing homes. She stated that this brought them back to the current property in the application. She stated that the limited access granted by the Board in 2010 allowed this piece of property to be chosen as the site. She also stated that with the Board's resolution, the Commonwealth Transportation Board approved the limited access off Route 199 for the purpose of constructing and servicing a cell tower.

Mr. Kennedy asked Ms. Frye if she had been in touch with Mr. Granger.

She stated yes. Ms. Frye stated that the engineers have stated that the radio tower will not meet the service objectives and therefore is not a viable site location. She stated that she can assure the Board that the company would not be spending all of this time and money, if co-locating on the radio tower was a viable option.

Ms. Jones asked Ms. Frye where the customers that nTelos is trying to service with this tower are located geographically. Ms. Jones asked if the customers were only in Ford's Colony and Powhatan Secondary.

Ms. Frye stated that was correct. Ms. Frye also stated that future customers in New Town Sections 7 and 8 will also benefit from the coverage, as well as citizens travelling up and down Route 199.

Mr. Kale asked Ms. Frye to clarify an earlier statement that the tower would allow customers to receive service inside their homes that currently do not have service.

Ms. Frye directed the question to Mr. Mark Cornell, Site Acquisition Manager for nTelos. He stated that when nTelos' network was developed, it was originally a car network, one designed to be used out of doors and in vehicles. Over the last five years, trends have drastically changed in cell phone usage. The predominant cell phone sold is a Smartphone and people have an expectation of being able to use their

Smartphone in their homes. He stated that it is more difficult to provide service inside of buildings and homes, than it is outside. He stated it is necessary for the towers to be located closer to the homes in order to provide the service inside the home.

As no one else had any more questions for the speakers, Mr. McGlennon closed the Public Hearing.

Mr. McGlennon stated that he had some questions for staff. He asked Mr. Chris Johnson, Acting Director of Planning, how difficult it would be to model and hold simulations of the different heights proposed.

Mr. Johnson stated that it would not be difficult to do, it would just require a small measure of time to prepare and bring back before the Board.

Mr. McGlennon asked for clarification on the location of the tower during the staff simulations. He asked if the simulation was done to the tree line or the proposed tower location.

Mr. Johnson stated that the simulations done by staff were done to the tower location, not to the property line.

Mr. Kale asked Mr. Johnson if having the tower at a lower height would resolve some of staff's concerns that lead to their recommendation of denial.

Mr. Johnson stated that while having the tower at a lower height will obviously lessen the visual impact, without having a balloon test done at the new height, staff has no visual representation to base their recommendation on.

Mr. Kale asked about the other issues in regards to the Comprehensive Plan and the Performance Standards.

Mr. Johnson stated that Route 199 is still a CCC and that will not change. He stated that lowering the tower will obviously mitigate some of the impact, but again, without having a balloon test done and a visual representation at the new height proposed, staff cannot make a recommendation.

Mr. Icenhour noted that several comments mentioned being blind-sided by a new proposed height. He stated that in the Planning Commission minutes included in the Board Packet, there was considerable discussion in regards to various heights of the tower. Mr. Icenhour noted that staff states in those minutes that 130 feet is the maximum height that they would support at this location. Mr. Icenhour asked if this was correct.

Mr. Johnson stated that yes there was discussion and un-advertised balloon tests done at various heights and staff stated that they could not support a tower above 130 feet.

Mr. Icenhour stated that balloon tests do nothing to measure the visual impact on the proposed development of Sections 7 and 8 because they are still covered with trees. The only way to simulate the impact is with the line of sight simulations. He asked if this was correct.

Mr. Johnson stated that yes it was correct.

Mr. Icenhour stated that the height of the tower and the visual intrusion is a balancing act. The Board has a responsibility to balance the right to use property and minimize the impact on the neighbors. He stated that the Board cannot tell the property owner that they cannot use their property just because the neighbors do not approve. There has to be some type of balance. He stated that there has to be some height that would

allow the tower to work and function properly and minimize the visual intrusion. That does not mean that the tower would not be seen, but means that the visual impact would be minimized. He stated that his concern is that staff and everyone involved focus on a compromise, but realize that the visual intrusion cannot be completely eliminated. He asked Mr. Johnson if that is clear and something that staff can do.

