

MINUTES
JAMES CITY COUNTY BOARD OF SUPERVISORS
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
January 11, 2022
5:00 PM

ADOPTED
FEB 23 2022
Board of Supervisors
James City County, VA

A. CALL TO ORDER

Mr. McGlennon called the meeting to order at approximately 5:05 p.m. following the James City Service Authority Board of Directors Regular Meeting.

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE

Mr. McGlennon noted Liam was a third-grade student at Norge Elementary School. He further noted some interesting facts about Liam.

Liam Green, Pledge Leader, led the Board and citizens in the Pledge of Allegiance.

E. PUBLIC COMMENT

None.

F. CONSENT CALENDAR

None.

G. PUBLIC HEARING(S)

1. Pre-Budget Public Hearing

Ms. Sharon Day, Director of Financial and Management Services, addressed the Board noting this meeting offered public comment opportunity on the upcoming budgets for the fiscal years ending June 30, 2023 and June 30, 2024, respectively.

Mr. McGlennon noted the purpose of the Public Hearing was to garner public input from citizens on priorities. He further noted no formal presentation would be made, but future discussions would take place in the spring.

1. Ms. Denise Kellogg, 204 Southpoint Drive, addressed the Board noting she was a 25-year resident of James City County and worked at Jamestown. She noted the financial struggles with low tourism due to COVID-19 and its impact on historic Jamestown. Ms. Kellogg further noted any additional tourism funding to the County be considered for other organizations outside of the Tourism Council for independent tourism funding. She added the need to get people back to visit and the work involved. Ms. Kellogg noted tours and educational programs were provided in addition to the archaeological significance. She further noted the need for County financial support as no additional regular state funding was received as other County organizations did. Ms. Kellogg stressed the dependence on the tourism funding provided by the County.

Ms. Larson noted for clarification that Ms. Kellogg represented Historic Jamestowne, Jamestown Island.

Ms. Kellogg noted Jamestown Rediscovery Foundation operated Historic Jamestowne she had referenced.

Ms. Larson and Mr. McGlennon thanked Ms. Kellogg.

2. Mr. Jay Everson, 6923 Chancery Lane, addressed the Board on the Capital Improvements Plan (CIP) in relation to the Williamsburg-James City County Schools. He noted his understanding of the need for the 900-building renovation at Lafayette High School as that school was approximately 50 years old, but added that project would increase school capacity by 200 students. Mr. Everson further noted the under capacity at the other local high schools, adding this project seemed wasteful in his opinion. He noted redistricting could address the capacity concerns without the financial burden. Mr. Everson encouraged removal of the cafeteria renovation project from the CIP.

Mr. McGlennon closed the Public Hearing as there were no additional speakers.

2. Ordinance to Amend County Code Sec. 20-86, cigarette tax penalties

A motion to Approve was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. McGlennon noted Ms. Jenni Tomes, Treasurer, was participating electronically. He further noted there would also be other individuals participating electronically throughout the meeting. Mr. McGlennon added with the significant increase in the spread of COVID-19, he encouraged vaccinations, masking, and social distancing, as safety precautions.

Ms. Tomes addressed the Board regarding the recently implemented cigarette tax and a minor change to the Ordinance. She noted during the Ordinance review, there was a different penalty rate from other taxes collected by the County with this tax assessed on a monthly basis. Ms. Tomes further noted current software was not able to charge a monthly penalty. She requested the Board change the penalty on non-payment of the cigarette tax to a one-time 10% penalty with interest assessed monthly.

Mr. McGlennon thanked Ms. Tomes. He asked about the calculation on the penalty interest and if it was more applicable in Section 3 versus Section 1 of the County Code.

Ms. Tomes noted she would work with the County Attorney to make that change.

Mr. McGlennon asked if in consideration of the amended resolution, the calculation of the penalty would move from Section A.1 to Section A.3 of the Ordinance.

Ms. Tomes confirmed yes.

Mr. McGlennon opened the Public Hearing.

Mr. McGlennon closed the Public Hearing as there were no speakers.

