

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 26TH DAY OF NOVEMBER 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

ADOPTED

B. ROLL CALL

DEC 10 2013

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

**Board of Supervisors
James City County, VA**

Doug Powell, Assistant County Administrator
Leo P. Rogers, County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Airlie Barrientos, a 12th-grade student at Jamestown High School and a resident of the Berkeley District, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATION - None

F. PUBLIC COMMENTS

1. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board regarding the Forest Heights Redevelopment project and the escalating costs associated with the project.

2. Mr. Fred Metcalfe, 3600 Woodbury Drive, addressed the Board in opposition of the dismissal of Mr. Middaugh as the County Administrator.

3. Mr. Sasha Diggs, 3612 Ironbound Road, addressed the Board regarding the good work of the James City Service Authority (JCSA) and the need of the Board to work together despite party lines.

4. Ms. Betty Walker, 101 Locust Place, addressed the Board regarding the public education system and the implementation of Common Core.

5. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board regarding the recount of votes in the Jamestown District Election and in opposition to the consolidated regional sanitation district.

6. Mr. Chris Henderson, 101 Keystone, addressed the Board regarding the development of a County naming policy and increasing transparency when hiring department directors, including the new Chief of Police.

7. Mr. Ed Oyer, 139 Indian Circle, addressed the Board regarding the Board working together despite party lines.

8. Ms. Heather Cordasco, 113 Alexander Place, addressed the Board stating that she had recently graduated from LEAD Virginia, a leadership organization, and that the County needs to evaluate its assets and decide what direction the County wants to go.

9. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in opposition to the consolidated regional sanitation district and in favor of doing away with staggered terms.

10. Ms. Angela Dennis, 209 Alisa Drive, addressed the Board regarding the incomplete project at Ironbound Square.

At 7:32 p.m., Mr. Kennedy recessed the Board of Supervisors in order to conduct the JCSA Board of Directors Meeting.

At 7:34 p.m., Mr. Kennedy reconvened the Board of Supervisors meeting.

G. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour stated that earlier this evening, during the Work Session, a vote was called to relieve Mr. Middaugh as the County Administrator. He stated that it was determined that Mr. Doug Powell, the Assistant County Administrator, would act as the County Administrator in the interim. He stated that the Board makes hiring decisions regarding the County Administrator and the County Attorney, the rest of the County employees are subject to Personnel Policies and Procedures which afford them greater protections. He stated that the Board has placed Mr. Powell in an unorthodox position and does not have a contract. He questioned how the Board will treat Mr. Powell and will he still fall under the Personnel Policies and Procedures.

Mr. Kennedy stated that he had been briefed by Mr. Rogers in regard to this issue and asked Mr. Rogers to brief the rest of the Board.

Mr. Rogers stated that Mr. Powell is the Assistant County Administrator and has certain powers granted by the Code of Virginia. He stated that the Board would need to appoint him, by resolution, as the Acting County Administrator, as there are certain documents that need the signature of the County Administrator. He stated that Mr. Powell does fall under the Personnel Policies and Procedures Manual, but he serves at the pleasure of the County Administrator. He stated that he can draft a contract for his time as the Acting County Administrator that would offer similar protections.

Mr. Icenhour asked when this was discussed.

Mr. Rogers stated that he spoke to Mr. Kennedy about it this evening.

Mr. Icenhour stated that a good functioning organization needs to have employees that are kept out of the political process. He stated that the County Administrator is the insulator between the political will of the Board and the professional employees that execute the will of the Board. He stated that when the Board begins

to politicize the professional staff, then it degrades the staff and the County. He stated that he asked the Board earlier this evening to state the reasons for relieving the County Administrator and no reasons were given. He stated that he hopes an answer will be given.

Mr. Hipple stated that he did not run for office on a political platform and refuses to be labeled as belonging to one side or the other. He stated that he votes his conscience and he is not, and will not, follow anyone other than what he believes to be right.

Ms. Jones stated that she would like to address the comments regarding Ironbound Square. She stated that when the Virginia Department of Transportation (VDOT) representative was here, she brought up the issue of the stormwater running down into the front yards and homes of the residents in Ironbound Square from the multi-use trail that was put in. She asked that staff work with members of that community to put together a list of what needs to be done.

Mr. Icenhour asked Mr. Powell to have a briefing with Mr. Middaugh and he will find a complete list documenting issues in that community that he and Mr. Middaugh had been working on together. Mr. Icenhour stated that the items were identified during his meetings with members of the community and they have been brought to the attention of the staff.

