

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF AUGUST 2013, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**ADOPTED**

SEP 10 2013

Board of Supervisors  
James City County, VA

**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** – Ross Wunibald, member of Scout Troop No. 103, led the Board and citizens in the Pledge of Allegiance.

**E. PRESENTATIONS**

1. Federal Emergency Management Agency (FEMA) Presentation

Ms. Mary Radford, Region III Mitigation Planner and CRS Coordinator, stated that localities participating in the National Flood Insurance Program (NFIP) must meet minimum requirements to maintain their rating. She stated that localities that go above and beyond the minimum requirements are eligible to join the Community Rating System (CRS). She stated that the CRS is comprised of 10 different class rating levels based on the number and types of activities that are voluntarily initiated by the locality. She stated that the ascending ratings are applied to premium discounts for flood insurance premiums written in the locality. James City County is being recognized for achieving a Class 7 Rating, up from a Class 8. She stated that each NFIP policy holder is saving approximately \$67 per policy. She stated that overall, the CRS accomplishment results in a combined annual savings throughout the County of \$67,572.

Mr. Middaugh stated that he would like to recognize the staff team members that have worked to accomplish this rating: from Development Management, Bill Cain, Tom Coghill, and Christy Parrish; from Emergency Services, Kate Hale; from Housing and Community Development, Keith Denny; and the lead on the Project, Darryl Cook.

2. Virginia Department of Transportation (VDOT) Quarterly Report

Mr. Rossie Carroll, Administrator of the Williamsburg Residency of VDOT, addressed the Board stating that signal synchronization is still ongoing on Route 60, Route 199, and Monticello Avenue. He stated that some adjustments have been made. He stated that the study for permissible left turns on Monticello Avenue has been completed. He stated that there are certain intersections along that corridor that qualify for permissible left turns. He stated that there were 503 maintenance work orders this quarter, and 313 have been completed. Out of the 190 outstanding, 130 of those work orders are for drainage issues. He stated that drainage issues have been the big concern during this quarter, especially given the excessive amount of rain received. He stated that the completed projects this quarter included: County-wide sidewalk repair and surface treatment. He stated that the current projects include: Rt. 1617 Stonehouse slope failure work will begin September 10<sup>th</sup>, Rt. 612 Longhill Road signal upgrade at Olde Towne Road, and Rt. 60 at Airport Road signal upgrade. He stated that some of the ongoing projects include: 3<sup>rd</sup> mowing cycle, Rt. 60 washout just past Barnes Road; turn delineation marking project on Rt. 60 at Rt. 30, Andersons Corner, and crossover delineation marking project on Rt. 60 at Colonial Heritage. He stated that a stand-alone secondary plant mix schedule was advertised in July and includes: Rt. 5000, Rt. 321, Rt. 615, and Rt. 755. The Monticello Avenue and Rt. 321 project is upcoming which will add a second turn lane. He stated that additional maintenance accomplishments this quarter included: crack sealing on the Capital Bike Trail, installed culvert for pedestrian crossing on Rt. 60, swept primary routes and curb and cutters, ditching in First Colony, Strawberry Plains, Grove, and Neck-O-Land, Rt. 60 regrade of ditches and installed pipe near Captain George's Restaurant, regarded approximately 3 miles of Ware Creek Road, excavated and sealed approximately 35 feet of culvert in Wellington, and repaired sinking pavements in Albert's Terrace. He stated that pending maintenance projects include: continually working on the Capital Trail, Rt. 617 cleaning debris and trim vegetation, Rt. 60 and 614 grade ditches at intersection, and Rt. 60 at Croaker Road intersection regrade ditches. He stated that currently there is a push to get vegetation removed that is blocking many of the signs throughout the County.

Mr. Icenhour stated that there is still an outstanding drainage issue on Carriage Road, but thanked Mr. Carroll for their efforts in attending the drainage issues in other neighborhoods.

Mr. McGlennon stated that he had asked that the drainage issues on Lake Powell Road be reviewed.

Mr. Carroll stated that some debris removal has been done, but the drainage work is scheduled to be completed in the next 2-3 weeks.

Mr. McGlennon asked if there was anything else that can be done about the curve farther down Lake Powell Road that recently had a bad accident.

Mr. Carroll stated that there are four delineations there, and the posted speed limit is 35 mph. He stated that he would look into it.

Mr. McGlennon stated that during the accident, the road was blocked for approximately 30 minutes. He stated that he hears from citizens during these times concerning the lack of outlet in the opposite direction.

Mr. Carroll stated that VDOT works with the local and state police to quickly clear accidents and get roads back open. He stated that that is a no outlet road, but in the case of a wash-out, there are things that VDOT can do, like temporary bridges, to prevent residents from being stuck and allow access.

Mr. McGlennon requested that Mr. Carroll send him, via email, a more detailed list of what has been done on Rt. 60 East in the Grove area.

Mr. Bradshaw stated that he appreciated the response given to his inquiry about the speed limit on Croaker Road from the interstate toward Rt. 60. He stated that the speed was posted along that road at 55 mph, which surprised some residents. He stated that in the response from Mr. Carroll, he was informed that the speed was determined based on speed-studies. Mr. Bradshaw asked what factors might prompt VDOT to then change that speed limit.

Mr. Carroll stated that geometrics, roadway system design, a speed study, 3 years' worth of crash data, and then compare that to district and state averages. He stated that pedestrian use is also looked at. He stated that once a speed study has been done, VDOT typically does not go back and reevaluate in less than 3 years, unless there is something that VDOT overlooked.

Mr. Bradshaw asked Mr. Carroll to review the speed study to ensure the factors he mentioned were taken into consideration.

Mr. McGlennon recessed the Board of Supervisors Meeting at 7:24 p.m. in order to conduct the James City Service Authority (JCSA) Board of Directors Meeting.

Mr. McGlennon reconvened the Board of Supervisors Meeting at 7:25 p.m.

#### **F. PUBLIC COMMENTS**

1. Mr. Bill Unaitis, 221 Charleston Place, President of the Community Services Coalition, addressed the Board in regard to the one-stop service concept of the Community Services Coalition and requested the assistance of the Board to continue this concept without the assistance of the United Way.
2. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board in regard to the Closed Session discussion held during the Work Session on July 23.
3. Mr. Randy O'Neill, 109 Sheffield Road, addressed the Board in regard to children's health and wellness in the County.
4. Ms. Betty Walker, 101 Locust Place, addressed the Board in regard to regionalism and the stripping of private property rights.
5. Mr. Nathan Walker, 101 Locust Place, addressed the Board in regard to the conduct of certain Board members at the recent Rural Lands public meetings.
6. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in regard to the Closed Session discussion held during the Work Session on July 23.
7. Mr. Christopher Schmedtje, 110 Ware Road, addressed the Board offering a prayer for the meeting.
8. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board in regard to the Closed Session discussion held during the Work Session on July 23.
9. Ms. Rosanne Reddin, 2812 King Rook Court, addressed the Board in regard to private property rights and economic freedom.

10. Ms. Dorothea Neiman, 105 Broomfield, addressed the Board in regard to the lack of common courtesy shown during citizen comments at the previous Board meetings.

11. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board in regard to the Closed Session discussion held during the Work Session on July 23.

12. Ms. Trisha Stall, a Matthews County resident, addressed the Board in regard to the loss of individual property rights and the effect of sustainable development policies.

