

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 9TH DAY OF JULY 2013, 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  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Jamestown District  
M. Anderson Bradshaw, Powhatan District

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

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE** – Stephanie Rubino, a recent graduate of Warhill High School and a resident of the Stonehouse District, led the Board and citizens in the Pledge of Allegiance.

**E. PRESENTATION**

**1. Clean County Commission Annual Update**

Ms. Peg Boarman, a member of the Clean County Commission, addressed the Board giving a presentation highlighting the following:

- Annual Spring Clean Up was held over three Saturdays in April, during the clean up 73.13 tons of trash was collected and removed, 1070 tires were collected, 27 locations throughout the County were cleaned up, and 264 vehicles made trips to the Jolly Pond Convenience Center
- Clean Business Forum Awards have been given out to the following recipients: 1<sup>st</sup> quarter awardee was the Citizens and Farmers Bank in Norge, 2<sup>nd</sup> quarter awardee was the Suntrust Bank in New Town. The third quarter award will be given out on August 14<sup>th</sup>. The commissioners asked the Board to make nominations of businesses in their districts.
- The County recycling program is at 81% participation.
- The Commissioners have generated over 700 volunteer hours since January.
- There are openings on the Commission for citizens wishing to serve.

## **F. PUBLIC COMMENT**

1. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board in regard to the Rural Lands presentation and the loss of property rights.

2. Mr. Randy O'Neil, 109 Sheffield Road, addressed the Board in regard to the health and physical well-being of children in the school system.

3. Ms. Betty Walker, 101 Locust Place, addressed the Board in regard to regionalism and the infringement of private property rights.

4. Mr. Nate Walker, 101 Locust Place, addressed the Board in regard to the Rural Lands presentation.

5. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board in regard to private property rights and the effect of conservation easements.

6. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board in regard to the County selling off land in Wellington to a large tract home builder.

7. Ms. Rosanne Reddin, 2812 King Rook Court, addressed the Board in regard to the definition of public comment and asked if the Board listens to the comments made by the citizens.

8. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in regard to the recent greenspace acquisitions and the money spent on the Forest Heights project.

9. Mr. Ed Oyer, 139 Indian Circle, addressed the Board in regard to storm debris that still has not been cleaned up in his neighborhood and questioned why the County is not doing anything.

## **G. BOARD REQUESTS AND DIRECTIVES**

Mr. Icenhour stated that he distributed a budget overview for the Greater Peninsula Workforce Development to the other Board members this evening.

Mr. Kennedy stated that the illegal signage is appearing in the medians again. He stated that the fence along Route 199 is almost non-existent because of the vines. He stated that he appreciates the improvements done along Route 199 since the last meeting. He asked about the procedure for dead animals along the road, as there are several on Route 199.

Mr. Middaugh stated that the Virginia Department of Transportation (VDOT) routinely handles that when they are notified.

Mr. McGlennon asked staff to address if any land that was purchased for conservation was later sold for development.

Mr. Rogers stated that he could speak to this issue. He stated that when Mainland Farm was purchased by the County, it was under development pressure and the owners had already sold a portion of the property to Jamestown Settlement. So that property was sold by the property owner, prior to the County acquiring Mainland Farm.

Mr. McGlennon stated that the property owners exercised their right to sell a portion of their property for development and then exercised their right to sell the remaining property to the County for preservation.

Mr. Rogers stated that was correct.

## **H. CONSENT CALENDAR**

Ms. Jones made a motion to approve the Consent Calendar.

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

1. Minutes –
  - a. June 25, 2013, Regular Meeting

## **I. PUBLIC HEARINGS**

1. Case No. AFD-09-86-1-2013. Gordon Creek Agricultural and Forestal District (AFD), Pickett Holdings Addition

Mr. Luke Vinciguerra, Planner I, addressed the Board giving a summary of the staff report included in the Agenda Packet.

Mr. McGlennon asked if the property owner approached the County about being included in this Agricultural and Forestal District (AFD).

Mr. Vinciguerra stated that is correct.

As there were no other questions for staff, Mr. McGlennon opened the Public Hearing.

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

Mr. Icenhour made a motion to approve the resolution.

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

## **ORDINANCE NO. \_\_\_\_\_**

### **CASE NO. AFD-09-86-1-2013. GORDON CREEK AGRICULTURAL AND FORESTAL DISTRICT (AFD), PICKETT HOLDINGS ADDITION**

WHEREAS, a request has been filed (the "Application") with the Board of Supervisors of James City County, Virginia, (the "Board of Supervisors") to add 349 acres of land owned by Pickett Holdings LLC, located at 2171 Bush Neck Road and identified as James City County Real Estate Tax Map Parcel No. 3510100001 to AFD 9-86, which is generally known as the "Gordon Creek Agricultural and Forestal District" (the "AFD"); and

WHEREAS, at its May 9, 2013, meeting, the AFD Advisory Committee voted 6-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the "Commission") at its June 5, 2013, meeting, pursuant to Section 15.2-4314 of the Code of Virginia, 1950, as amended (the "Virginia Code"), after which the Commission voted 6-0 to recommend approval of the Application; and

WHEREAS, pursuant to Section 15.2-4214 of the Virginia Code a public hearing was advertised and held by the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adds 349-acres owned by Pickett Holdings LLC, as referenced herein to the 3,203 acres of the Gordon Creek AFD with the following conditions:

1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the AFD may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawals of Property from AFDs, adopted September 28, 2010, as amended.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with Section 15.2-4301 et. seq of the Virginia Code, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.