Mr. Kennedy acknowledged that Mr. Vaughn Poller, Director of Housing and Community Development, is in attendance tonight. He stated that anything that is incomplete or needs to be addressed should be discussed with a neighborhood meeting.

Ms. Jones stated that she is extremely concerned about the comment that money is missing. She stated that she wants a follow-up regarding the money as soon as possible.

Mr. Powell stated that staff would follow-up.

H. CONSENT CALENDAR

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

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

1. Minutes –
 - a. October 22, 2013, Work Session
 - b. November 12, 2013, Regular Meeting
2. Grant Appropriation - Clerk of the Circuit Court - \$39,917

RESOLUTION

GRANT APPROPRIATION - CLERK OF THE CIRCUIT COURT - \$39,917

WHEREAS, the State Compensation Board has awarded a Technology Trust Fund grant to the Clerk of the Circuit Court totaling \$39,917; and

WHEREAS, the grant will be used for the replacement of computer equipment and records modernization;
and

WHEREAS, no local match is required for this grant.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,
hereby authorizes the following appropriation to the Special Projects/Grant Fund:

Revenue:

Revenue from the Commonwealth \$39,917

Expenditure:

Clerk of the Circuit Court \$39,917

3. Authorization for One Temporary Police Overhire Position

RESOLUTION

AUTHORIZATION FOR ONE TEMPORARY POLICE OFFICER OVERHIRE POSITION

WHEREAS, the return to work status of a Police Officer traumatically injured in the line of duty is uncertain;
and

WHEREAS, reduced staffing in the Police Department adversely affects service delivery; and

WHEREAS, funds are available within the existing Police Department FY 14 Budget to create an overhire
position.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,
hereby establishes one full-time regular Police Officer overhire position. If the employee
returns to full-time employment in full capacity and the Police Department is fully staffed, the
overhire position will remain in effect until a Police Officer vacancy occurs and then the
vacancy will be eliminated. If the employee is unable to return to work, the position will be
permanently filled by the overhire position.

I. PUBLIC HEARING

1. Ordinance to Amend and Reordain Chapter 3, Animal Laws

Ms. Lola Perkins, Assistant County Attorney, addressed the Board giving a summary of the
memorandum and proposed ordinance included in the Agenda Packet. She stated that Animal Control
Supervisor Anderson is in attendance, as well, to answer any questions.

Ms. Perkins stated that an amended version of the ordinance is before the Board this evening that
corrected a typographical error and clarified that the hybrid canine must be kept on property that is occupied by
the owner or custodian. She stated that also before the Board, on the dais, is a grandfathering resolution that

the Board may choose to act upon. She stated that the grandfathering resolution would grandfather hybrid canines, currently residing in the County as of today's date, outside of the A-1 district, as long as the rest of the permit process is complied with by January 31, 2014.

Mr. Icenhour asked if there are still only two hybrid canines in the County that staff is aware of.

Ms. Perkins stated yes, those are the only two that staff is aware of.

Mr. Icenhour asked how long Mr. Charbeau has had the hybrid canines.

Ms. Perkins stated that she is not sure; however, the animal that attacked was the most recently acquired hybrid in his possession.

Mr. Hipple asked for clarification on the double-fencing requirement.

Ms. Perkins stated that her understanding is that the shorter, outer fence is designed to prevent anyone from getting closer to the higher, inner fence. Ms. Perkins deferred to Officer Anderson.

Officer Anderson stated that it would prevent someone from getting close to the higher, inner fence and prevent someone from getting close to the animal.

Mr. Hipple asked for clarification on the grandfathering resolution as it relates to the two known hybrids in the County.

Ms. Perkins stated that if the Board approves the resolution, then Mr. Charbeau would not have to move his animals, but he would have to comply with the rest of the permitting process.

Mr. McGlennon stated that it was mentioned that more flexible language could be used regarding the enclosure. He asked Ms. Perkins if she had that optional language with her this evening.

Ms. Perkins stated that what she would propose would be to strike certain language from the ordinance. She asked the Board to turn to Page 36 of the Agenda Packet. She stated that in Subsection C, she would recommend striking requirements 2 through 6.

Mr. McGlennon asked if additional language would need to be added regarding who determines if the enclosure is sufficient.