13. Mr. Ed Oyer, 139 Indian Circle, addressed the Board in regard to trash and vegetative debris along Route 60 and storm debris pick up offered to other citizens residing in other localities.

14. Ms. Janet Casaney, Toano, addressed the Board in regard to the contract amendments for Mr. Middaugh and Mr. Rogers.

15. Mr. Jay Everson, 103 Branscome Boulevard, addressed the Board in regard to adding an increase to the Virginia Retirement System (VRS) contribution by the employee, to the Legislative Agenda for the coming year.

16. Mr. Randy Basley, addressed the Board thanking them for supporting the fight with Virginia Dominion Power.

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

Mr. Kennedy stated that he has had several citizens contact him regarding bulk trash pick-up. He requested that the information be put on the County's website for citizens.

Mr. Icenhour stated that he would like to raise the issue of the Community of Faith Mission and their email that was received by the Board. He stated that the issue of the fees for the building inspections imposed by the County is an issue for the organization. He stated that he would like to see the Board support this organization and its work housing the homeless during the winter months.

Mr. Middaugh stated that he has been in contact with the Community of Faith Mission and the issue they are facing is that the County requires a building and fire inspection due to the churches offering an overnight stay to the homeless. He stated that he is not comfortable with waiving the fees for the inspections, because that would set precedence. However, the organization is providing a service to the citizens and the Board in the past has typically bought those services from the organizations. He suggested that the Board authorize him to purchase the service for the cost of the inspection fees, which amounts to \$800. He stated in this way the Board is remaining consistent with previous similar actions.

Mr. Icenhour asked if a motion is necessary or if such an action would need to be prepared and brought back at a later meeting.

Mr. Middaugh stated that if it is the wish of the Board, then a motion would be sufficient.

Mr. Icenhour made the motion to appropriate \$800 for the Community of Faith Mission.

Mr. McGlennon asked if there was any discussion necessary.

Ms. Jones stated that she fully supports streamlining the process for the area churches to assist the

homeless.

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

Ms. Jones stated that she would like to thank Mr. Kennedy for raising his concerns about the Closed Session discussion after the fact. She stated that she too, in hindsight, realized that she should not have voted to certify the Closed Session. She stated that she was wrong and asked for the forgiveness of the citizens.

Mr. McGlennon stated that he would like to direct staff to look in adjusting the weekend hours of the Recreation Center, due to citizen requests that the Center be open earlier on the weekends. He stated that he has been notified that Mr. John Carnifax, Director of Parks and Recreation, has already begun evaluating adjusting the hours.

Mr. Middaugh stated that staff is going to implement the adjustment of the hours and believes that it can be done within the budget. However, if funds run short, then staff will come before the Board for a budget amendment.

Mr. McGlennon stated that he has received concern from several of the Master Gardeners that with the loss of two of the County's Extension Agents, Ms. Doris Heath and Mr. Jeremy Johnson, a new full-time extension agent be hired that has both agricultural and horticulture experience. He asked that their concern be passed along to the staff at the Extension Office as they begin the hiring process for replacements.

Mr. McGlennon stated that he was surprised to see the change of heart by two of the Board members in regard to the Closed Session in the newspaper. He stated that the discussion of ordinance amendments in regard to backyard chickens was raised by Mr. Kennedy. He stated that the motion to certify the Closed Session was made by Mr. Kennedy and supported by Ms. Jones and the rest of the Board members. He stated that he is confident that the Board acted within the law. He stated that policies were discussed within Mr. Middaugh's evaluation but no policy was voted on within the Closed Session. He stated that one Board member asked that the Board voice its opinions on the backyard chicken keeping issue in Open Session, which the Board did do.

Ms. Jones stated that she does not believe that Mr. Kennedy should be criticized for reflecting on a decision that he made and then voicing his concerns. She stated that the question raised by Mr. Kennedy about the chicken keepers was directly aimed at the County Administrator and how he had handled the issue and the backyard chicken keepers. She stated that what was discussed later was how the Board wanted to handle a backyard chicken keeping ordinance, which was an inappropriate discussion. She stated that the Board discussing a policy is completely different than discussion of the County Administrators actions in handling this issue when it arose.

Mr. McGlennon stated that if Board members have concerns over what has been discussed then the appropriate time to raise those concerns is at the certification, not after the certification has been adopted. He stated the he believes that they disagree on the content of those discussions.

Mr. Kennedy stated that during the County Administrator's review, he gave constructive criticism on how the backyard chicken keeping issue was handled by the County Administrator. He stated that his criticism was that it took a year to be brought up and that there was some negligence at the staff level, all of whom report to the County Administrator. Mr. Kennedy stated that it was said by Mr. McGlennon while on the subject of what the Board would like to do about this. He stated that he engaged in that discussion and it was his reflection later that he should not have.

Mr. McGlennon stated that his words were that while discussing this issue, how are we going to handle this issue as far as a process; not, what are we going to do about this issue itself.

Mr. Kennedy stated that is splitting hairs.

Mr. McGlennon stated that this whole issue is about splitting hairs.

Mr. Kennedy stated that he can appreciate that there might be differences in opinion in the way in which things were interpreted. He stated that he is not going to be criticized for bringing up this issue in the context of a policy when he did not. He stated that he brought it up in the context of reviewing the actions of the County Administrator.

Ms. Jones stated that it was also mentioned in the article in the newspaper, how to handle the public comment, the citizens coming to the public comment, and the limitations on public comment. She stated that is a discussion that should be held in front of the citizens and is not appropriate for Closed Session.

Mr. McGlennon stated that it is a discussion that has been had in Closed Session before.

Mr. Kennedy stated that he did not cite anyone in particular, only that he thought that the Board did not act appropriately. He stated that he apologizes if it has ruffled any feathers and he has apologized to the citizens.

Mr. Icenhour stated that the biggest failing is on the Board. He stated that we, as the Board, do not know how to conduct an evaluation. He stated that the Board should be been talking about the County Administrator's performance and critiquing any failures.

Ms. Jones stated that is what the Board was doing until the discussion veered off course and into policy discussions.

Mr. Icenhour stated that when evaluating the things that the County Administrator did not do well, it requires discussing the steps that the Board expects him to take on dealing with those issues. He stated it is all about policy, but it is all about his job and how he performs it. He stated that the Board needs to have a better analysis of how it wants to conduct these evaluations in the future.

Mr. Kennedy stated that he has requested, in the past, a written review done by each Supervisor and they be combined into a review discussion. He stated that he would support a structure and believes that each of the Supervisors should come to the review with something in writing that is then shared with the rest of the Board.

Mr. Middaugh requested to share with the Board the debris assessment that was done and then receive any direction from the Board. He stated that the assessment that was sent to the Board was both of structures, which there were 12-14 buildings with some form of damage, two of which were severe, and of tree debris. He stated that staff's opinion is that this storm is similar to the previous storm and that the damage is not widespread enough to warrant a debris pick-up. He stated that staff will be happy to work out the particulars of allowing citizens to share a bulk pick-up load as was discussed previously.

Mr. Kennedy stated that he is supportive of that and the other Board members nodded in agreement.

## H. CONSENT CALENDAR

Mr. Middaugh stated that he would like to recognize the staff members that worked on the Mitigation Bank Item: Mr. Mike Woolson, Ms. Fran Geissler, Ms. Lola Perkins, Ms. Sue Mellen, Ms. Ann Davis, and Mr. John Horne. He stated that the Mitigation Bank is the first to be created in the State. He stated that the Mitigation Bank is credits that can be used to offset costs that could be incurred by the County down the line.