2. Case No. SUP-0006-2013. Creative Kids Child Development Center

Mr. Jose Ribeiro, Planner III, addressed the Board giving a summary of the staff report included in the Agenda Packet.

Mr. Kennedy asked if the zoning ordinances are checked when applying for a business license to see if a Special Use Permit (SUP) is necessary.

Mr. Middaugh stated that the initial license was for a by-right use and an SUP was not required. The applicant subsequently expanded without checking back with the County to see if an SUP would be required.

Mr. Ribeiro stated that was correct.

Mr. Kennedy stated that he believed the Board had decided to have staff conduct inspections annually to determine the number of children on the premises of these home day cares.

Mr. Middaugh stated that he does not believe that is correct. The only inspections are done by the licensing agency, Department of Social Services (DSS).

Mr. Kennedy stated that he would recommend as a matter of practice that when citizens are applying for business licenses for home day cares that they be provided information on how many children they can have on the property by-right and the procedures for expanding and being granted an SUP.

Mr. Icenhour stated that there is a by-right use of up to five children that requires a license from the County, but not an SUP. However, the covenants of the neighborhood state that the property is for residential use only. He questioned if the by-right use is considered a residential use under the covenants.

Mr. Rogers stated that this is two different types of law. One is zoning and what may be allowed under the zoning ordinance may be very different from what is allowed under the covenants. He stated that the County cannot say what might be included in any type of covenant, but what the County can do is say what is considered a by-right use in that particular zoning district and what requires an SUP. He stated that the County issuing an SUP does not violate the covenants. It is the responsibility of the property owner to determine what is allowable under their specific covenants.

Mr. Icenhour stated that a previous recommendation from the County Attorney's office is that the Board should not take any action that knowingly violates the covenants of a development. He stated that anything above the by-right use would seem to violate the covenants and believes the Board should be very careful about this. He also stated that there is a question about the requirements for changing the covenants, is it 51 percent or 100 percent.

Mr. Rogers stated that he has reviewed the covenants and a simple majority at this time is all that is required to change them.

Mr. Ribeiro stated that during the Planning Commission meeting, the question was raised about changing the covenants. At that time, Mr. Adam Kinsman, Deputy County Attorney, stated that it would take a 100 percent vote to change them. However, after further research, Mr. Kinsman reported to staff that it would take a majority.

Ms. Jones asked what the timeframe expectation would be to change the covenants. She stated that if the direction of the Board is that she change the covenants, she does not want the applicant to have to pay the fees twice to go through this process to obtain the SUP.

Mr. Middaugh stated that there is no defined amount of time. It is really up to the resources available to the person seeking to make a change. He stated that this is why staff included the alternate resolution for the Board to consider. The alternate resolution would allow her to increase the number of children to 12 and would bring her into compliance with the County and then give her a year to get the covenants changed. He stated that she is still going to be exposed to a challenge by the neighborhood, as she is now, but at least she would be in compliance with the County.

Mr. Bradshaw stated that he understands that there is another home occupation at this residence as well and questioned how that occupation might conflict with this application.

Mr. Ribeiro stated that there is a business license for a moving company on file for this residence. He stated that staff has noticed that there are one or two moving vans that occupy space in the driveway of the residence, which affects parking at the residence.

Mr. McGlennon stated that one of his concerns is the statement made by the applicant that she would move out of the home to accommodate the increase in children, which would turn the home into a commercial use in a residential neighborhood. He stated that his understanding of accommodating 20 children is based on there being no living space allotted to the family in the home.

Mr. Ribeiro stated that was correct.

Mr. McGlennon asked if staff had a sense of how many children could be allowed if the family remains in the home.

Mr. Ribeiro stated that staff does not have that information. He stated that when the applicant submitted the functional drawing of the space to the Department of Social Services (DSS), the applicant did not include any personal living space on the drawing. To his knowledge, the applicant has not submitted a separate drawing to DSS showing personal living space in the home. He stated that by including personal living space on the drawing, the capacity for the number of children that can be accommodated in the home would decrease.

Mr. McGlennon asked Mr. Ribeiro to comment on the parking available at the home.