Mr. McGlennon noted no Public Hearing would be held for Item No. 3 (previously voted as an Agenda amendment to move this item from Board Considerations - Ordinance to amend James City County Code section 20-45 to allow the Commissioner of the Revenue to assess a

penalty for late returns (Action deferred at November 9, 2021, Regular Meeting). He further noted it was an item previously discussed by the Board in 2021 in relation to a request from the Commissioner of the Revenue for assessment of a penalty for failure to file reports of taxes collected under the Meals Tax provisions.

A motion to Approve was made by Ruth Larson, the motion result was Passed.

AYES: 4 NAYS: 1 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon

Nays: Sadler

Mr. Richard Bradshaw, Commissioner of the Revenue, addressed the Board noting the County Code currently did not have a filing penalty for excise taxes. He noted the imbalance of the situation, adding people who did not file on time received no penalty until an assessment was made and billed. Mr. Bradshaw further noted that timeline was usually 30 days later, adding that equated to roughly a free 30-day loan of County money. He added research showed that other local jurisdictions had filing penalties which were assessed by the Commissioner where returns were filed.

Mr. McGlennon asked if the report had to be filed prior to tax assessment.

Mr. Bradshaw confirmed yes, adding the report was necessary for the proper assessment to be determined. He noted administrative assessments could not be done prior to the due date and that returns were required to be postmarked by the 20th of each month. Mr. Bradshaw further noted sometimes those returns do not get to his office until the 30th of the month, but added those were still considered timely filed returns.

Mr. McGlennon asked if the assessment was based on that return and that information was sent to the Treasurer for billing.

Mr. Bradshaw noted payments were normally included with the return. He further noted if the payment was received on the 30th with a postmark of the 20th, but no payment included, then the Treasurer would send a statement with a due date of 10 days for payment. Mr. Bradshaw added that administrative assessment are generally done on the 15th or 20th of the next month, which were already 30 days past the due date. He noted the next step was certified mail to the taxpayer documenting the liability with payment due 10 days from the postmark date before incurring penalty or interest.

Mr. McGlennon asked if the tax paid by the customer to the restaurant was for the customer's share of the bill.

Mr. Bradshaw confirmed yes, these were excise taxes also known as trust taxes.

Mr. McGlennon noted the tax was not on the restaurant itself, but in fact had already been paid by the customer.

Mr. Bradshaw confirmed yes. He noted the tax was not considered part of the restaurant's gross receipts.

Ms. Sadler noted she had some comments, but had not had time to respond. She further noted she was voting no as she felt this was a double penalty on a small group of habitual offenders.

Mr. McGlennon noted he would try to ensure Ms. Sadler's comments were heard.

Ms. Sadler thanked Mr. McGlennon.

3. Cell Tower Lease Amendment - 5301 Longhill Rd.

A motion to Approve was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. John Carnifax, Director of Parks and Recreation, addressed the Board noting a request for expansion of the cell tower's base by approximately 150 feet for additional instruments. He noted this request would not negatively impact the users of the James City County Recreation Center Park or the facility. He further noted his recommendation for approval. Mr. Carnifax further noted this amendment would increase the monthly lease by \$433.50.

Mr. McGlennon opened the Public Hearing.

Mr. McGlennon closed the Public Hearing as there were no speakers.

4. Z-20-0002. 2280 Lake Powell Road Rezoning

A motion to Approve was made by James Icenhour Jr, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Paul Holt, Director of Community Development, addressed the Board noting he was standing in for Ms. Tori Haynes, Senior Planner. He noted Mr. Benming Zhang of Kaufman & Canoles, P.C. had applied on behalf of Mr. Paul Smith, Jr. for rezoning for a one lot, single-family residential unit. Mr. Holt noted the details of the application which included notification from the James City Service Authority (JCSA) that public water and sewer were unavailable to the property. He further noted JCSA had indicated a private well and septic system would need to be installed for the additional dwelling unit. Mr. Holt addressed the R-8 zoning requirements did not allow for additional subdividing of less than three acres. He noted if the property was rezoned to R-2, the minimum lot size was 30,000 square feet for well and septic. Mr. Holt further noted staff recommended approval.

Ms. Larson asked if the applicant was aware of the sewer and well criteria.

Mr. Holt confirmed yes, adding it was really the only option.

Ms. Larson thanked Mr. Holt.