Mr. Kennedy stated that he would like to pull Item No. 3 for discussion and that he has a question about Item No. 8.

In regard to Item No. 8, Mr. Kennedy asked Mr. Middaugh if there is a Resource Officer in all of the middle schools now, or if the City of Williamsburg schools are still without Resource Officers.

Mr. Middaugh stated that all of the County schools have Resource Officers, but the City does not provide them to all of the City schools. He asked Police Major Brad Rinehimer to clarify.

Major Rinehimer stated that the City is providing a Resource Officer on a limited basis and believes it is two days a week.

Mr. Kennedy stated that is still an issue and one that he would like addressed.

Mr. Kennedy made a motion to approve all items on the Consent Calendar except Item No. 3.

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. July 23, 2013, Work Session
  - b. July 23, 2013, Regular Meeting
2. Dedication of Streets within the Williamsburg West Subdivision

## RESOLUTION

### DEDICATION OF STREETS WITHIN THE WILLIAMSBURG WEST SUBDIVISION

WHEREAS, the streets described below currently serve at least three families and were established prior to July 1, 1992, at which time they were used by motor vehicles as a public access; and

WHEREAS, the County has determined its subdivision ordinance satisfies subsection B of § 33.1-72.1, Code of Virginia, and is therefore eligible to make qualifying additions to the secondary system of State highways maintained by the Virginia Department of Transportation (the "Department") and fund necessary improvements as setout therein, except as otherwise prohibited by subsection B of § 33.1-72.2, Code of Virginia; and

WHEREAS, after examining the ownership of all property abutting these streets, including the deeds and related plats, this Board finds no restriction on the use of public funds for improvement of the roads; and

WHEREAS, after examining the ownership of all property abutting these streets, this Board finds that

speculative interest does not exist; and

WHEREAS, this Board has identified immediately available funding to make improvements required to qualify the streets for addition to the aforesaid secondary system of State highways, based on the Department's cost estimate of \$400,000.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the following streets be added to the secondary system of State highways maintained by the Department and hereby guarantees the right-of-way of the street to be clear, unencumbered, and unrestricted, which right-of-way guarantee shall be including any necessary easements required for cuts, fills, and drainage pursuant to § 33.1-72.1, Code of Virginia:

Name of Subdivision:

Williamsburg West

Name and Description of Streets:

- Lexington Drive from the intersection of Country Club Drive and Lexington Drive to the proposed T turnaround for a distance of .21 miles with a 50-foot right-of-way.
- Country Club Court from the intersection of Country Club Drive to the cul-de-sac for a distance of .02 miles with a 55-foot right-of-way.
- A portion of Country Club Drive from the intersection of Country Club Drive and Country Club Court for a distance of .09 miles with a 80-foot right-of-way.

Right-of-Way Instrument Reference:

Plat Book: 26 Page: 3 and Date Recorded: June 28<sup>th</sup> 1968

BE IT FURTHER RESOLVED, this Board requests the Department to improve said streets to the prescribed minimum standards, funding said improvements with \$200,000 of County allocated funds.

BE IT FURTHER RESOLVED, this Board agrees to reimburse, within 45 days of receiving an invoice, all costs that the Department incurs to relocate existing utilities within the right-of-way that are discovered during the course of and in conflict with the construction, drawing such funds from resources other than those administered by the Department.

BE IT FURTHER RESOLVED, this Board agrees to reimburse, within 45 days of receiving an invoice, all costs that the Department incurs in the construction of necessary improvements to the road that are over and above the estimated cost of improvements or to otherwise identify an eligible source of funds administered by the Department to cover such costs.

BE IT FINALLY RESOLVED, that a certified copy of this resolution and a County check in the amount of \$ 200,000 be forwarded to the Residency Administrator of the Department.

4. Contract Award – Video Equipment Purchase – \$134,376.77

**RESOLUTION**

CONTRACT AWARD – VIDEO EQUIPMENT PURCHASE – \$134,376.77

WHEREAS, funds are available in the James City County Capital Improvements Plan (CIP) Fund as approved by the Board of Supervisors for FY 2014; and



WHEREAS, two Virginia Information Technologies Agency (VITA) contractors were considered for award and Digital Video Group (DVG), Inc. was the lowest responsive and responsible bidder.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract in the amount of \$134,376.77 for the replacement of Board Room video cameras, projector, and location equipment to DVG, Inc.

5. Grant Award – Victim’s Witness Program – \$118,087

**RESOLUTION**

**GRANT AWARD – VICTIM’S WITNESS PROGRAM – \$118,087**

WHEREAS, the Commonwealth Attorney for the City of Williamsburg and James City County has been awarded a \$118,087 Federal grant from the Victim’s Witness Grant Fund (Federal share \$51,498; State share \$51,498; County match \$15,091) through the State Department of Criminal Justice Services; and

WHEREAS, this grant would fund the personnel costs of two positions to provide comprehensive information and direct services to crime victims and witnesses beginning July 1, 2013 through June 30, 2014; and

WHEREAS, the grant requires a local match of \$15,091, which is available in the Commonwealth Attorney’s General Fund account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the additional appropriation to the Special Projects/Grants Fund for FY 14 purposes described above:

Revenues:

Victim’s Witness Department of Criminal Justice Services (DCJS) Federal Revenue	\$ 51,498
Victim’s Witness Department of Criminal Justice Services (DCJS) State Revenue	51,498
James City County Matching Funds	<u>15,091</u>
Total	<u>\$118,087</u>

Expenditure:

Victim’s Witness Personnel	<u>\$118,087</u>
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6. Grant Award – Acceptance and Appropriation of Virginia Housing Development Authority FY’13 HUD Housing Counseling Grant Funds - \$20,506

**RESOLUTION**

**GRANT AWARD - ACCEPTANCE AND APPROPRIATION OF VIRGINIA HOUSING  
DEVELOPMENT AUTHORITY FY’13 HUD HOUSING COUNSELING  
GRANT FUNDS - \$20,506**

WHEREAS, financial assistance is available to units of local government through the Commonwealth of Virginia Housing Authority (VHDA) FY’13 HUD Housing Counseling Grant; and

WHEREAS, James City County wishes to provide VHDA homeownership education classes and housing counseling services for its residents; and

WHEREAS, \$20,506 in funds are allocated to the program, and will be expended as part of this effort; and

WHEREAS, the program is anticipated to benefit 137 persons, of which 22 will be low- and moderate-income renters, and 25 will receive pre-purchase counseling, and seven will receive mortgage default counseling, and six Homebuyer Education Classes will be held.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to accept the Virginia Housing Development Authority FY’13 HUD Housing Counseling Grant; and

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the Budget, as adopted for the fiscal year ending June 30, 2014, as follows:

Revenues:

VHDA FY 13 HUD Housing Counseling Grant	<u>\$20,506</u>
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Expenditure:

Housing Counseling	<u>\$20,506</u>
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7. Grant Award - Virginia Housing Development Authority REACH Housing Counseling and Education Grant Acceptance and Appropriation - \$18,750

**RESOLUTION**

**GRANT AWARD - VIRGINIA HOUSING DEVELOPMENT AUTHORITY REACH HOUSING  
COUNSELING AND EDUCATION GRANT ACCEPTANCE AND APPROPRIATION - \$18,750**

WHEREAS, the James City County Office of Housing and Community Development currently offers

housing counseling services, including individual pre-purchase counseling, group homebuyer education seminars, and delinquent rental and mortgage assistance through the Homeless Prevention Program and a Homebuyer Club to HUD Family Self-Sufficiency participants; and

WHEREAS, the Virginia Housing Development Authority (VHDA) has made funding available to support homebuyer education and housing counseling through a VHDA REACH Housing Counseling Grant; and

WHEREAS, VHDA has awarded OHCD \$18,750 to provide these services to residents of James City County; and

WHEREAS, no local funds are required to match the grant funding.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts and appropriates the VHDA Reach Housing Counseling and Education Grant in the amount of \$18,750.