Mr. Johnson replied yes. He stated that staff is not unreasonable and understands that the towers are going to be visible. Mr. Johnson stated that the compromise heights thrown out tonight have just not been modeled or simulated to see their visual impacts on the CCC and the proposed development in New Town.

Mr. Kennedy stated that he has always been concerned about the CCC component. He stated that the tree line along Route 199 was removed when building Warhill High School. He stated that the lights from Warhill High School are the longest running line of sight that he sees on his evening commute. He stated that the irony of this situation is that almost everyone uses a cell phone and everyone wants their cell phone to work, but no one wants to see the cell towers that make the cell phone work.

Ms. Jones stated that the purpose of the Public Hearing is to get the input of the public, hear from the applicant, and from staff. She stated that it is important to publicly advertise a balloon test if there is going to be a change in the proposed height of the tower. Hence the public can see the impact of the new height and be able to communicate their input to the Board and to staff.

Mr. Kennedy stated that he is not opposed to waiting another two weeks or a month to give the public and the applicant time to meet, to try and work out a compromise, and to do some renderings of any changes in height to the tower.

Mr. Icenhour stated that looking at the list of proposed locations for this tower many of those locations were marked off because the property owner was unwilling to lease their property. He stated that the public needs to understand that while there may be many potential locations, it is a business transaction and there must be a buyer and a seller. The Board cannot tell a property owner that they have to lease their property to a cell provider for a tower. Mr. Icenhour asked Mr. Johnson what the staff's role was in helping nTelos go through the other locations.

Mr. Johnson stated that staff was not directly involved in those locations, but that staff trusts that nTelos has done their due diligence in researching alternative locations. He stated that Mr. Cornell could probably better answer the question.

Mr. Cornell stated that the process was started by identifying gaps in coverage. Then they began looking at other preexisting structures in the area that could meet the need of the gap in coverage. If there is no available structure to meet the need they begin to look a potential property where they might be able to erect a structure. The property has to meet certain criteria to even be considered, including having a willing property owner that is willing to have their property used long-term. He stated that nTelos has done its due diligence in searching for alternative sites and this application is before the Board now because it is the last site that can meet the objectives and provide service to fill in the gap of coverage.

Mr. Kale made a motion to consider amending the resolution in regards to the height listed from 172 feet to 150 feet.

Ms. Jones stated that she would not be able to support that motion. In moving forward, she stated that if there is going to be a change in height, then a publicly advertised balloon test needs to be done. She stated that she would support a deferral.

Mr. Icenhour stated that he believes 150 feet would be a reasonable compromise and would support amending the resolution.

Mr. McGlennon stated that he does not believe he could support the height at 150 feet, but would need to see the evidence of the balloon test and the modeling at that height.

Mr. Kennedy stated that he would consider 150 feet.

Mr. Icenhour stated that in regards to Ms. Jones' comments, that he does not believe that another balloon test would be accurate. He stated that the area in Sections 7 and 8 that will be most affected still have trees now, but those trees will be gone once development begins. He stated that computer simulations of line of sight would probably be more accurate.

Ms. Jones stated that doing the computer simulations and a balloon test would be very thorough.

Mr. Icenhour asked staff what would be involved for staff to put together computer simulations and a balloon test at the heights of 150 feet and 130 feet.

Mr. Johnson stated that staff would request a one-month deferral to properly advertise a balloon test and to allow the applicant to generate propagation maps. After those are completed staff can properly prepare a report back to the Board.

Mr. Icenhour asked Ms. Frye if the applicant would like to go through with the deferral and put together the documentation and the balloon test at the heights of 130 feet and 150 feet.