Ms. Sadler asked Mr. Holt if this rezoning was aligned with the 2045 Comprehensive Plan.

Mr. Holt confirmed yes. He noted it was designated Low Density Residential on the Comprehensive Plan Land Use Map.

Ms. Sadler asked if the Planning Commission had approved, adding she had some difficulties hearing Mr. Holt.

Mr. McGlennon noted Mr. Richard Krapf, Planning Commissioner, was present.

Mr. Krapf addressed the Board noting the Planning Commission, at its October 6, 2021, meeting, had voted 6-0 in favor of the application. He noted the Commission felt the rezoning from R-8 to R-2 allowed for suitable subdivision for a family without allowing for additional

subdivision or rezoning.

Mr. McGlennon opened the Public Hearing.

1. Mr. Zhang, 4801 Courthouse Road, addressed the Board noting he was representing the applicant. He provided background on the family and the property. He noted his applicant was in agreement with both staff and Planning Commission recommendations and sought the Board's support.

Mr. McGlennon closed the Public Hearing as there were no additional speakers.

5. AFD-21-0002. 9958 Mill Pond Run, Barnes Swamp AFD Addition

A motion to Approve was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Holt addressed the Board detailing the application specifics of an approximately 60-acre addition to the Barnes Swamp Agricultural and Forestal District (AFD). He noted at the October 21, 2021, AFD Advisory Committee meeting, the property was deemed agriculturally and forestally significant and recommended approval of the application with an 8-0 vote. Mr. Holt further noted the Planning Commission concurred with these findings at its December 1, 2021, meeting and recommended approval. He added staff recommended approval of the application subject to the proposed conditions which were consistent with other properties in the AFD District.

Mr. Krapf noted the Planning Commission recommended approval with a 6-0 vote. He referenced the equine restocking option, adding the Planning Commission was in favor of the applicant pursuing that option. He noted the favorable comments on the Soil and Water Conservation District recommendations. Mr. Krapf further noted another point was the reforestation of five acres and conversion to pasture for the remaining property were favorable options. He added these three points were key components of the application.

Mr. McGlennon opened the Public Hearing.

Mr. McGlennon closed the Public Hearing as there were no speakers.

6. Z-21-0012 and MP-21-0003. Proffer and Master Plan Amendment for the Continuing Care Retirement Facility at Ford's Colony (Ford's Village)

A motion to Postpone until March 8, 2022 was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. McGlennon reiterated there would be no presentation. He noted the applicant had requested a deferral until the March 8, 2022, Board of Supervisors meeting. He further noted the applicant wished to address some concerns and potentially make revisions to the application. Mr. McGlennon noted he would open the meeting to allow for comments and the Planning Commission would give its report at the March 8, 2022, Board meeting.

Mr. McGlennon opened the Public Hearing. He noted the Public Hearing would remain open until March 8, 2022.

7. SUP-21-0018. 1403 Jamestown Road Rental of Rooms

A motion to Deny was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Ms. Terry Costello, Planner, joined the meeting electronically. She noted the Special Use Permit (SUP) would allow the short-term rental of two bedrooms within a caretaker-occupied single-family home. Ms. Costello further noted the specifics of the SUP with several favorable factors, but added staff found the proposal incompatible with short-term rental regulations in the adopted 2045 Comprehensive Plan. She noted staff was therefore unable to recommend approval for this application. Ms. Costello further noted the Planning Commission denied recommendation of this application at its December 1, 2021, meeting with a 6-0 vote. She added the applicant was available for any questions.

Mr. Krapf addressed the Board noting the Planning Commission's 6-0 vote against recommendation of this application approval. He noted this application was the short-term rental application to come forward under the 2045 Comprehensive Plan's stricter short-term rental recommendations. Mr. Krapf highlighted one short-term rental criteria was the owner would reside on the property. He noted the Commission felt as the first application under the new Comprehensive Plan, a show of support for the Plan was important and the reason for the vote.

Mr. McGlennon opened the Public Hearing.