Revenues:

VHDA REACH Housing Counseling and Education Grant \$18,750

Expenditure:

REACH Housing Counseling \$18,750

- 8. James City County and Williamsburg-James City County Schools Memorandum of Understanding (MOU) for the School Resource Officer Program

**RESOLUTION**

**JAMES CITY COUNTY AND WILLIAMSBURG-JAMES CITY COUNTY SCHOOLS**

**MEMORANDUM OF UNDERSTANDING (MOU) FOR THE**

**SCHOOL RESOURCE OFFICER PROGRAM**

WHEREAS, the Board of Supervisors of James City County has previously approved a School Resource Officer (SRO) Program partnership between James City County and the Williamsburg-James City County (WJCC) Public Schools; and

WHEREAS, the most recent agreement between James City County and the Williamsburg-James City County Public Schools governing the operation of the SRO Program was signed on June 30, 2001; and

WHEREAS, the proposed new agreement contains necessary updates including new schools that have been added in James City County, but no substantive material changes from the previous Memorandum of Understanding (MOU); and

WHEREAS, the agreement provides that the Chief of Police of James City County has the discretion to manage the Program based on manpower needs of the Police Department.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to enter into a new MOU on its behalf, with the Williamsburg-James City County Public Schools for the purpose of continuance of the SRO Program.

9. James City County Single-User Stream Mitigation Bank

**RESOLUTION**

**JAMES CITY COUNTY SINGLE-USER STREAM MITIGATION BANK**

WHEREAS, James City County restored 2,440 linear feet of aquatic resources in an unnamed stream in the Powhatan Creek Watershed; and

WHEREAS, the stream restoration project removed a fish barrier, repaired 10-foot-deep active erosion area, restored an unstable, actively eroding stream channel to a stable condition, reconnected the stream to its flood plain, and found and preserved one of the largest Virginia Least Trillium colonies in Virginia; and

WHEREAS, the stream restoration project created a self-sustaining natural aquatic system suitable for use as a stream mitigation bank; and

WHEREAS, a 33.00-acre natural open space easement has been established for the stream restoration to protect in perpetuity; and

WHEREAS, a Mitigation Banking Instrument (MBI) was developed, describing the guidelines and responsibilities for the establishment, use, operation, and maintenance of the mitigation bank; and

WHEREAS, the MBI establishes 4,173 available stream credits and states that the credits are for the exclusive use of James City County for mitigation of stream impacts; and

WHEREAS, the US Army Corps of Engineers and the Virginia Department of Environmental Quality have approved the MBI.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that James City County endorses the establishment of a single-user stream mitigation bank and secures the 4,173 stream credits for the County's future use and growth.

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the County Administrator to sign the MBI, James City County Single-User Mitigation Bank.

3. Building F, HVAC Repair

Mr. Kennedy stated that it is concerning that the County is having HVAC issues in a building that will be only 10 years old in December. He asked if the County's specifications for air conditioning are too low. He asked if the County is looking for low bids and then paying double for it later. He stated that he understands that the County has to take the lowest bid, but the County does build for specification and are the specifications

being evaluated.

Mr. John Horne, Director of General Services, stated yes.

Mr. Kennedy stated that he would like to see, as the Board evaluates these projects, that sufficient emphasis is put on these mechanical systems to prevent the tax payers from paying for the systems twice.

Mr. Kennedy made a motion to approve Item No. 3.

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

## **RESOLUTION**

### **CONTRACT AWARD – BUILDING F HVAC UPGRADE – \$345,523**

WHEREAS, the James City County Department of General Services is standardizing HVAC building controls and equipment in County facilities to promote operational efficiency and safety; and

WHEREAS, the Building F HVAC controls and equipment is within the Building F project budget; and

WHEREAS, it has been determined by General Services, in consultation with the Purchasing Office, that Damuth Trane is the only source practicably available to engineer and install the HVAC controls and equipment required; and

WHEREAS, Damuth Trane submitted a proposal to perform the required services, the proposed rates have been determined to be reasonable and adequate funds are available in the Capital Improvement budget.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the contract award in the amount of \$345,523 to Damuth Trane for the Building F HVAC controls and equipment.

### **I. PUBLIC HEARINGS**

#### **1. Disposition of Property in the Forest Heights Neighborhood Improvement Project Area**

Mr. Vaughn Poller, Director of Housing and Community Development, addressed the Board giving a summary of the memorandum included in the Agenda Packet.

Ms. Jones stated that she would prefer the exchange of property in the Neighbors Drive area come back before the Board at a later date when more details are available to clarify the need to exchange the properties.

Mr. Icenhour stated that the smaller lot is the entryway to the two flag lots which is needed for the development of the flag lots.

Mr. Poller stated that is correct.

Mr. Icenhour stated that the resolution gives staff the ability to adjust property lines adjacent to the BMP pond without coming back to the Board.

Mr. Poller stated that is correct.

Ms. Jones stated she is more comfortable with the disposition now that it has been clarified.

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. Bradshaw stated that he wanted to disclose that he is a member of the advisory board for the local Salvation Army Corps. He stated that he has no financial interest in the exchange of the property and believes that he can fairly and impartially discharge the matter.

Mr. Bradshaw made a motion to approve the amended the version of the resolution placed on the dais this evening.

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

## **RESOLUTION**

### **DISPOSITION OF PROPERTY IN THE FOREST HEIGHTS**

#### **NEIGHBORHOOD IMPROVEMENT PROJECT AREA**

WHEREAS, on December 14, 2010, the Board of Supervisors of James City County, Virginia, authorized the acquisition of real property necessary to complete the Forest Heights Road and Neighbors Drive Concept Plan; and

WHEREAS, by Deed from the Salvation Army and by recordation of the subdivision plat the County will acquire that certain property shown and designated as "AREA TO BE CONVEYED TO JAMES CITY COUNTY FROM SALVATION ARMY, 36,608 S.F., 0.840 AC" on Sheet 8 of that certain plat known as "PLAT OF BOUNDARY LINE EXTINGUISHMENT AND SUBDIVISION OF LOTS 3 THRU 33 AND 35 THRU 39 AND RIGHT-OF-WAY DEDICATION, FOREST HEIGHTS NEIGHBORHOOD, PREPARED FOR: JAMES CITY COUNTY HOUSING & COMMUNITY DEVELOPMENT, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA;" ("the "Salvation Army Property"); and

WHEREAS, the County has entered into agreements to convey and exchange portions of the Salvation Army Property with the owners of properties adjacent to Forest Heights Road; and

WHEREAS, the Board of Supervisors held a public hearing on August 13, 2013, to receive public comment on the disposition of all or portions of the Salvation Army Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to sign on behalf of the County, any deed, plat and all other documents necessary to convey, in whole or in part, ownership of the Salvation Army Property in the Forest Heights Neighborhood Improvement Project Area.