Mr. Ribeiro stated that there is a paved driveway at the home and by observation the driveway can accommodate five or six vehicles. Staff's concern is that the driveway must accommodate personal vehicles, vehicles of parents dropping off and picking up children, as well as the moving vans. He stated that staff is not confident that there is adequate parking and conflicts with the residential character of the neighborhood.

Mr. McGlennon stated that it is his understanding that if this residence was to be turned into a commercial space, then there are some structural changes that would have to be made to the house.

Mr. Ribeiro stated that was correct. Also, if the applicant is granted more than 12 children, then there are changes that will have to be made. He stated that all the rooms that are used to care for the children must be on the ground floor and every room must have an exit door.

Mr. McGlennon questioned if exit door meant an exterior door that leads outside.

Mr. Ribeiro stated that was correct and currently those doors do not exist. He stated that a monitored fire system would also be required.

Mr. McGlennon asked if the applicant moving out and turning the residence into a purely commercial use would violate the zoning ordinance.

Mr. Rogers stated that it would violate the zoning ordinance.

Mr. Bradshaw questioned if DSS requires 35 square feet per child.

Mr. Ribeiro stated that was correct.

Mr. Bradshaw stated that for 12 children, that is just over 400 square feet of space.

Mr. Ribeiro stated that was correct, but that is wall-to-wall space and does not include space that is for closets or bathrooms.

As there were no other questions for staff at this time, Mr. McGlennon opened the Public Hearing.

1. Ms. Tracey Williams, 701 Mosby Drive, addressed the Board as the applicant. She stated that she provides 24 hour, 7 day a week care for children in a safe, loving environment in her home. She stated that she holds a degree in education and the children are provided a learning environment, as well as access to educational and fun field trips. She stated that she provides care for children of parents that work hours other than first shift. She stated that she is affiliated with DSS and is part of the DSS subsidy program. She stated that she has tried to extend her services to meet the needs of the community.

Ms. Williams stated that she would like to address some of the questions that were discussed with staff. In regard to the question about parking, she provided a photo of her driveway and stated that the driveway would hold up to nine vehicles.

Mr. McGlennon asked how it works with parents picking up and dropping off kids.

Ms. Williams provided a map of her street showing that her home is on the corner of Mosby Drive and Penniman Road. She stated that parents turn off Penniman Road and right into her driveway.

Ms. Williams stated that in regard to the covenants, she is in the James Terrace subdivision and her property falls under Section 5 of the covenants. She showed letters of approval from all of the property owners that fall under Section 5 of the covenants.

She stated that DSS granted her a day care license for nine children, ages 11 months to 12 years, which will expire on August 20, 2013. She stated that Building Safety and Permits stated that if the occupancy of children was to rise above 12, she would be required to have a monitored fire system. She stated that she currently has an ADT security system in her home and she has already contacted the company about expanding her service to include fire monitoring.

She stated that she has been working with Building Safety and Permits regarding the hours of operation. She currently is available 24 hours a day, seven days a week. She stated that does not mean there is a child in her home 24 hours a day, that it allows flexibility for parents in the military and get called in, or for parents that need to pick up an extra shift at work.

She stated that the only reason she suggested moving out of her home was because she found that a child day care center, with an SUP, is allowable in the R-2 residential district. She stated that there are other commercial businesses in the R-2 district in her area. She provided pictures of the commercial businesses in her area.

Mr. McGlennon asked about her staffing, how many staff she currently has, and how many she would need if approved.

Ms. Williams stated that she was waiting on this procedure to determine how many children she can have. That number will determine the child to teacher ratio. She stated that as the Director, she is required to be there at least 50 percent of the time.

Mr. Bradshaw asked if she was to continue to reside in the home, how many square feet would be required for her family and how many square feet would be available for the children in her care.

Ms. Williams stated that the functional design submitted to DSS was for the whole home to be available to the children in her care, which is 1,262 square feet. She stated that at the time, she was not intending to continue residing there. She stated that the DRC added the condition that she would have to

continue to reside there; therefore, she asked that she be allowed to add an addition to the home. She stated that if she has to stay on the property she would add an addition of 1,800 square feet for her family.

Mr. McGlennon asked if that is 1,800-square-feet total or an additional 1,800 square feet.

Ms. Williams stated an additional 1,800 square feet.

Mr. McGlennon stated that it would be approximately a 3,000-square-foot house.

Ms. Williams stated that was correct.

Mr. McGlennon asked if she had given any thought to another location for her business.

Ms. Williams stated that she looked into a building on Olde Towne Road. However, the owner decided that she needed to do an E-group occupancy and required that someone be there regardless if the children were in school. She stated that she would have to pay someone to sit there in the building, doing nothing, while the children were in school. She stated that there was no point continuing the deal when the owner added this stipulation.

Mr. McGlennon stated that an addition of 1,800 square feet is a significant investment, so would it be possible to try and find a suitable location in a commercial zone.