1. Mr. Scott Berggren, 5821 Painted Leaf Lane, Naples, Florida, addressed the Board noting he was the applicant. Mr. Berggren noted changes within the Comprehensive Plan since he had purchased the property, adding one such change included a caretaker on-site to property owner on-site. He further noted an on-site caretaker would fulfill some of the Comprehensive Plan requirements such as affordable housing. Mr. Berggren added that caretaker would receive discounted housing as part of maintenance at the residency. He noted this would be his retirement home and this phase would maintain the property until that time. Mr. Berggren further noted if the application did not meet the Board's requirements, would the Board consider approval for rental of the property when he was on-site and living there.

Ms. Larson asked if a caretaker was currently on-site or would one be employed if the application was approved.

Mr. Berggren noted he would hire a caretaker if approved as the house was currently under renovation.

Ms. Larson thanked the applicant.

2. Ms. Martha Caruso, 110 Dover Road, addressed the Board. She noted her attendance at the Planning Commission's December meeting when the application was denied. Ms. Caruso further noted she was present as a representative of her neighborhood and its integrity. She added community concerns over the property as rental with an out-of-state owner. Ms. Caruso noted her neighborhood had no homeowners association (HOA) to protect its residents and she was hopeful the Board would agree with the Planning Commission's recommendation to preserve the neighborhood.

Mr. McGlennon called Mr. Frank Caruso, the next speaker, to the podium.

Mr. Caruso noted he would pass on speaking.

Mr. McGlennon noted this would be Mr. Caruso's one opportunity to speak if he so chose.

Mr. Caruso's response was inaudible.

3. Ms. Ann Buran, 108 Dover Road, addressed the Board noting she shared a back property line with the applicant. She further noted her living area was on the back side of her home and the visibility aspect for herself and neighbors. Ms. Buran stated she never intended to live behind a business, particularly with other areas available in the area. She noted the tight-knit, small community where she lived. Ms. Buran further noted the recent receipt of an opposition letter from another neighbor regarding the application. She noted the thought behind the Comprehensive Plan and adhering to it.

4. Ms. Sharon Dennis, 101 St. George's Boulevard, addressed the Board noting she had already been operating a short-term rental and her familiarity with the process. She noted current struggles, particularly with diminished tourism and by-right uses. Ms. Dennis further noted more staff outreach to neighbors as well as owners of short-term rentals for feedback and information, particularly with regards to the Comprehensive Plan. Ms. Dennis asked the Board if it was aware of any complaints with currently active short-term rental SUPs. She noted she was unsure if she could ask that question.

Mr. McGlennon noted no to asking that question.

5. Ms. Emily Huffman, 2032 Back River Lane, addressed the Board with her concerns regarding short-term rentals. She noted neighbors concerns and fears regarding short-term rentals, adding people renting these homes were not staying to be disruptive or throw parties. Ms. Huffman further noted the people renting these homes were here to visit and spend money at Colonial Williamsburg, Jamestown, and other area locations. She noted she drove past the applicant's property regularly, adding it was primarily surrounded by trees so visibility into neighboring homes seemed less of a factor. Ms. Huffman further noted her personal experience as the host of a short-term rental, most guests were not at the home during the day. She felt the applicant's property size was sufficient to not serve as an interference to the neighbors. Ms. Huffman expressed her concern with verbiage in the Comprehensive Plan, adding she felt more community feedback was required. She noted she and other short-term rental owners who were active and held SUPs were not contacted and that contact information was available on the James City County website. Ms. Huffman further noted she and her husband had received no complaints from neighbors in addition to improving their neighborhood with a complete exterior painting and other projects of their home through the short-term rental. She noted the thought that neighborhoods would decline was not the reality, adding as a host, the owner wanted the home to be as attractive and well maintained as possible.

Mr. McGlennon closed the Public Hearing as there were no additional speakers. He asked the Board for discussion.

Mr. Hipple noted he had an SUP in the same situation and that the Board had discussed neighborhoods. He noted his home was hidden in the woods. Mr. Hipple added his experience had been very beneficial and he had met some wonderful people in the process. He noted several factors such as rental cost and amenities could be more attractive to families. Mr. Hipple referenced several earlier comments and asked Mr. Krapf if any SUP applicants had been contacted. He noted he had not received a call.