2. Case No. SUP-0008-2013. Flea Market, 9299 Richmond Road

Mr. Christopher Johnson, Principal Planner, addressed the Board giving a summary of the staff report included in the Agenda Packet.

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

1. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in support of the SUP application.

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

Mr. Bradshaw stated that he wanted to disclose that the applicant, Mr. John Filichko, has been a long-time client of his; however, the applicant has not consulted him in regard to this matter and he has no financial interest in the matter. He stated that he believes he can fairly and faithfully discharge the matter.

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).

**RESOLUTION**

CASE NO. SUP-0008-2013. FLEA MARKET, 9299 RICHMOND ROAD

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

WHEREAS, Mr. John Filichko has requested an SUP to allow for a seasonal flea market in the A-1, General Agricultural, District, located at 9299 Richmond Road, further identified as James City County Real Estate Tax Map Parcel No. 1010100004; and

WHEREAS, the proposed development is shown on a plan titled "Special Use Permit Exhibit for Flea Market, 9299 Richmond Road" dated June 17, 2013; and

WHEREAS, the Planning Commission, following its public hearing on July 3, 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-0008-2013 as described herein with the following conditions:

1. Master Plan: This SUP shall be valid for a seasonal flea market and accessory uses thereto (the "flea market") for operation from May 1 through October 31 and December 15 through December 24 on approximately 0.2 acre (the "Property") in the area shown as "Area for Flea Market Operation" on the master plan titled "Special Use Permit Exhibit for Flea Market, 9299 Richmond Road" dated June 17, 2013 (the "Master Plan").

Development of the Property shall be generally in accordance with the Master Plan with such minor changes as the Planning Director determines does not change the basic concept or character of the development.

2. Hours of Operation: The flea market hours of operation shall be limited to 8 a.m. to 5 p.m. Friday through Sunday.
3. Parking: Parking shall only be permitted in the area designated as "Parking Lot" on the Master Plan. Such parking areas shall be graveled or paved. All non-paved areas shall be flagged and shall be labeled with "No Parking" signs.
4. Location of Merchandise: Merchandise to be sold at the flea market may be sold only in the areas designated as "Building for Flea Market Operations" and "Outdoor Display Area" on the Master Plan.
5. Signage: All signs and sign locations shall be reviewed and approved by the Planning Director or his designee prior to final approval of any sign permit.
6. Certificate of Occupancy: A Certificate of Occupancy (CO) will be required prior to operating the flea market. A permanent CO shall be obtained within one year of approval of this SUP, or the permit shall become void.
7. Septic/Sewer Systems: A valid operation permit from the Health Department shall be maintained in order to operate the flea market. The owner shall provide verification of a valid permit on an annual basis by the end of January.
8. Term of Validity: This SUP shall be valid for a period of 48 months from the date of approval by the Board of Supervisors.
9. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

At 8:45 p.m., Mr. McGlennon recessed the Board for a brief break.

At 8:52 p.m., Mr. McGlennon reconvened the Board.

3. Case No. ZO-0005-2013, Zoning Ordinance Amendments, Corrections and Case No. SO-0001-2013, Subdivision Ordinance Amendments, Corrections

Mr. Christopher Johnson, Principal Planner, addressed the Board giving a summary of the staff report included in the Agenda Packet.

Mr. Russell Seymour, Director of Economic Development, addressed the Board providing additional specific information about the M-2, General Industrial District; as well as the Economic Development Authority's (EDA) meeting on August 8, 2013, where the EDA unanimously voted to support staff's recommendation to remove places of public assembly from the M-2 District.

Mr. Icenhour asked Mr. Seymour about the Enterprise Zone, stating that the Enterprise Zone actually encompasses multiple zoning districts. He questioned if the use of the property inside the Enterprise Zone must meet the specific requirements in order to qualify for assistance under the Enterprise Zone, regardless of the zoning.

Mr. Seymour stated that is correct, most of which have to do with capital improvement or capital investment thresholds.

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

1. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board in opposition to the lack of



transparency on the part of the County in not disclosing the mistake that was made with the M-2 ordinance revisions done previously.

2. Mr. Tim Trant, 4801 Courthouse Street, an attorney with Kaufman and Canoles representing The Peninsula Pentecostals, addressed the Board stating that his client is the contract purchaser of the property shown on the map projected up on the screen, more commonly known as the Kirby Tracts. He stated that the property is approximately 40 acres, consisting of three parcels and is across Pocahontas Trail from the Greenmount Industrial Park. He stated that his client was able to get the property under contract at the end of March, just prior to their meeting with staff on April 2 to discuss the acquisition of the property and his client's plans for the property. He stated that the principal use of the property was to be for development of a church and daycare facilities. He stated that they provided staff with a loose concept plan for the remaining residual acreage. He stated that this loose concept plan was provided to address the Comprehensive Plan designation. He stated that the property is zoned M-2, but it is designated as Mixed Use on the Comprehensive Plan. He stated that they were informed by staff that the principal use outlined was permitted by-right in the M-2 zone. He stated that he asked staff if commercial Special Use Permit (SUP) requirements would come in to play and was told that the plan would be evaluated and staff would get back in touch. He stated that staff contacted him on April 29 to say that a rezoning of the property was a "non-starter," staff did not see a tax-exempt use as the proper use of that property and wanted to see it preserved for M-2 heavy industrial use, notwithstanding that that is inconsistent with Comprehensive Plan Map designation of Mixed Use. However, staff stated that a more constrained use and development of just a church and daycare is permitted by-right.

Mr. McGlennon interjected stating that the five minute time limit for speakers during a Public Hearing had expired. He asked if Mr. Trant was representing the group as a whole.

Mr. Trant stated that yes he represents The Peninsula Pentecostals and would respectfully request to be treated as the applicant in this case.

Mr. McGlennon stated that there is no applicant in this case because it is a zoning ordinance amendment. He stated that Mr. Trant can represent the group and receive 15 minutes, but that would mean that the members would not speak. He stated that he has received several speaker cards from church members wishing to speak.

Mr. Trant respectfully asked that their voices be heard as well.

Mr. McGlennon stated that Mr. Trant would need to conclude his comments.

Mr. Trant requested to be granted a few more minutes to give important context to the decision.

Mr. McGlennon stated that he understands, but that this case not about a single application. He stated that if Mr. Trant is speaking as the representative of the group, then he is the representative of the group.

Mr. Trant asked if he speaks as the representative, then the Board will not allow any of the church members to speak.

Mr. Kennedy asked for a point of order. He stated that he recalls in the past that a representative of a group has spoken and then other members of the group have been allowed to speak as well.

Mr. McGlennon asked if Mr. Kennedy could provide an example.

Mr. Kennedy stated that Mr. Halderman has spoken several times on behalf of the James City County Citizens Coalition (J4C) and then other members of the J4Cs have spoken as well.

Mr. McGlennon stated not for the 15 minutes granted to a group representative.

Mr. Kennedy stated yes, Mr. Halderman has and so have others. He stated that there has always been a loose definition of a group and clarity has been requested before, but the Board has not followed through on it. He stated that for clarity's sake it has been done in the past.

Ms. Jones requested a point of order as well. She stated that while the case tonight is about a zoning ordinance change, there is a conceptual plan that has been filed with the County that will be directly impacted by the decision made tonight.