Ms. Williams stated that she already has a building and Building Safety and Permits stated that she can have an occupancy permit for her home for more children. She stated that if she expanded her home, she has no intention of going over the limit of 20 children.

Mr. McGlennon stated that the Board has to look at the SUP and anyone else that might come along, not just her own character and plans.

Ms. Jones stated that SUPs have term limits on them, which acts as a checks and balance.

Ms. Williams stated that the Planning Commission approved the SUP for 36 months and then subject to the renewal process.

Mr. Bradshaw questioned the hours of operation stated.

Ms. Williams stated that she is currently open 24-hours a day, seven days a week. However, she stated that Building Safety and Permits has issue with that, so she lowered the hours to 5:30 a.m. to midnight Monday through Friday and 7:00 a.m. to midnight on Saturday and Sunday.

2. Mr. Ed Oyer, 139 Indian Circle, addressed the Board stating that previously the Board approved a day care on Indian Circle and there were cars parked all along the curb. He stated that the Board went against the covenants in his neighborhood and the residents and approved it anyway.

3. Mr. Eric Williams, 701 Mosby Drive, addressed the Board stating that he understands the concern over parking; however, it is not a steady stream of cars. He stated the parents pull in, drop their kids off, and then leave.

4. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board stating as a grandmother that values good day care for children, she wanted to applaud the applicant for doing a good job this evening.



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

Mr. Rogers stated that he would like to clarify statements earlier. He stated that if there are five children, it is an accessory use of the property. If the number of children goes to 12, it then becomes a special use and a permit is required. One of the conditions of the SUP is that she must reside there. With 12 children it would no longer be an accessory use of the property and she would not have to reside there; however, staff has added the condition to the SUP that she resides on the property.

Mr. Bradshaw asked staff if the notion of a 1,800-square-foot addition was something that staff or the Planning Commission had given any thought.

Mr. Ribeiro stated no, it had not been brought to their attention.

Mr. Bradshaw stated that he would have concern about the effect it would have on the character of the neighborhood.

Mr. Ribeiro stated that staff from the Engineering and Resource Protection Department has stated that if any expansion occurs than stormwater criteria would apply.

Ms. Jones stated that she believes the expansion would require an amendment to the SUP. She asked if the applicant is aware of that.

Ms. Williams asked why that would be.

Ms. Jones stated that it is important that the applicant be aware of these things.

Mr. Kennedy stated that is a valid point. As part of the business plan, it could be very cost prohibitive and perhaps staff should be briefing the applicant on what this could entail.

Mr. Ribeiro stated that he would like to clarify a statement he just made that was incorrect. He stated that the SUP is contingent upon the number of children being cared for, as long as the number of children did not go up as a result of the expansion, then an amendment would not be required.

Mr. Kennedy asked if stormwater management would still apply.

Mr. Ribeiro stated yes, he believes so.

Mr. Kennedy stated that he is trying to recall the numbers from previous cases and asked staff to shed some light on what the Board has done historically.

Mr. Allen Murphy, Director of Development Management, stated that the Planning Commission's policy for the placement of day care centers came about as a result of the case in Kristiansand and the policy is included in the attachments in the packet. He stated that this application is consistent with that policy.

Ms. Jones made a motion to approve the application and to approve resolution (1) based on the recommendation of the Planning Commission. She stated that all of the residents covered by her covenants have submitted letters of recommendation and that speaks volumes. She stated that it is a much needed service in this community that provides flexibility for working parents. She stated that in regard to the expansion that she trusts the applicant as a businesswoman not to take on more than she can afford and handle.

Mr. Middaugh stated that given the evidence to support changing the covenants given tonight, showing that it may not be a lengthy process after all and given some of the variables introduced tonight regarding the addition, deferral of action is a possibility as well.

Mr. Kennedy stated that he has some concerns regarding the covenants. He stated that he has been told by staff before that the County cannot get involved in covenants, that that is between the homeowner and the developer. He stated that if the Board is going to start looking at the covenants, then there needs to be consistency and it should be part of the proposal process. He stated that he is concerned about the number of children and does this become the benchmark for other cases. He stated that he is concerned over the integrity of neighborhoods. He stated that he appreciates the need for this service and he is very conflicted over this case.

Mr. Bradshaw stated that he did not realize that the portion of the neighborhood covered by these covenants was so small. And while the letters from her neighbors do not change the covenants, they do give the indication that she will be successful in changing them. He stated that when covenant restrictions come to the attention of the Board, he believes that the Board should not act against them. He stated that his preference would be to take more time to resolve these issues. He stated that he also has concerns over a day care that would be that large in a residential neighborhood.

Ms. Jones stated that she would withdraw her motion of approval if the Board would rather defer the application.

Mr. Bradshaw made a motion to defer the application for a reasonable amount of time for the applicant to have the covenants changed.

Mr. Kennedy asked if the Board would allow the approval of the application, providing that she puts forth the effort to have the covenants changed.