Ms. Perkins stated that part of the application is a consent form that allows Animal Control Officers to go onto the property and conduct inspections of the enclosure and that consent is sufficient to imply that Animal Control will determine if the enclosure is sufficient.

Mr. Hipple asked with that responsibility being on Animal Control, does that leave the County open to any liability.

Ms. Perkins stated no, the liability remains with the property owner.

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

1. Mr. Andrew Poole, 4019 E. Providence Road, addressed the Board stating his support of the ordinance this evening and believes that it is a reasonable compromise which allows the owners to keep their animals while protecting the citizens of the community.

2. Mr. Frank Buckley, 3900 Cold Spring Road, addressed the Board stating his support of the ordinance this evening and he stated that the specific requirements for the closure should be left in the ordinance so that there is no question about what is considered a sufficient enclosure.

3. Mr. Ed Oyer, 139 Indian Circle, addressed the Board stating that these animals are socially adaptable and as the coyote population continues to grow in the County, these hybrid animals will become more restless and their innate, wild characteristics will come out.

4. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board stating his support of the ordinance. He also stated that the blending of a wild animal with a domesticated animal produces a wild animal that no longer fears humans. He stated that in his opinion, a six foot fence is not tall enough and it must be buried underground.

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

Ms. Jones stated that she is supportive of the ordinance, but would like some clarification on the grandfathering resolution. She asked if the grandfathering would allow the current owner to keep the animals in a residential neighborhood temporarily or if it is indefinite.

Ms. Perkins stated that any hybrid canines currently in the County would be allowed to stay on the current property, which is not A-1 zoned property, as long as the owner complies with the rest of the requirements for the permit. She stated that the only part of the ordinance that the grandfathering resolution would address is the requirement for the enclosure to be located on property that is zoned A-1 and not a plated subdivision or mobile home park. She stated that if current owners do not have the space or the means to meet the requirements of the ordinance they would not be able to get a permit.

Ms. Jones asked if there is specific legal terminology for identifying these animals.

Ms. Perkins stated that the General Assembly has dictated that the terminology is hybrid canine.

Mr. Hipple asked if the grandfathering resolution only applies to the current animals and if it would cease once the animal passes away.

Ms. Perkins stated that the resolution has specific language that states that the grandfathering resolution only applies to the specific hybrid canine, which currently resides in the County, which meets all other requirements.

Mr. Kennedy clarified that this only covers animal that have currently been declared as of today or if there is going to be a grace period offered.

Ms. Perkins stated that the grandfathering resolution applies to all hybrid canines currently in the County as of today's date. She stated that there is not currently a veterinarian notification requirement as part of the ordinance.

Mr. McGlennon stated that someone that owns a hybrid canine, which has not been declared to a veterinarian, the County or anyone else would be covered under the grandfathering as well if they came forward prior to January 31.

Ms. Perkins stated correct.

Mr. McGlennon stated that the County does not know how many hybrid canines are currently in the County. He stated that the County thinks it is only two, but it could in fact be more.

Ms. Perkins stated correct.

Mr. Kennedy asked if the grandfathering resolution has been discussed with the residents that live near and around the current known owner. He stated that one neighbor spoke earlier saying that if the other requirements were met, then he would be okay with the grandfathering resolution.

Ms. Perkins stated that she has spoken with Mr. Buckley, but at the time, the grandfathering resolution had not come up.

Mr. McGlennon stated that he would welcome Mr. Buckley's opinion on the grandfathering if he cares to give it.

Mr. Kennedy concurred and asked if there were any objections. Hearing none, Mr. Kennedy asked Mr. Buckley to come forward and have his opinion on the matter heard.

1. Mr. Frank Buckley, 3900 Cold Spring Road, addressed the Board stating that these measures contain the animal, but most residents and he believe that these animals belong in the A-1 District and not in a neighborhood.

Mr. McGlennon asked if staff has a sense of how close the current owner's enclosure is to what would be required.

Officer Anderson stated that the current owner has a six-foot wood fence all around his property and there are not any diggers in the ground to prevent them from digging under the fence.

Mr. McGlennon stated that he wonders how likely it will be for an owner to go through the process of changing the enclosure verses finding an alternate location for the animals. He stated that it seems like an expensive process for something that would only be applicable to the current owner.