Mr. Krapf noted he was unsure if any SUP holders were specifically contacted. He further noted reliance on public media to promote discussion during the Community Participation Team (CPT) and Planning Commission Working Group (PCWG) meetings to gather public

input on particular topics. Mr. Krapf stated the Planning Commission had struggled with short-term rentals for some time with respect to various reasons. He noted discussion of sunset clauses. Mr. Krapf further noted the concept of an SUP applying to an applicant rather than conveying with the property in perpetuity would assist in individual assessment of cases. He noted a current owner may be diligent in maintaining the property, but there was the possibility of no guarantees with future owners. Mr. Krapf further noted he preferred approvals were applicant-based as opposed to property-based, but he was unsure if that could be done legally.

Mr. Hipple asked if the approval could be tied to the land as long as that owner owned that property. He questioned if the land was sold or conveyed to another person, then reapplication would take place and the legal aspect.

Mr. Kinsman confirmed once the SUP was granted, it stayed with the land and not the owner.

Mr. Hipple asked if the land was sold, would the next owner need to reapply to continue the SUP.

Mr. Kinsman noted the Virginia Code did not grant that ability.

Mr. Hipple noted the limitations of the Code. He further noted public notices were sent out, but sometimes overlooked by people.

Mr. Krapf noted SUPs had been a point of discussion with the Planning Commission for several years.

Mr. Hipple thanked Mr. Krapf. Mr. Hipple noted the difficulty of living on-site with some SUPs. He further noted on-site caretakers allowed for an immediate point of contact if issues arose, which offered neighbors reassurance that any situations were being addressed. Mr. Hipple noted the importance of no disruption to neighborhoods.

Ms. Larson noted she would prefer the applicant live on-site. She further noted the potential situation of the caretaker leaving the property and the impact to the neighbors, particularly in situations where no HOA existed. Ms. Larson added the local government and its representatives were sought to address issues when no other group existed. She noted tourism had almost risen to its 2019 visitation level and work continued to attract more tourists. Ms. Larson further noted her concerns with a property owner who was not living on-site with an employed caretaker as the neighbors' contact point.

Ms. Sadler expressed her concern about SUP holders and the lack of contact. She noted addressing that point in the future. Ms. Sadler further noted her concern about the SUP transferring with the land as noted by Mr. Krapf and Mr. Kinsman. She reiterated the desire to stop the SUP moving in perpetuity with the land rather than an owner or business.

Mr. Icenhour noted some personal experience with Airbnbs in Colorado and Virginia. He further noted Ms. Larson's point of rentals typically in older neighborhoods with affordably priced homes. Mr. Icenhour noted the lack of HOAs in these neighborhoods. He stated he felt neighbors were less fearful of wild parties and riots, but concern regarding their expectations for their homes and community when purchased. Mr. Icenhour noted his neighborhood had a very strict covenant and he was aware of the expectations, adding a mechanism was in place to address issues that could arise. He further noted homeowners' concern over the idea of a neighborhood or a commercial operation. Mr. Icenhour stated the work of the Comprehensive Plan and the opportunities for public input. He noted any community member could find a point or points within the Comprehensive Plan he or she did not like. Mr. Icenhour further noted the Board essentially served as the last line of defense for residential neighborhoods

without an HOA. He added residents sought help from the Board and the Comprehensive Plan attempted to provide some help in this matter. Mr. Icenhour noted if the owner lived on-site then he was agreeable, adding there was a difference in long-term rentals of six to 12 months versus weekly rentals. He further noted that the situation was not perfect, but he was in favor of supporting the Planning Commission's recommendation.

Mr. McGlennon noted there was a struggle within the County to find affordable housing options for employees working in the community. He further noted the need to preserve affordable local housing. Mr. McGlennon noted parties could occur at rentals, hotels, and other short-term rental locations. He further noted he liked the owner-occupied home and the concept of the sharing economy on an individual level. Mr. McGlennon expressed concern over the business potential of rental home accumulations by individuals. He noted the employment of caretakers, but the potential lack of enforcement on certain SUP conditions and zoning codes. Mr. McGlennon further stated he was not in support of the application, nor did it provide the model he wanted to see be used. He added Mr. Hipple's model was more aligned with his vision with owner proximity to the rental, owner engagement with renters, and other factors.

8. SUP-21-0020. 528 Neck-O-Land Road Tourist Home

A motion to Deny was made by James Icenhour Jr, the motion result was Passed.