Mr. Icenhour stated that he would have an issue with Mr. Kennedy's suggestion. He stated that he agrees with Mr. Bradshaw. It appears that changing the covenants will not require much effort, and he would prefer that they be changed prior to approving the SUP. He stated that the service that the applicant provides is a valuable service to the community. However, the issue with the covenants is one that he cannot go around. He stated that the number of children that she wants to have in the home gives him issue as well. He stated that he feels that that number of children would be better served in a commercial space. He stated that the hurdle of the covenants is his first priority and if that can be solved by deferring action tonight, then he is supportive of that motion. He stated that the alternate resolution, included in the agenda packet, intended to grant a conditional approval to allow her time to change the covenants is a possibility, but he would rather utilize a deferral. He stated for clarity's sake, after the issue with the covenants is settled, he still is not sure he can support approval of 20 children in the home. He stated that many children become a too intensive use of the space in a residential neighborhood. He stated he would be very supportive of seeing the applicant find commercial space and really turn this into a full-scale operation, because it is such a needed service in the community.

Mr. Kennedy stated that if there is some fluctuation or doubt over the number of children the Board is going to approve, then that may change the nature of what the applicant wants to do. He stated that he believes she is currently serving 24 children.

Ms. Williams stated that was correct. She has 24 children enrolled; however, they are not all there at the same time, it is broken up into shifts.

Mr. Kennedy stated that if the Board is going to approve 20 at one time, that might change the whole business profile and the applicant may want to look at other options. He stated that giving the applicant some idea of the direction the Board is willing to go would be beneficial to the applicant.

Ms. Jones stated that she would clearly be supportive of the 20 children at one time.

Mr. McGlennon stated that his concern is that this is a residential neighborhood. In his opinion, to be able to accommodate 20 children requires converting the structure into a commercial use and that does not fit within the residential district. He stated whether the applicant stays there for 20 years, or decides after three years to move into a commercial space, that building will no longer be a residential structure.

Ms. Jones asked for a point of clarity from the applicant. She questioned if the intent of allowing 20 children means that there will be 20 children on the premise at one time, or if that number is the maximum enrollment number for children on differing schedules.

Mr. McGlennon stated that his understanding is that the number 20 is to service no more than 20 children on the premise at one time. He stated she already has 24 children enrolled, but not on the premise all at the same time.

Ms. Williams stated that was correct.

Ms. Jones stated that is not a currently an issue.

Mr. McGlennon stated that having 20 children on the property at one time is a big difference.

Ms. Williams stated that there will not be 20 children on the premise at one time. She stated that DSS requested that she pick a number for the application process, but she would still be bound to the student to teacher ratio and the 35-square-foot per child rule enforceable by DSS. She stated that while she is asking for 20, there would not be 20 children there at one time.

Mr. McGlennon stated that he understands her intentions, but that he is concerned about what happens if she decides to sell her business and her home. The SUP is for the property and the next operator could come in and have 20 children there.

Ms. Williams stated that she has no intention of selling her home that it is a family home and it will be left to her children.

Mr. McGlennon stated that she is proposing to change the home into a commercial structure.

Ms. Williams stated that was her original intention, yes, but she has been told that she must live on the premise as a condition of the SUP.

Ms. Jones stated that this what she has been explaining. She is not going to move out of the home, because she has been told that she cannot move out and use the home purely for commercial use.

Ms. Williams stated that she has to comply with the licensing requirements and she is subject to home inspections and head counts of children by the DSS.

Mr. Bradshaw stated for clarification, the 20 children limit means 20 at one time, but there might be more than 20 children enrolled in her program.

Ms. Williams stated that was correct.

Mr. Bradshaw stated that because there are 24 enrolled now does not mean that there are 24 there at one time now. He stated that there may only be 12 there at one time.

Ms. Williams stated that if approved, there might be 16 children there at one time, but the number is dependent on the schedule of the parents. With her hours of operation now, parents have the opportunity to work 2nd and 3rd shift. She stated that she is the only provider, to her knowledge, in the County that provides 24-hour care and transportation.

Mr. Icenhour stated that her current license allows nine children at one time.

Ms. Williams stated that was correct.

Mr. Icenhour stated that her current enrollment is 24 children.

Ms. Williams stated that was correct.

Mr. Icenhour stated that at any given time, no more than nine of those 24 children enrolled may be on the property at one time.

Ms. Williams stated that was correct.

Mr. Icenhour stated that what he is looking at is that her current proposal would allow no more than 20 children at one time; however she could have 40 or 60 children enrolled in her program so long as no more than 20 were on the premise at one time. He stated that the enrollment numbers are nice to know; however the function of her license and the function of the permit is the number of children allowable at one time. He stated that in his opinion, when the number of children reaches 20 at one time, that it changes the nature and character of the neighborhood. He stated that he is comfortable with a smaller number in a neighborhood, but if Ms. Williams wants the larger number, then he would be more comfortable with that occurring on a commercial property.