Mr. Kennedy stated that he understands the concern and it has been a tragedy for all those involved. He stated that he never imagined that a wolf hybrid would be considered a pet and be residing in a residential neighborhood. He stated that he is not one to over-regulate, but in this situation he believes that it is warranted. He stated that he is supportive of the ordinance, but he is not convinced that the grandfathering will make any difference in this particular case with this current owner. He stated that the Board is reacting to this particular case, because it is the one that brought this issue to the forefront. He stated that he is not sure that the current owner will comply with permitting process, so he is not sure if the grandfathering is even warranted.

Mr. McGlennon stated that he is supportive of the ordinance and be clear about what the County's expectations are in regards to the enclosure and the permitting process. He stated that he is not supportive of the grandfathering resolution, because the current owner does not seem to be prepared to comply with the enclosure specifications and the other terms of the permit. He stated that if the current owner wants to continue to raise these animals, then he should do so in conformance with all the parts of the regulation.

Mr. Icenhour stated that the Board's first responsibility is public safety and is pleased to see the involvement of the community in bringing this ordinance before the Board. He stated that he is supportive of the ordinance with all of the specific enclosure language kept in. He stated that he would also be supportive of

the grandfathering resolution, because the Board and staff do not know that this owner is the only owner in the County. He stated that the strength of the regulation and the comments from the citizens, reassure him and he can support the grandfathering resolution as well.

Mr. Hipple stated that he is supportive of the ordinance. He stated that he can understand the grandfathering, as all pet owners can and wishes the current owner was in attendance this evening to state his intentions. He stated that there could be other citizens that have these animals that are just now finding out about this new regulation. He stated that ordinance provides a compromise, allowing owners to keep their animals as long as they comply with the regulation and it protects the members of the community. He stated that he wonders about the language regarding the platted subdivision of five or more houses in the A-1 District. He stated that if only two homes are built and this permit is granted, and then three more homes are built around it, then the ordinance would be violated. He stated that he recommends removing the language of a platted subdivision of five or more homes. He stated that if it is a platted subdivision in the A-1 District, then it probably should not be allowed. He stated that there is such a tight window for citizens to report and comply, that he can be supportive of the grandfathering resolution as well.

Ms. Jones asked if staff has any comment on Mr. Hipple's suggestion to exclude platted subdivisions in the A-1 District.

Ms. Perkins stated that the current language excludes platted subdivisions in A-1 of five or more lots as long as three more homes are occupied or mobile home parks. She stated that in the example given by Mr. Hipple, a hybrid canine would be allowed if only two of the homes are occupied.

Mr. Hipple stated that if it is a platted subdivision then it should be excluded.

Mr. Rogers stated that the Board has the authority to make that change to the ordinance now and we can certainly make that deletion. He stated that the Board could delete the language on Page 4 that states, "of which at least three lots have occupied dwellings."

Mr. Hipple asked the other Board members their opinion on this change.

The Board voiced its agreement.

Mr. Rogers stated that he would make that amendment now to the ordinance. Mr. Rogers stated that he would like to speak to the grandfathering resolution. He stated this is not a zoning ordinance so grandfathering is typically not done; however, he suggested the addition for a couple of reasons. He stated that staff cannot make the legislation with regard to one particular owner and the particular dog is now deceased, staff does not know what other dogs are out there in the County and the owner of the dog must apply for the permit by January 31 and then fully comply with the ordinance. He stated that it puts the County in a much better enforcement position to be able to say that the County grandfathered an owner in and then the owner made an economic decision not to comply with the specifications of the ordinance.

Ms. Perkins stated that she has had several electronic conversations, via email, with the owner in question. She stated that he has received information that his other two dogs may in fact not be hybrids. She stated that the position of staff is that the animals are hybrids until scientific evidence is provided to prove otherwise. She stated that the owner has stated that he intends to pursue testing by a laboratory that was recommended to Officer Anderson and her by the State Veterinarian. She stated that for anyone that has claimed that their animal is a hybrid and now wants to back-peddle; this type of scientific evidence would be required. She stated that she has spoken to people at the laboratory and the test will register if there is 10 percent wolf DNA present and that would be considered a hybrid dog.

Mr. Kennedy asked if the same applies to a coyote. He stated that it is his understanding that one of the dogs is part coyote.

Ms. Perkins stated that she is not sure, but she will find out.

Officer Anderson stated that it would be determined by the laboratory.

Mr. Kennedy asked staff to be prepared if a rescue is necessary for these animals and asked that they be placed with an organization that staff has knowledge of. He stated that he wants to make sure that the animals are taken care of regardless of the outcome of this regulation.