AYES: 4 NAYS: 1 ABSTAIN: 0 ABSENT: 0

Ayes: Icenhour Jr, Larson, McGlennon, Sadler

Nays: Hipple

Ms. Costello noted Ms. Sharon Dennis, the applicant, had applied for an SUP short-term rental. Ms. Costello further noted the application allowed for the rental of two bedrooms within a single-family home. She cited the zoning specifics, adding the property was located within the Primary Service Area. Ms. Costello noted the SUP, if granted, would allow for short-term rentals throughout the year. She further noted adequate off-street parking was one favorable factor. Ms. Costello noted staff found the proposal did not meet the location recommendations for short-term rentals as cited in the 2045 Comprehensive Plan and thus was unable to recommend approval of the application. She further noted the Planning Commission recommended denial of this application at its December 1, 2021, meeting by a 6-0 vote.

Mr. McGlennon opened the Public Hearing. He called Mr. Krapf to speak on the Planning Commission's behalf prior to the first speaker.

Mr. Krapf addressed the Board noting similar discussion items to the previous application had been considered. He noted the R-8, Rural Residential Zoning District, had also been considered as it was more removed from neighborhoods.

Mr. McGlennon thanked Mr. Krapf and welcomed the first speaker.

1. Ms. Sharon Dennis, 101 St. George's Boulevard, addressed the Board highlighting the zoning for this application differed from the previous short-term rental application. She noted the rural character and no HOA for this property. Ms. Dennis further noted the Planning Commission's reference to the use of exhaustive research, yet no one had reached out to her or other short-term rental owners. She questioned the local demographics in using advertisement on buses and in newspapers, adding most people using public transit did so as they did not own a car and probably not a home. Ms. Dennis referenced an on-site owner was not necessary with the use of technology to monitor the property, adding not all renters were comfortable with the idea of an on-site babysitter. She highlighted sections from the

Zoning Ordinance with relation to R-8 properties and uses within that Zoning District. Ms. Dennis noted specifics for short-term rentals in rural lands within the Comprehensive Plan. She further noted she felt this property met the criteria laid out in the Plan. Ms. Dennis stated she did not live on-site, but resided within minutes of this property. She noted the property on Neck-O-Land Road was rural and she wanted to preserve the rural character, adding that rural character was diminishing up and down the road. Ms. Dennis further noted the issue of affordable housing and maintaining homes, but added development was a factor. Ms. Dennis noted she had a good rapport with her neighbors and she took care of her property. She further noted short-term rentals could be advantageous to the community.

2. Ms. Gail Fisher, 3102 London Company Way, addressed the Board noting her support of Ms. Dennis and her Airbnbs. She noted she had cleaned Ms. Dennis' properties on occasion. Ms. Fisher spoke in support of Ms. Dennis and her character.

3. Ms. Emily Huffman, 2032 Back River Lane, addressed the Board noting she and her husband owned the neighboring property at 530 Neck-O-Land Road. She noted their support of Ms. Dennis' operation of an Airbnb at the property. Ms. Huffman further noted she and her husband operated the front half of their property as an Airbnb and echoed Mr. Hipple's comments on good experiences with their property. She added that as Ms. Dennis' neighbor, she and her husband had observed the damage from long-term renters to Ms. Dennis' property. Ms. Huffman noted her own property had suffered damages during long-term rentals with lower price points. She further noted that had not been the case with their Airbnb guests. Ms. Huffman added they did not foresee short-term rental at this location as a detriment to the neighborhood. She noted the country environment, but also proximity to the amenities in the City of Williamsburg. Ms. Huffman cited the benefits of running short-term rentals and offered support of Ms. Dennis and the SUP application.

4. Mr. Scott Berggren, 5821 Painted Leaf Lane, addressed the Board noting the County's Zoning Ordinances were not in alignment with the Comprehensive Plan. He noted if an SUP came before the Planning Commission and it was outside of the Comprehensive Plan, it would not be allowed. Mr. Berggren further noted removal of SUPs from the Zoning Ordinance. He agreed HOAs protected neighborhoods, but questioned their right regarding long-term rentals. Mr. Berggren noted on-site owners, adding if an individual stayed at a Marriott Hotel, a hotel employee would address issues and not Mr. Marriott. Mr. Berggren further noted the closest neighbor to 528 Neck-O-Land Road was also a short-term rental and that should be a point of consideration. He noted there were 14 SUPs for Airbnbs in the County, but 1,400 were operating in the County. Mr. Berggren further noted that represented a loss of bed tax and revenue for the County.