Mr. McGlennon stated that the guidance that some of the Board members are trying to provide is that 20 children is too high a number for a residential neighborhood.

Mr. Kennedy stated that the applicant currently states that she provides transportation and 24-hour a day care. However, under this application, the hours of operation are reduced to roughly 18 hours a day. He questioned how that reduction in hours is going to impact the parents that she is currently serving. He asked if this is an accommodation she wants to make or is it one she is being told she has to make. He stated that if she is servicing military members, then being available 24-hours a day is an important service.

Ms. Williams stated that Mr. Tom Coghill, Director of Building Safety and Permits, had an issue with the hours of operation being 24-hours in a combustible home. She stated that is why she lowered her hours. She stated that being open 24-hours offers an opportunity for parents to take on any shift that they may need. She stated that the parents she currently services are picking their children up by midnight.

Mr. Kennedy stated that the reduction in hours does not affect the parents she is currently servicing, it would just prevent the applicant from offering overnight care.

Ms. Williams stated that was correct, she currently has no overnight children in her program.

Mr. Kennedy asked why 20 children is the number that was chosen. He asked if it is part of her business model, or a function of profit, or what specifically lead to that number.

Ms. Williams stated that when she submitted the functional design to DSS, the determination was made that she could potentially receive a license for 24 children based on that design. She stated that she did not need 24, so she is requesting 20.

Mr. Kennedy asked if 20 children is the number of children she is looking to have on the premise, or if she is comfortable at the current number of 12 with the option for more if necessary. He stated that when adding more children, then the question of staffing comes in to play. He asked if 20 children is the number she plans to have on the premise, or if the number was just an option and part of her license.

Ms. Williams stated that she is not set on having 20 children on the premise at one time. She stated that she would like to increase her numbers to possibly 16. She stated that she asked for 20 knowing that the governing body might reduce it. She stated that staffing increases are a significant cost to her business. She stated that she does not charge the typical rate of day-care centers in the community. She offers affordable care for working parents and she covers the costs of field trips out of her own pocket.

Mr. McGlennon stated that there was a motion to defer to on the floor.

Mr. Bradshaw stated that his deferral motion was for one month; however, he believes that a two-month deferral would be more practical, he so moved to amend his motion to defer.

Ms. Jones stated that the applicant appears to have a question.

Ms. Williams stated that her current license expires on August 20, 2013; therefore, she cannot wait two months. She stated that the consent of the local governing body is a new regulation for State licensing and she must submit the Board's ruling with her renewal application prior to the expiration of her license on August 20. She stated that if the Board does not approve her proposal, then the State licensing body will put her license back to five children which is the by-right use under the zoning ordinance.

Ms. Jones asked Mr. Rogers how quickly covenants can be changed. She stated that if the Board is going to defer, then she would like to see the case back at the meeting in August, which is before the license expires. She asked if this would be realistic.

Mr. Rogers stated that it would be possible to get the covenants changed quickly; however, it is going to take some work. He stated that every property owner covered by the covenants would have to sign a notarized document that can be recorded. He stated it looks like she has the neighbors on board and it is not a lot of people covered by the covenants, so it is possible to get it done. He stated that it is going to take considerable work.

Mr. Kennedy asked if that meant all the property owners had to sign a notarized document.

Mr. Rogers stated yes, all signatures had to be notarized.

Mr. Kennedy asked Ms. Williams if all the neighbors that signed her letters were the property owners or if any of them were renters.

Ms. Williams stated that two of the neighbors are renters. She stated that she is concerned if she loses her license where the parents that she services will go for child care.

Ms. Jones stated that considering this, would the Board be willing to come to a compromise with a time limit imposed on the SUP. She stated that she understands this is a land use issue; however, it is also about people and a business that provides a much needed service in this community.

Mr. Rogers stated that there is an alternate resolution in the Agenda Packet that would impose a one year time restriction and the covenants would have to be changed during that year.

Mr. Icenhour asked if the Board could approve what she currently has for a specific time frame, perhaps two or three months, to allow her to get her license and get the covenants changed. He stated that he is uncomfortable with raising the number higher than what her current license states until some of these other issues are resolved.

Mr. Rogers stated that the use of a time limit on an SUP is to allow the Board to review or resolve issues that may be brought up, as in this case. He stated that staff reviewed the options and the issues and recommended the one-year time frame. He stated that staff believed that changing the covenants would be more involved than what it appears here tonight, as well, as for a business and for the purposes of enrollment for her parents serviced.

Mr. McGlennon stated that changing the covenants will involve a more formal and legalized form of notice. He stated he does not believe it can be done in a few months. He stated that Ms. Williams will not be very well served if her license is not granted because the SUP is only valid for a few months. He stated that he believes the one-year time frame is more of a reasonable time frame. He stated that he would be more supportive of the alternate resolution proposed by staff.