Mr. McGlennon stated that his question is about the allocation of time allowed during the public hearing. He asked that Mr. Trant try to condense his comments, since the Board members have received and read the materials sent to them by Mr. Trant and therefore move along to the other speakers.

Mr. Trant stated that when he and his client were contacted by staff, at the conclusion of their deliberations, there was no mention of a mistake in the ordinance or that his client should proceed cautiously by-right. He stated that the only conclusion from the conversation was that his client should begin preparing a site plan for development of the property. He stated that it was at that point that his client began expending and investing considerable time, energy, and resources in a by-right development approach of the property. He stated at this point, to step back and apply for a rezoning of the property is not a reasonable outcome of this situation. The time, energy, and resources already expended by his client cannot be gotten back, or recycled for a rezoning case. He stated that in terms of the church's budget, tens of thousands of dollars lost is tremendous. He stated that the only way for the church to receive any equity as an outcome of this situation is to allow the church to proceed by-right. He stated that he has proposed, in the correspondence reference by Mr. McGlennon earlier, several options to do that. One would be to grandfather the original conceptual plan proposed by the church. Another would be for the County, on its own initiative, to begin a rezoning of the 25-acre parcel to M-1. He stated that instead of engaging in an open dialogue with the church about how to resolve this issue, the County decided unilaterally to exploit the powers of government against the interests of the church's time, energy, and resources.

3. Mr. Jared Arango, 901 Wynstone Court, Newport News, lead Pastor of The Peninsula Pentecostals, addressed the Board in regard to the work of the church and the positive impacts the church have made in the community. He requested that the Board consider the options proposed by Mr. Trant that would make this situation right and would allow the church to use this piece of property.

4. Mr. David Green, 206 Carters Neck Road, addressed the Board requesting that the church be allowed to proceed by-right on the property and speaking to the personal and familial benefits of the church.

5. Ms. Diane Green, 201 Britannia Drive, addressed the Board speaking about the personal benefits of being a member of church, as well as the potential benefits to the community of Grove.

6. Mr. Bennett Weidemann, 204 Linden Court, Yorktown, addressed the Board discussing the potential impacts and influence of the church on the Grove community and requesting that the Board allow the church to proceed by-right.

7. Mr. Benjamin Farmer, III, 8386 Mohawk Lane, Gloucester, addressed the Board speaking to the personal influence of the church and the positive impacts of the church on the community of the peninsula.

8. Ms. Diana Peters, 413 Wrought Iron Bend, Yorktown, addressed the Board speaking to the personal influence of the church and the positive impacts of the church on the community, especially the

children of the community.

9. Ms. Clarissa Buckley, 7746 Farmwood Road, Gloucester Point, addressed the Board speaking to the impacts of the church on the community and the children of the community.

10. Ms. Brianna Green, 201 Britannia Drive, addressed the Board speaking to the positive impacts of the church on the children and youth of the community.

11. Mr. John McSherry, 818 Enos Court, Newport News, Church Administrator, addressed the Board stating that a house of worship is the highest and best use of any piece of land and believes that is why churches are protected and allowed to proceed by-right.

12. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in opposition to removing places of public assembly from the M-2 ordinance, stating what is done is done and it should be left the way it is now.

13. Ms. Shandra Dunn, 4600 Prince Trevor Drive, addressed the Board requesting that the Board act in good faith with the citizens by allowing the church to proceed by-right as they were told to by staff.

14. Mr. Stephen Barrs, 185 Barrett Place, addressed the Board stating that he and other business owners in Greenmount Industrial Park are supportive of the church and he expressed concern over the actions of the County.

15. Mr. Douglas Beck, 9915 Swallow Ridge, addressed the Board stating that in this area, where the foundation of our country goes hand in hand with churches, it would be disheartening to see a church's by-right use superseded for economic gain.

16. Mr. Donald Patten, 139 West Landing, the Managing Partner of Greenmount Associates and the seller of the property being discussed, addressed the Board stating that the Board should be considering the compatibility of the use proposed to the surrounding area, the question of access, and the credibility of this governing body.

17. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board stating that the process about this ordinance change is lacking transparency and is not right.

18. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board stating that it is disturbing that the ordinance change is being proposed after the fact and that citizens should be concerned that an ordinance change could come at any time and change their life.

19. Mr. Ed Oyer, 139 Indian Circle, addressed the Board stating that this is a precedent setting event for the uses of the limited M-2 zoned land in the County.

20. Ms. Michelle Rushalow, 103 Indian Circle, addressed the Board speaking to the personal impact of the church and the potential influence on the community of Grove.

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

Ms. Jones stated that for the benefit of the public, she served on the Planning Commission previously, so she is very familiar with the ordinances, the Comprehensive Plan, and land use issues. She stated that there have been several reviews and revisions of the ordinances since 2011. She acknowledges that people make mistakes, but how this mistake was communicated to the parties involved, and the public, is very concerning to

her. She stated that she had asked the County Attorney if the ordinance is changed, could this application that was started prior to the change, be grandfathered in. She stated that the response she received from the County Attorney is that it is not possible. She stated that her interest is to work with the church because they have invested a lot of time and resources on an application in good faith based on the conversations with staff. She stated that in the interest of full disclosure, she spoke to Mr. Trant this afternoon and she completely understands their perspective in not wanting to file for a rezoning when they were told, by staff, from the beginning, that a rezoning was a non-starter. She stated that she believes the church is an appropriate use of the land; yes, it is zoned M-2, but it is also designated on the Comprehensive Plan as Mixed Use. She stated that you can look at the investment in dollars and sense, or you can look at the investment that the church is making in the people and the community. She stated that she supports the ordinance recommended by the Planning Commission which keeps places of public assembly in the M-2 district; however, she would also be supportive of staff's recommendation to remove place of public assembly in the M-2 district if the church is allowed to move forward and its application grandfathered in.

Mr. Kennedy stated that all people are capable of making mistakes, he admitted to making one this evening. He stated that there was an issue back in 2011 and he and Mr. Icenhour both called for a review of the ordinances and to look very carefully at the land use of the particular zoning districts to make sure they are compatible. He stated that he had the assumption that it was done. He stated that there are a lot of housekeeping items in the ordinance amendment as well, but he believes those are nothing more than an attempt to hide what is really going on with this ordinance. He stated that the County has encouraged applicants to come in and meet with the staff to discuss their ideas and plans, prior to submitting a formal application. He stated this is encouraged for several reasons, including: perceptions may be wrong on either side of the table; and the County wants to see the process move along at a reasonable pace. He stated that he believes that this is what the church and their representation did. He stated that they met with staff and a variety of issues were discussed including that the County felt the scope of the project was too large and some of the uses were not compatible. The question was then raised, what does the County feel is compatible. After several weeks of deliberations, staff came back to the church and said that the plan for the church and the daycare was a by-right use. He stated that if there was a mistake there, then one of the things the Board needs to look at is to do no harm. He stated that he has concerns over the notification process and believes that if an ordinance change is going to be made, that landowners in the affected areas should be notified. He stated that it should not be assumed that landowners are going to read a notice in the Virginia Gazette or the Daily Press. He stated that in 2011 this mistake should have been corrected. He stated that there is a lot of blame that could go around but everyone missed this mistake. He stated that he could be supportive of carving this piece out, he is supportive of making this situation with the church right, but he is not supportive of opening the door to allow all of the other M-2 property to be carved up into uses not originally intended. He asked staff if this property could be cut out and abutted, and made M-1. He stated he understands the precedence, but the County has made mistakes in this situation and they should be corrected.