Ms. Frye stated yes they would at both heights.

Mr. Kale withdrew his current motion and made a new motion to defer the application to the October 9, 2012, Board meeting.

Mr. Icenhour stated that when staff and the applicant come back he wants to see a balloon test, propagation maps, and line of sight renderings for 150, 135, and 130 feet.

Mr. Kale stated that he would want staff to notify the residents of New Town as to the time and date of the balloon test.

As there was no more discussion on the motion, Mr. Middaugh called the roll.

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

Mr. McGlennon stated that before moving on from this case, he wanted to point out that he has concerns over the implication made that the Board should turn down this case so that another party might purchase the land.

3. Case No. ZO-0004-2012. Walnut Grove Proffer Amendment

Mr. Middaugh stated that the case has been withdrawn and recommended that the Chairman open the Public Hearing and if no one wishes to speak the Board can dispose of the matter all together.

Mr. McGlennon opened the Public Hearing.

Mr. Kennedy stated that he was disappointed with this case and he wanted it to be part of the public record.

Mr. Kale stated that he concurred with Mr. Kennedy. He asked for clarification on the withdrawal.

Mr. Rogers stated that should the applicant wish to re-apply that the applicant would have to start over completely and pay the fees, but there is no time limit for the applicant to re-submit.

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

Mr. Kennedy stated that this case has brought to light an issue with the Proffer Policy. He stated that his concern is that the County has open-ended Proffers and the County needs to do something to clean that up. He stated that there needs to be some time constraint on when these Proffers need to be expected to be completed.

Mr. Rogers stated that the County would have to look into how to prevent this situation going forward.

At 9:43 p.m., Mr. McGlennon recessed the Board for a break.

At 9:51 p.m., Mr. McGlennon reconvened the Board.

Mr. McGlennon noted that Mr. Kennedy had to leave for medical reasons.

4. Case No. ZO-0002-12. Definitions
Case No. ZO-0005-2011. Endorsement of Green Building Incentives
Case Nos. ZO-0007-2011 and ZO-0009-2011. Residential Districts, Cluster Overlay, Residential Redevelopment Policy and Workforce Housing Opportunities Policy
Case No. ZO-0008-2011. Multiple Use Districts and Mixed Use Construction Phasing Policy

Mr. McGlennon stated that the Board was going to treat all these cases as one Public Hearing and go through the ordinances one-by-one.

Ms. Tammy Rosario, Principal Planner, addressed the Board and stated that the next four cases represent a compilation of efforts to update the Zoning Ordinance regarding definitions, green building issues, multiple uses, and the residential districts. As part of the Zoning Ordinance update process, these items have proceeded through Stages 1 and 2 of the process and come before the Board for consideration with final language as part of Stage 3.

Ms. Rosario stated that in particular the items include:

Definitions Ordinance: Most of these items have been presented individually as part of the review of a specific district and come together under a collective section. There are also miscellaneous changes to address broader issues that arose during the general review, such as the deletion of obsolete terms and the addition of illustrations.

Green Building Incentives Resolution: As discussed at the last work session, the focus of the green building initiatives is a list of incentives included in a resolution, supplemented by density bonuses in various residential and multiple use districts.

Residential Ordinances and the Workforce Housing Opportunities Policy: These include changes to R-1, R-2, R-5, and Cluster Overlay districts, the creation of the R-3 district and an associated Residential Redevelopment Policy, and the development of the Workforce Housing Opportunities Policy.

Multiple Use Ordinances and Mixed Use Construction Phasing Policy: These include changes to the R-4, MU, and Planned Unit Development (PUD) districts, as well as the creation of the construction phasing policy.

Ms. Rosario noted that at the request of the Planning Commission, a change was made to the PUD ordinance to allow setback reductions for commercial/industrial development when the PUD property was adjacent to land already zoned for commercial/industrial development. This language is similar to other language in the PUD ordinance that allowed setback reductions for residential uses.