Mr. Icenhour asked if the alternate resolution allows her to increase her number from the nine she currently has to 12, then will her license from DSS reflect that number as well.

Mr. Rogers stated that again, these are two types of law. He stated that he is confident that what the licensing body is attempting to do, by requiring this approval, is to make sure that the applicant is in compliance with the zoning ordinance in the jurisdiction. He stated that he is fairly confident that if the Board approves 12 children with the SUP and brings the business into compliance with the County's zoning ordinance, then the licensing body will approve her license for 12 as well.

Mr. McGlennon stated that the benefit of approving the alternate resolution is that it will allow the applicant to look into all the issues associated with the request of the higher number. He stated it would allow the applicant the opportunity to present the Board with a much clearer picture of what 20 children in that space would like. He stated that the applicant needs to make the case that having the higher number of children on the property is feasible and will not have the negative impacts that the Board is concerned about. He stated that the Board needs to consider the implications on the rest of the neighborhood.

Mr. Bradshaw stated that he would withdraw the motion to defer for two months considering the time schedule of Ms. Williams license. He made a motion to approve the alternate resolution, titled resolution (2) in the Agenda Packet.

Mr. Icenhour stated that in that resolution, nowhere does it state that the covenants have to be changed in order to renew this SUP at the end of the one-year time frame. He asked if it is necessary to state this change in the resolution.

Mr. Rogers stated that it is not necessary; it is clearly the intent of the Board and would be reflected in the minutes. He stated that when the renewal comes back to the Board at the end of the year, the minutes would be included as part of its consideration.

Mr. Icenhour stated that he can be supportive of the alternate resolution, provided that the applicant understands that a renewal of the SUP would be predicated on having the covenant issue resolved.

Mr. McGlennon stated that the resolution can be amended to state, under Condition No. 4, "during which the child daycare center owner shall maintain (and renew or obtain as necessary) all needed County and State permits and covenant revisions to operate the child daycare center."

Mr. Kennedy stated that at the end of the year, it still seems that the comfort level of the Board is 12 children at one time, not 20.

Mr. Icenhour stated that he could support the 12, he is not sure he could support the 20. He stated that a lot of this dependent on the covenants and the willingness of the people in the neighborhood to allow this use in this community.

Ms. Williams questioned why the Board is concerned with the covenants when she is the one that is liable if a neighbor has an issue.

Mr. Icenhour stated that while the County will not enforce covenants and is not liable for uses that violate covenants, the Board desires to respect the covenants when they are brought to the attention of the Board.

Mr. Kennedy stated that if there is not an active Homeowners Association, typically covenants are often never enforced. He stated that things do change in regards to covenants over time. He stated that depending on what Ms. Williams neighbors think and how the covenants work out, will influence his decision later on. He stated that having exterior doors installed changes the nature and façade of the building and will affect the neighborhood feel and would be things that he would take in consideration later on. He stated that he would recommend a small business group called WALT (retired business people), that could sit down with her and do a business plan and see if the necessary requirements for increasing the number of children is even feasible. He stated that it seems that Ms. Williams does a lot for these children and parents and the community at large, out of the goodness of heart and some of these changes may not be feasible from a business standpoint. He stated that he applauds her efforts for the children and parents.

Ms. Williams stated that the covenants were written in 1951 and Williamsburg and the County is very different than it was.

Mr. McGlennon stated while that may be true, covenants have not changed so much that the conversion of a home in a residential neighborhood into a commercial structure would be allowed. He stated that there are mixed use areas that are zoned specifically to mix residential and commercial uses.

Ms. Williams asked if she would have to start the entire process with the Planning Department all over for the renewal in a year.

Mr. Rogers stated that prior to the expiration date of the SUP, the applicant would have to apply for a renewal.

Mr. Kennedy asked about the cost involved.

Mr. Ribeiro stated that for an SUP amendment the cost would be \$400.

Ms. Jones stated so the Board could do an SUP amendment.

Mr. Ribeiro stated that was correct.

Mr. McGlennon asked Mr. Middaugh to call the roll on the motion to approve the alternate resolution as amended and stated earlier.