Mr. Rogers stated that he would address both questions. He stated that grandfathering is different than a vested right. With a vested right, the landowner has received some significant governmental approval; however, the concern with grandfathering is that there is a contract on the property and contracts on land do not necessarily give any additional rights or vesting of rights under the zoning ordinances. He stated that it is difficult for staff to consider granting a grandfathering request, because there has not been the significant and detailed step of submitting an application by the church.

Ms. Jones stated that the church has submitted a conceptual plan.

Mr. Rogers stated that in regard to question of carving out these pieces of property these are appropriate decisions for the Board to be considering. He stated that yes, the Board could carve out a piece of property and identify it by different zoning, but that cannot be done tonight because all that is in front of the Board is an ordinance amendment. He stated that the property owner, or the Board, would have to initiate a re-

zoning process for the property. He stated that it would have to go through the proper process and then come back before the Board.

Mr. Middaugh stated that he would like to point out that staff has maintained and tried to communicate that the ordinance would affect all of the property in the County with the M-2 designation, not just this one piece of property. He stated that staff has represented to the church, that the best solution for this particular piece of property is a rezoning. He stated that one of the things most concerning, is that if the church is allowed to proceed by-right, then the Board has no recourse to deal with the impacts associated with that use; for example, traffic on Route 60.

Mr. Kennedy asked in the case of a rezoning of the property, who initiates that process. He stated that the expense that the church has incurred already is a concern for him; and if the County erred, which he believes it did, then how does the County make it right. It is a sense of right and wrong, and it does not matter that it is a church; it would be the same if it was a business and the situation needs to be made right.

Mr. Bradshaw stated that if the question was that the Kirby Tract is a good location for the church, or that Grove is the best location for the church, or that the Kirby Tract should be rezoned, then a strong case has been made for those questions. However, the question before the Board is should the M-2 ordinance be revised to include more industrial uses, that were excluded by mistake and to exclude some non-industrial uses that were included by mistake. He stated that there seems to be universal agreement that had there not been a proposal for a church in the zone that the changes to the ordinance by staff would be universally accepted. He stated that he has not heard a compelling argument that churches are a suitable and compatible use for the M-2 zone and that is the question before the Board. He stated that there is an expression used by lawyers that hard decisions make bad laws. This is the situation that the Board finds itself in tonight. Because of the proposal for this church, and perhaps because of the way the situation was handled, there is a specific outcome that the Board would like to reach. However, in order to reach that outcome, some rules would have to be changed and that would cause problems down the road and would be a bad law. He stated that the change to the ordinance tonight would apply to all of the land in the M-2 zone, not just the specific parcel that the church wants to use. He stated that when he looks at how the church has been harmed by this situation, he agrees that there has been material harm done. However, he is under the impression that the church has been looking at this piece of property for years and up until about a year ago the land would have had to be rezoned. He stated that his understanding is that the land contract was signed under the assumption that it would have to be rezoned. He stated that he wishes the situation was handled a little bit differently, that the church had been promptly notified when the decision was made to make the corrections to this ordinance. However, he does not believe that those actions are enough to warrant an accommodation with the ordinance. He stated that he does agree that the proper accommodation would be for the church to pursue a rezoning of the property. He stated that he believes that the Board should proceed with the change to the ordinance and the church should proceed with a request to have the property rezoned, which the church knew might be necessary all along.

Mr. Icenhour stated that he respects the candor that he has heard tonight from the church members. However, the Board is focused on a much narrower issue this evening. He stated that the Board is having to weigh and balance the harm done to the church with the harm done to the general public's interest. He stated that the Board is here to represent all of the citizens of the County. In regard to the process, this property has been on the market for a long time and the church has been looking at this property since 2005. From 2005 until recently, the church has always known that the property would have to be rezoned. He stated that he shares Mr. Kennedy's concerns over the process with this ordinance. He stated that when the Board voted on the revisions to the ordinance in January of 2012, there were mistakes in the ordinance that he was not aware of until later. He stated that there was no conscious decision when the ordinance was revised, to allow a by-right use. He stated that he believes the mistake caused an unintentional benefit, an opportunity. He stated the Board has to balance precedence and the making of good laws versus bad laws. He stated that the Board has to look at the compatible and intended uses for the M-2 zone and those decisions have nothing to do with whether

or not the piece of property that the church is interested in should be zoned M-2. He stated that there is a lot of property around the County that is zoned improperly according to the Comprehensive Plan. Bringing the property into compliance with the Comprehensive Plan is achieved through a rezoning and legislative process so that the adverse impacts can be weighed and addressed.

Mr. Middaugh stated that he would like to clarify the reaction of staff that was noted by Mr. Trant. He stated that the negative reaction from staff was in regard to a conceptual plan of 40 acres of Mixed Use development. Mr. Trant has stated this evening that the plan has been drastically scaled back and would just include the 25-acre parcel for the church and the daycare. He stated that an application for the 25-acre parcel would be met with a different reaction from staff.

Ms. Jones stated that the church came to the County to talk about a rezoning for the 40 acres to Mixed Use and they were told it was a "non-starter." She said that the church did not come to the County for a by-right use initially.

Mr. McGlennon stated that he is very appreciative of the respectful and educational way in which the church has addressed this matter. He stated that it leaves a lasting impression. He stated that everyone has known from the beginning that this property would require legislative action, a rezoning. He stated that the issue before the Board has been well discussed this evening. He stated that is supportive of staff's recommendation on the ordinance, but he is also willing to sit down with the church to talk about its plans for the property and a rezoning application. He stated that he would make no guarantees as far as his support of a rezoning application, because it would be weighed against the impacts on the rest of the citizens. He stated he believes that the Board should take action on the ordinance to bring it back to the intention of the M-2 zone.

Mr. Bradshaw made a motion to approve the staff recommended revision to the ordinance.

Ms. Jones stated that she earlier said that she would support the Planning Commission's version of the ordinance. She stated that she feels like the Board is changing the rules in midstream and adversely impacting an applicant that has a conceptual plan on file with the County. She stated that she supports the church moving forward with its plan by-right.

Mr. Kennedy stated that he would not be supporting staff's recommendation on the ordinance. He stated that this situation is a muddled mess between M-1 and M-2. He stated that the church will be affected and it has not been made right.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Mr. McGlennon (3). NAY: Mr. Kennedy, Ms. Jones (2).

At 11:24 p.m., Mr. McGlennon recessed the Board for a short break.

At 11:29 p.m., Mr. McGlennon reconvened the Board.

## **J. BOARD CONSIDERATION**

### **1. Consideration of Amendment to Contracts**

#### **a) County Administrator**

Mr. Middaugh stated that he would like to give an explanation about his Severance Package, because it seems to not be understood very well considering the article in the newspaper. He stated that his Severance



Package is part of the Employment Agreement that was negotiated by him and the Board when the Board hired him to be the County Administrator. He stated that employment agreements are very common for City Managers and County Administrators. He stated that it is also very common for Chief Administrative Officers in our population bracket, more than 80 percent, have a Severance Package in the Employment Agreement. He stated that it provides a severance payment if he is fired without cause. He stated that there are many reasons why the Board could fire him and he would not get a severance payment. He stated that if he retires, takes another job, or the Board has a reason to fire him then he would get nothing. He stated that what he is proposing to change is the language in the Severance Agreement so that on day one after the first six months, instead of paying out a lump sum, that the amount be split and paid out on a month-to-month basis. This means that if he were to find a job, then the monthly payment would stop. He stated that if his position is to be compared to private business, there is only one County Administrator in James City County, so in order for him to find another job he would have to move and that is a substantial consideration for him. He stated that on a practical matter, the hiring process for County Administrators is a long process, due to the public consideration, and typically takes a year.