Mr. McGlennon stated that if Mr. Rogers is representing that the grandfathering resolution will offer a better opportunity for enforcement, then he would be supportive of it.

Ms. Jones stated that she supports the ordinance with the amended language, as well as the grandfathering resolution.

Mr. Icenhour made a motion to approve the ordinance as amended this evening and approve the grandfathering resolution.

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

RESOLUTION

ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, ANIMAL LAWS

WHEREAS, the Board of Supervisors is considering revisions and amendments to sections of Chapter 3, Animal Laws, of the Code of the County of James City, Virginia; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby grandfathers the owning or possessing of hybrid canines in any area of the County if the following criteria are met:

1. The hybrid canine was owned or possessed and kept on property occupied by the owner or custodian within the County as of the effective date of the revised ordinance, November 26, 2013; and
2. The owner or custodian of such hybrid canine obtains a permit for the keeping of such hybrid canine pursuant to the requirements of the revised ordinance no later than January 31, 2014; and
3. The owner or custodian maintains a current permit for the hybrid canine and complies with all aspects of the Chapter 3 of County Code.

BE IT FURTHER RESOLVED that grandfathering shall apply only to the hybrid canine meeting the above criteria and shall not apply to other hybrid canines which may be owned or possessed by the same owner or custodian.

J. BOARD CONSIDERATIONS

1. The Virginia Department of Transportation (VDOT) Revenue Sharing Program-Fiscal Year 2015

Ms. Tammy Rosario, Principal Planner, addressed the Board stating that this item was deferred from the November 12 meeting. She stated that the resolution was included in the Agenda Packet and that she and Mr. Poller are available to answer any questions.

Mr. McGlennon made a motion to approve the resolution on Page 44 of the Agenda Packet.

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

RESOLUTION

THE VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT)

REVENUE SHARING PROGRAM-FISCAL YEAR 2015

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting up to \$465,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2015 Revenue Sharing Program; and

WHEREAS, matching funds already exist in the Community Development fund the County will match up to \$465,000 to any awarded Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling up to \$930,000 is requested to fund the reconstruction of Neighbors Drive.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation up to \$465,000 through the VDOT Revenue Sharing Program and further approves a County contribution up to \$465,000 toward this project.

2. 2014 Legislative Program

Mr. Kennedy stated that deferral of this item was discussed during the Work Session. He asked if there were any other issues that the Board would like addressed in regard to this item.

As there were none, Mr. Kennedy stated that this item would be deferred until the December 10, 2013, meeting.

K. PUBLIC COMMENTS

1. Mr. Randy O'Neil, 109 Sheffield Road, addressed the Board regarding the health and fitness of children in our community.
2. Mr. Chris Henderson, 101 Keystone, addressed the Board regarding the expanding cost of Fire Station 1 and a study of value-engineering should be done before the project goes any farther.
3. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board stating that the voters of the County voted for change on November 5 and that is what is being done now.
4. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board stating that the people have spoken and it is new era of accountability.
5. Mr. Jay Everson, 103 Branscombe Boulevard, addressed the Board in support of doing away with staggered terms.
6. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board stating that the first Thanksgiving was celebrated by people who came to this new world to escape government tyranny and to freely worship God.
7. Ms. Anna Pennington, a representative of Howling Woods Farm, addressed the Board stating that Howling Woods Farm is the rescue organization where the deceased hybrid canine came from. She expressed her sympathies and condolences for all those involved in this tragedy.

L. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Powell stated that the County will provide one round of curbside leaf collection. He stated that the collection dates are determined by voting district and are as follows: North Powhatan/Stonehouse District, December 2-4; South Powhatan/Jamestown District, December 4-11; Berkeley/Roberts District, December 11-18. He stated that leaves must be in clear bags, 40 gallons or less, and be left curbside by 8 a.m. on the first day of the collection cycle. He also stated that the synthetic ice skating rink will open in New Town on November 29 and will be located at Sullivan Square behind Legacy Hall in New Town. Mr. Powell reminded citizens that the County Offices will be closed Thursday and Friday in observance of Thanksgiving.

M. BOARD REQUESTS AND DIRECTIVES

Ms. Jones wished everyone a Happy Thanksgiving.

Mr. Hipple wished all the citizens a Happy Thanksgiving.

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

Mr. Hipple made a motion to adjourn.

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

At 9:04 p.m., Mr. Kennedy adjourned the Board.

M. Doug Powell

Doug Powell
Deputy Clerk to the Board

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