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

## **RESOLUTION**

### **CASE NO. SUP-0006-2013. CREATIVE KIDS CHILD DEVELOPMENT CENTER**

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, Ms. Tracey Williams has applied for an SUP to operate a child day-care center for a maximum of 20 children on a parcel totaling 0.39 acres and zoned R-2, General Residential; and

WHEREAS, the subject parcel is located at 701 Mosby Drive and can be further identified as James City County Real Estate Tax Map Parcel No. 41403300103; and

WHEREAS, if approved, this SUP application will bring the use into conformance with the current zoning ordinance regulations; and

WHEREAS, the Planning Commission, following its public hearing on June 5, 2013, voted 6-0 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-0006-2013 as described herein with the following conditions:

1. Occupancy: No more than 20 children shall be cared for at the child day-care center at any one time.
2. Hours of Operation: Hours of operation shall be limited from 5:30 a.m. to 12 midnight, Monday through Friday and from 7 a.m. and 12 midnight, Saturday through Sunday.
3. Residency: The owner/operator of the child day-care center shall reside on the property for the duration of the validity of the SUP.
4. Validity of Special Use Permit: This SUP shall be valid for a period of 36 months from the date of approval during which the child day-care center owner shall maintain (and renew or obtain as necessary) all needed County and State permits and covenant revisions to operate the child day-care center.
5. Signage: No signage shall be permitted which relates to the use of the property as a child day-care center.



6. Lighting: No additional exterior lighting shall be permitted on the property, other than lighting typically used at a single-family residence.
7. Water Conservation Agreement: The Applicant shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources. The JCSA shall receive and approve the standards within 90 days after approval of this SUP.
8. Food Preparation: No commercial food preparation or laundry services shall be provided as part of the operation of the child day-care center. For purposes of this condition, "commercial food preparation or laundry services" shall be defined as meaning any food preparation or laundry services provided at the center that are not directly related to, and intended to serve the needs of, the children being cared for and/or the day-care center staff.
9. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentences, or paragraph shall invalidate the reminder.

**J. BOARD CONSIDERATION - None**

**K. PUBLIC COMMENTS**

1. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board in regard to the Wild Lands Project and the loss of property rights for citizens.
2. Ms. Carol Anderson, addressed the Board in regard to reviving the local public address cable channel with programming designed by and for the people.
3. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board continuing her previous comments about conservation easements encroaching on the property rights and civil rights of property owners.
4. Mr. Ed Oyer, 139 Indian Circle, addressed the Board in regard to storm debris that has not been picked up on the shoulders on Route 60 that VDOT has not cleaned up.
5. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in regard to the conservation easements and purchase of development rights acquisitions that have occurred lately and the effect on property taxes.

**L. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Middaugh stated that there is an ongoing discussion in regard to Rural Lands in the County. He stated that the next two sessions will be Wednesday, July 17 at Norge Elementary beginning at 6 p.m. and Thursday, July 18 at the James City County Recreation Center beginning at 7:30 a.m. He stated that there will be a questionnaire available prior to the next sessions and citizens are encouraged to fill it out and submit it online or bring it to the sessions.

**M. BOARD REQUESTS AND DIRECTIVES**

Mr. Kennedy asked for an update on the property commonly known as The Castle. He stated that there is still storm debris that has not been cleaned up. He stated that he is still interested in information about blighted properties and he would appreciate an update on that from staff as well.

Mr. McGlennon recommended that the Board take a break prior to going into Closed Session.

At 9:45 p.m., Mr. McGlennon recessed the Board for a break.

At 9:50 p.m., Mr. McGlennon reconvened the Board.

**N. CLOSED SESSION**

Mr. Kennedy made a motion to go into Closed Session.

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

1. Consideration of a Personnel Matter, the Appointment of Individuals to County Boards and/or Commissions Pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.
  - a) Clean County Commission Committee
  - b) Stormwater Program Advisory Committee
  - c) Colonial Behavioral Health
2. Consideration of acquisition/disposition of a parcel/parcels of property for public use, pursuant to Section 2.2-3711 (A)(3) of the Code of Virginia.

At 10:23 p.m., Mr. Icenhour made a motion to certify the Closed Session.

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

**RESOLUTION**

**CERTIFICATION OF CLOSED MEETING**

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) consideration of acquisition/disposition of a parcel/parcels of property for public use, pursuant to Section 2.2-3711(A)(3) of the Code of Virginia; and ii) consideration of a personnel matter(s), the

appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.

- a) Clean County Commission Committee
- b) Stormwater Program Advisory Committee
- c) Colonial Behavioral Health

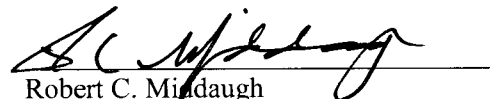
Mr. Icenhour made a motion to reappoint Ms. Peggy Boarman, Mr. Will Barnes, and Mr. Charles Loundermont to the Clean County Commission; to reappoint Mr. Malcolm Martin, Mr. Robert Winters, Mr. Phillip Doggett, and Mr. Nitant Desai and to appoint Mr. Randolph Taylor to the Stormwater Program Advisory Committee; and to reappoint Mr. John Kuplinski, and appoint Ms. June Hagee to the Colonial Behavioral Health Board.

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

**O. ADJOURNMENT** – 4 p.m. on July 23, 2013, for the Work Session.

Mr. Icenhour made a motion to adjourn.

At 10:25 p.m., Mr. McGlennon adjourned the Board.

  
Robert C. Mindaugh  
Clerk to the Board