Ms. Rosario stated that at its July 11, 2012, meeting, the Planning Commission voted 7-0 to recommend approval of all of the ordinances changes, policies, incentives, and guidelines, with the change noted previously.

Ms. Rosario stated that staff recommends the Board approve these ordinances, resolutions, and policies, and for clarity and record-keeping purposes, do so case-by-case.

Case No. ZO-2-11 – the Definitions section ordinance

Mr. Jose Riberio, Planner II, stated that the definition of Affordable Housing and Workforce Housing is used interchangeably. He stated that the Affordable Housing definition has been deleted and the Workforce Housing definition has been added.

Mr. McGlennon stated that by deleting the one definition he is concerned that they have eliminated the definition of the one group that the market has the hardest time providing housing. He stated that by clumping this group in with the Workforce Housing definition, he is concerned that emphasis is lost on the group that falls in the lower end of the income spectrum and where the market has the hardest time meeting the needs.

Ms. Jones stated that if Mr. McGlennon is stating that the definitions of Workforce Housing and Affordable Housing need to be separated, then she would definitely support that. She stated that there are very specific federal definitions of these two types of housing and believes that they should be kept separate.

Mr. Icenhour stated that he would be supportive of separating the two definitions.

Mr. Kale stated that it is important that no one believe that the Board is diminishing the Affordable Housing and that it should be separated.

Mr. McGlennon opened the Public Hearing.

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

Mr. Icenhour made a motion to approve the Definitions Ordinance with the exception of removing the Workforce Housing Definition, which would be reconsidered after revisions are made.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

Case No. ZO-5-11 – the Endorsement of Green Building Incentives Resolution

Mr. McGlennon opened the Public Hearing.

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

Mr. Icenhour commented that he was disappointed in the resolution. He stated that he does not see a lot of incentive in the resolution, but he would support it.

Ms. Jones made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

RESOLUTION

CASE NO. ZO-0005-2011. ENDORSEMENT OF GREEN BUILDING INCENTIVES

WHEREAS, the 2009 Comprehensive Plan cites use of green building practices in a development project as an example of public benefit; and

WHEREAS, the Green Building Design Roundtable Forum, which met from March 2009 to June 2010, compiled a report and set of green building recommendations known as the James City County Green Building Design Roundtable Report (“Report”) dated June 2010; and

WHEREAS, on July 27, 2010, the Board of Supervisors adopted a resolution that supports implementation of the general recommendations found within the Report; and

WHEREAS, consideration of a green building policy was part of the Zoning Ordinance update methodology adopted by the Board of Supervisors in May 2010; and

WHEREAS, at its January 24, 2012, work session, the Board of Supervisors directed staff to set forth incentives to be provided for projects that pursue green building certification; and

WHEREAS, the Board of Supervisors encourages all types of development in James City County to pursue green building practices for new construction and major renovations or expansions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby endorse the following green building incentives:

In support of projects considering program certification (at a minimum, “Certified” level or equivalent), James City County commits to the following:

1. Technical consultations and assistance, including the following components:
 - a. County-organized workshops and training sessions that will cover green building topics; and
 - b. As-needed opportunities to sit down with knowledgeable County staff to discuss questions about certification standards and processes and to evaluate options.

In support of projects that do make the commitment¹ to achieve green building certification through Leadership in Energy and Environmental Design (LEED), Earthcraft, or another equivalent certification program, James City County offers the following package of incentives:

1. To help defray the costs of certification program registration and certification, the County will refund 25 percent of the Planning Division site or subdivision construction plan review fees upon the project achieving certification.
2. On-going technical consultations and assistance, including the following components:
 - a. Invitations to no cost or low cost planned County-organized workshops and training sessions that will cover green building topics.
 - b. Opportunities to work with County staff:
 - i. Pre-application meeting to go through the certification program checklist to identify opportunities to coordinate certification points with County requirements.
 - ii. Plan review project participation within Development Management by staff members familiar with green building certification programs. Staff will be available to review and discuss the elements of the project proposed to meet the certification points on an as-needed basis.
3. Recognition of the commitment through the following, at a minimum:
 - a. A "Future James City County Green [Business/Institution/Community]" site sign on location during construction.
 - b. Upon certification, a profile on the County website and on TV Channel 48.
 - c. Upon certification, inclusion in the Planning Commission's Annual Report and recognition at a Board of Supervisors meeting.