Mr. Bradshaw stated that unlike severance packages in the private sector that are based on longevity and are typically paid out when there is a reduction in workforce, the County Administrator is a unique position with unique jeopardies and risks that are not seen in the private sector.

Mr. McGlennon stated that the Board did have an opportunity to discuss the performance of the County Administrator during Closed Session. He stated that the Board expressed its appreciation for the performance of the County Administrator and his handling of some very difficult issues. He stated that while there may be differences in opinion on the compensation issue, it is fair to say that the Board is very satisfied with the performance of the County Administrator.

Mr. Icenhour stated that he is very satisfied with the performance of the County Administrator and the County Attorney and believes it should be recognized.

Ms. Jones stated that she has not supported the employee pay raises and she is not supportive of this change as well. She stated that many citizens are still going through hard times and many do not have retirement plans or severance packages. She stated that she believes the Board should continue to be cautious with salaries for employees of local government that are paid for by the citizens.

Mr. Kennedy stated that he is not supportive of the change to the severance package. He stated that it is longer in length than others that he has seen. He stated that the County Attorney and the County Administrator did not take a bonus the last two years when the rest of the employees received one. He stated that he cannot be supportive of the severance package.

Mr. McGlennon stated that the severance package was included in the original employment agreement that he and Mr. Kennedy worked on for the Board to present to Mr. Middaugh. He stated that this restructuring of the severance package actually is in the best interest of the County. Mr. McGlennon stated that as long as the Board and the County Administrator maintain a good, working relationship there will never be a need for the severance package.

Mr. Bradshaw made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Mr. McGlennon, (3). NAY: Mr. Kennedy, Ms. Jones, (2).

**RESOLUTION**

**AMENDING EMPLOYMENT AGREEMENT FOR MR. ROBERT C. MIDDAUGH**

WHEREAS, Mr. Robert C. Middaugh has an employment agreement with James City County engaging his services as the County Administrator; and

WHEREAS, the various terms and conditions of Robert C. Middaugh's employment are spelled out in said employment agreement; and

WHEREAS, upon successful completion of Robert C. Middaugh's annual evaluation, the Board and Mr. Middaugh have agreed that certain amendments to the employment agreement are desired and appropriate.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the employment agreement with Mr. Middaugh to serve as the County Administrator for James City County as follows:

1. Section 7 of the agreement titled Retirement, in Subsection B, is amended from a 5.5 percent contribution by the County to either a 401(C) plan or 457 plan of the employees choosing to a contribution of 8.5 percent.
2. Section 10 of the agreement titled severance, shall be amended in Subsection B, to read "If the Employee is terminated pursuant to Section 9, then the Employer shall maintain Employee on Employer's payroll for the earlier of six (6) months or until the Employee accepts and commences other employment. All benefits defined in this Agreement shall continue during the above-referenced period. In addition, in the event Employee does not accept other employment by the expiration of the six (6) month period, Employer shall pay to Employee, one month of the Employee's previous base salary in a lump sum until the earlier of six (6) months or until the Employee accepts and commences other employment."

b) County Attorney

Mr. McGlennon stated that the Board was very pleased with the performance of the County Attorney and the amount of work that the Board asked him to take on this year. Mr. McGlennon stated that he would like to move that the County Attorney receive a 3% pay raise, a 0.5% increase to deferred compensation, and a commitment to a 0.5% increase each year based on a superior performance rating. He stated that he would also move that the County Attorney be included in the Compensation Study that is currently going to be done by staff.

Mr. Rogers stated that there is an issue of a prior increase to deferred compensation that was promised in 2008.

Mr. McGlennon stated yes. He stated that the motion would be a 3% pay raise, a 1% increase to deferred compensation for this year, and a commitment to a 0.5% increase to deferred compensation each year that a superior performance rating is received; as well as, inclusion in the Compensation Study. Mr. McGlennon stated that the Board had promised Mr. Rogers an increase in his deferred compensation in 2008, but due to the economic downturn, was unable to fulfill that commitment.



Mr. Kennedy asked if the 1% increase to deferred compensation this year would bring Mr. Rogers up to the level that he was promised back in 2008.

Mr. Rogers stated that the 1% would bring him up to what he was promised in 2008. He stated that he suggested the 0.5% increase be given each for superior performance evaluation instead of longevity. He stated that it would be his hope that after this year, he would receive the 1% for what was promised, the 0.5% for the superior performance rating, and the 3% which is the County raise.

Mr. Bradshaw stated that if the 1% had been promised previously that does not take into account what has been determined to be a superior performance this year, so the number for this year would be a 1.5% increase to the deferred compensation. Mr. Bradshaw stated that motion would then be a 3% pay increase, a 1.5% increase to deferred compensation, with a commitment to 0.5% increase each year following a superior performance rating, and included in the Compensation Study.

Mr. Kennedy stated that he has an issue with the inclusion in the Compensation Study. He stated that he was not in favor of the study to begin with.

Mr. McGlennon stated that he would have no issue with splitting the motion and voting separately on the Compensation Study component.

Mr. McGlennon stated that the motion would then be a 3% pay raise, a 1.5% increase in deferred compensation this year, and a commitment to a 0.5% increase in deferred compensation for each year a superior performance evaluation is received.

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

Mr. McGlennon stated that the second motion would be to include the County Attorney in the Compensation Study being conducted by the County.

Ms. Jones stated that there was a significant shift in the economy. She stated that her stance is to be respectful to the citizens of the County. She stated that she did not support the pay raise, and she did not support the Compensation Study either.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Mr. McGlennon (3). NAY: Mr. Kennedy, Ms. Jones (2).

#### **K. PUBLIC COMMENTS**

1. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board expressing his displeasure at the actions of the Board during the meeting.

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

Mr. Middaugh stated that Kidsburg will be reopening on Thursday, August 29, 2013. The ribbon-cutting ceremony will begin at 11:00 a.m.

**M. BOARD REQUESTS AND DIRECTIVES**

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) Social Services Advisory Board

Mr. Bradshaw made a motion to reappoint Ms. Teresa Christin to the Social Services Advisory Board.

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

Mr. Icenhour stated that he would be attending the VACo summer meeting beginning on Friday, August 16<sup>th</sup>. He stated that the various committees would be meeting to begin drafting the legislative agenda that will be distributed to the counties in September and the Board can discuss it and make recommendations back to VACo.

Mr. McGlennon stated that he has been asked by members of the Roberts District to find a way to recognize the service of Mr. Abram Frink. He stated that he will be asking the Board that the James River Community Center be named in his honor.

**N. ADJOURNMENT – to 7 p.m. on September 10, 2013, for the Regular Meeting**

Mr. Bradshaw made a motion to adjourn.

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

At 11: 58 p.m., Mr. McGlennon adjourned the Board.

  
Robert C. Middaugh  
Clerk to the Board