Case No. ZO-7-11 – the Cluster Overlay District ordinance

Case No. ZO-9-11 – the R-1, R-2, R-3, and R-5 district ordinances, the Residential Redevelopment Policy, and the Workforce Housing Opportunities Policy

Mr. Icenhour stated that he wanted to commend staff for doing a great job of simplifying what is a very complicated issue. He stated that he was confused about the density bonus in the R-5 district ordinance. He stated that if a property was to be re-zoned R-5, it would have to come before the Board, so he believes that the density bonuses in R-5 districts should be at the discretion of the Board not the Planning Commission.

Ms. Cook stated that that section was old language and a carryover from when density bonuses were done administratively. She stated that the ordinance could be amended to state that the density bonuses in R-5 districts would come before the Board.

¹ Commitment shall entail providing a copy of relevant documents showing that the project has been registered with the certification program, and submission of an initial draft certification checklist indicating the likely items to be pursued.

Mr. Icenhour stated that in the R-4 district table of uses, that assisted living facilities require an SUP. He stated that this is different than the other districts. He stated that this should be amended to be consistent across all the districts.

Mr. Purse stated that staff would be fine with that change.

Mr. Icenhour questioned why there is no density bonus in the R-4 districts like there are in most of the other districts.

Mr. Purse stated that staff made the conscience decision to leave the density bonuses out of the R-4 districts, because there are many R-4 districts already in place.

Mr. McGlennon opened the Public Hearing.

As no one wished to speak to these cases, Mr. McGlennon closed the Public Hearing.

Mr. Icenhour made a motion to approve the R-1 District Ordinance.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

Mr. Icenhour made a motion to approve the R-2 District Ordinance.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0).. ABSENT: Mr. Kennedy.

Mr. Icenhour made a motion to approve the R-3 District Ordinance.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

Mr. Icenhour made a motion to approve the R-5 District Ordinance.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

Mr. Icenhour made a motion to defer the Residential Redevelopment Policy, Cluster Overlay Districts, and the Workforce Housing Opportunities Policy until the November 27, 2012, meeting.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

Case ZO-8-11 – the R-4, Mixed Use, and PUD district ordinances, and the Multiple Use Districts and Mixed-use Construction Phasing Policy.

Mr. Purse stated that Mr. Icenhour's question about the R-4 district had already been addressed.

Mr. Icenhour made a motion to adopt the R-4 ordinance with the correction stated earlier.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

Mr. Icenhour made a motion to adopt the PUD Ordinance, the Mixed Use Ordinance, and the Multiple Use Districts and Mixed-use Construction Phasing Policy.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

RESOLUTION

CASE NOS. ZO-0008-2011. MULTIPLE USE DISTRICTS AND MIXED USE

CONSTRUCTION PHASING POLICY

WHEREAS, the task of updating the Mixed Use Zoning District was undertaken as a part of the Board of Supervisors adopted methodology for the zoning ordinance update in May 2010; and

WHEREAS, the 2009 Comprehensive Plan referenced the importance of construction phasing to ensure residential development did not take place before a majority of commercial/industrial development was completed; and

WHEREAS, after meeting with the Policy Committee, the Planning Commission, and the Board of Supervisors, the following policy is recommended for all Mixed Use area development.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby endorse the following:

Construction within Mixed Use developments shall be sequenced in accordance with a project build-out schedule submitted for review as a part of the initial application and approved by the Board of Supervisors. As a guideline, project proposals that adhere to the following sequencing requirements will be considered consistent with the objectives of the phasing plan:

- (1) Building permits for up to 10 percent of the residential units may be issued prior to commencing any commercial construction; and
- (2) Certificates of Occupancy (CO) must be issued for at least 25 percent of the commercial square footage as shown on the master plan prior to building permits being issued for any residential unit above 50 percent of the total proposed units as shown on the master plan; and
- (3) Prior to issuance of building permits for construction of the final 20 percent of the residential units, CO must be issued for at least 80 percent of the commercial square footage as shown on the master plan.
- (4) If no residential development is proposed, the construction phasing shall still make assurances that all infrastructure is installed in coordination with the planned build-out of the development.

8. Authorization of Conveyance of J.B. Blayton Elementary School and Lois S. Hornsby Middle School Property to Williamsburg-James City County School Board.

Mr. Rogers stated that the County owns the property where the schools were constructed. He stated that the County typically waits until an appropriate time after construction of the schools to turn the property over to the School Board. He stated that now is the appropriate time and recommends the Board adopt the resolution.

Mr. McGlennon opened the Public Hearing.

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

Mr. Kale made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

RESOLUTION

AUTHORIZATION OF CONVEYANCE OF J.B. BLAYTON ELEMENTARY SCHOOL AND

LOIS S. HORNSBY MIDDLE SCHOOL PROPERTY TO

WILLIAMSBURG-JAMES CITY COUNTY SCHOOL BOARD

WHEREAS, the County is the owner of certain real property identified as Parcel No. 3020100011 on the James City County Real Estate Tax Map (the "Property"); and

WHEREAS, the County desires to transfer ownership of the Property to the Williamsburg-James City County School Board under certain terms and conditions to be set forth by deed; and

WHEREAS, the Property to be conveyed contains 80.546 acres and is more commonly known as 800 and 850 Jolly Pond Road, Williamsburg, Virginia, 23188, on which J.B. Blayton Elementary School and Lois S. Hornsby Middle School have been operating since October 2010; and

WHEREAS, the Board of Supervisors of James City County, following a public hearing, is of the opinion that it is in the public interest to convey the Property to the School Board.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute any and all documents necessary to convey the Property to the School Board.

J. BOARD CONSIDERATIONS

1. Legislative Application Deferral Policy

Mr. McGlennon requested that in deference to Mr. Kennedy's absence that the Board defer this item until its next meeting.

Mr. Icenhour made a motion to defer until the September 25, 2012, Board meeting.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4).
NAY: (0). ABSENT: Mr. Kennedy.

2. Zoning Ordinance Transition

Ms. Cook stated that the purpose of the transition resolution is to codify the Code of Virginia provisions at the local level, thus making clear in a local ordinance the status of vested rights in relation to the changes to the residential and multiple-use districts. Developments which completely meet the criteria listed in the resolution would be vested under the old ordinances prior to the adoption of the ordinances before the Board. At the July 11, 2012, meeting, the Planning Commission voted 7-0 to recommend approval.

Mr. Rogers stated that the Board should approve this transition resolution now to cover the ordinances approved earlier, and that another transition resolution would need to be done to cover the ordinances that were deferred this evening.

Mr. Kale made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4).
NAY: (0). ABSENT: Mr. Kennedy.

RESOLUTION

ZONING ORDINANCE TRANSITION

WHEREAS, the Board of Supervisors has adopted comprehensive revisions and amendments to sections of Chapter 24, Zoning, of the Code of the County of James City, Virginia, as described in Case Nos. ZO-0007-11, ZO-0008-2011, and ZO-0009-2011; and

WHEREAS, the orderly transition from the existing zoning regulations to revised regulations requires a transition resolution to affect changes in law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby grandfathers proposed developments which meet the criteria identified below under the regulations in effect prior to the September 11, 2012, adoption of the comprehensive revisions to the James City County Zoning Ordinance, as described in Case Nos. ZO-0007-11, ZO-0008-2011, and ZO-0009-2011, if all of the following conditions were fully and completely met on or before September 11, 2012:

1. The landowner had obtained or was the beneficiary of a "significant affirmative governmental act" (as defined herein) which remains in effect allowing development of a specific project; and
2. Relied in good faith on the significant affirmative governmental act; and
3. Incurred extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

Each of the following are deemed to be a "significant affirmative governmental act":

- a. The board of supervisors has accepted proffers or proffered conditions which specify use related to a zoning amendment;
- b. The board of supervisors has approved an application for a rezoning, with master plan, for specific use(s) or density;
- c. The board of supervisors or board of zoning appeals has granted a special exception or use permit, with master plan, with conditions;
- d. The board of zoning appeals has approved a variance;
- e. The board of supervisors or its designated agent has approved a preliminary subdivision plat, site plan, or plan of development for the landowner's property and the landowner diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;
- f. The board of supervisors or its designated agent has approved a final subdivision plat, site plan, or plan of development for the landowner's property; or
- g. The zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification, or reversal under subsection C of section 15.2-2311 of the Code of Virginia, 1950, as amended.

3. Renaming of Longhill Road Connector

Mr. Middaugh stated that the Board has recommended renaming the Longhill Road Connector section of road to acknowledge the many contributions of Mr. Perry DePue. He stated that the Board could choose any descriptive word to name this description of road.

Mr. Kale stated that this section of road is very confusing with the advent of GPS and he believes that it is appropriate to rename this section of road after Mr. DePue, due to his efforts in seeing this road to completion.

Mr. Kale made a motion to adopt the resolution with the amendment of changing the name to DePue Drive.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

RESOLUTION

STREET NAME CHANGE: LONGHILL CONNECTOR ROAD (ROUTE 615) TO

"DEPUE DRIVE"

WHEREAS, Mr. Perry M. DePue was instrumental in pursuing construction of the Longhill Connector Road during his tenure on the Board of Supervisors; and

WHEREAS, the Board of Supervisors has requested to change the name of Longhill Connector Road (Route 615) to "DePue Drive;" and

WHEREAS, Section 19-54 (b) of the James City County Subdivision Ordinance provides for street names to be changed upon approval by the Board of Supervisors; and

WHEREAS, the proposed street name change has been discussed with the Fire Department, Police Department, Planning Division, Williamsburg Post Office, and Real Estate Assessments and these agencies have found it acceptable.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve renaming the street called Longhill Connector Road (Route 615) to "DePue Drive."

K. PUBLIC COMMENT – None

L. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh stated that a very successful Ladies' Professional Golf Association (LPGA) tournament held in the County had just concluded. He stated that in the coming weeks he hopes to have some statistics for the Board in regards to economic impact.

Ms. Jones complimented the staff for all the effort put in to the tournament and in working with Kingsmill for making the tournament a success and is happy to report that the LPGA will be back in May.

Mr. Kale stated that after visiting all of the corporate boxes, many of them have signed up to return in May 2013. He congratulated staff and Kingsmill.

Mr. Middaugh asked the Chairman his thoughts on doing the Closed Session tonight, because of the late hour.

Ms. Jones stated that she believed that the Closed Session should be put off in deference to Mr. Kennedy's absence.

M. BOARD REQUESTS AND DIRECTIVES

Mr. Kale stated that he had a request of the Board. He stated that he would like the Board to consider returning to staggered election terms for the Board of Supervisors. He stated that he wants this on the agenda

for the meeting on October 9 prior to the November elections. Mr. Kale made a motion to have staggered terms added to the agenda for the October 9, 2012, meeting.


Ms. Jones stated that she would not support this motion.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Mr. McGlennon (3). NAY: Ms. Jones, (1). ABSENT: Mr. Kennedy.

Ms. Jones made a motion to adjourn the meeting until 4 p.m., on September 25, 2012.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy.

At 10:40 p.m., Mr. McGlennon adjourned the Board of Supervisors.



Robert C. Middaugh
Clerk to the Board

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