Mr. McGlennon closed the Public Hearing as there were no additional speakers.

H. BOARD CONSIDERATION(S)

1. Appeal of Notice of Violation, 5032 River Drive

A motion to Adopt the four resolutions was made by James Icenhour, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Ms. Liz Parman, Assistant County Attorney, addressed the Board noting four appeals of violations of the County's Erosion and Sediment Control and Stormwater Management Ordinances on residential property at 5032 River Drive were before the Board. She noted staff had cited violations to the property owner, Mr. Danny Patterson, and the contractor, R.A.

Coleman, Inc. for failure to obtain permits for land disturbing activity on the property which resulted in collapse of the rear yard into Diascund Creek. Ms. Parman noted both Mr. Coleman and Mr. Patterson, through their attorneys, had agreed to accept the violations as detailed in the Board's Agenda Packet. She further noted staff's recommendation for adoption of the four resolutions regarding the violations. Ms. Parman added the Board's approval would allow the County to continue settlement negotiations and potentially file an enforcement action if needed in Circuit Court. She noted Mr. Gregory Bean of Gordon Rees Scully Mansukhani, LLP, and Mr. J. Stephen Roberts were present on benefit of their respective clients.

Ms. Larson asked Ms. Parman if she felt this situation would move forward toward a settlement.

Ms. Parman noted she was unsure, but added the resolutions before the Board affirmed the violations and if filing was required in Circuit Court, she was be prepared to do that.

Ms. Larson thanked Ms. Parman.

Mr. Hipple asked about the silt that had filled in at that location on the creek.

Ms. Parman noted there was a request to remove the discharge into the creek, adding it had occurred six to seven months earlier. She further noted she was unsure how that would look, but added Virginia Marine Resources Commission (VMRC) was also requesting the same removal.

1. Mr. Gregory Bean, 5425 Discovery Park Boulevard, legal representative for Mr. Danny Patterson, addressed the Board. He noted, for the record, an agreement had been reached. Mr. Bean further noted Mr. Patterson felt he had done no wrongdoing and had followed the rules, but wanted to work toward a settlement and was putting forth a good faith effort. He noted continued negotiations with insurance carriers, neighbors, and other parties to reach a settlement agreement. Mr. Bean noted agreement with the resolutions to move forward.

Ms. Larson thanked Mr. Bean.

2. Mr. Steve Roberts, 905 Richmond Road, legal representative for R.A. Coleman, Inc., addressed the Board. He noted support for adoption of the resolutions. Mr. Roberts further noted email exchanges and if there was any language inclusion which would suggest an intentional act, property improvement, or a dumping site as this was accidental. He noted he had negotiated with Mr. Coleman's insurance carrier, adding the language of negligent or unintentional violation would be helpful in providing coverage for funding the settlement. Mr. Roberts further noted Mr. Coleman had been in business with 30 years during which he had no prior violations. He added this particular part of Diascund Creek had erosion issues due to rising water levels. Mr. Roberts noted this situation had occurred as an attempt to stop erosion rather than create a problem. He was hopeful that other than the addition of that language to the resolution, the resolution would be adopted.

Mr. Hipple noted Mr. Coleman's work ethic and history. He referenced Mr. Roberts' first statement and added he did not consider this as an accident. Mr. Hipple noted he had also spoken with Mr. Coleman regarding the erosion problem.

Mr. Roberts noted he possibly had misspoken. He further noted rather than an accident, the action was unintentional or negligent. Mr. Roberts noted the use of that wording included in the resolutions would be covered under a general liability policy. He further noted the insurance funding was the source of the settlement.

Mr. McGlennon thanked Mr. Roberts. Mr. McGlennon then read the clause in the resolution which addressed the question and it stated “WHEREAS, the Board of Supervisors is of the opinion that the negligent acts of the Appellant resulted in a violation of the County Code.”

Mr. Bean noted the use of unintentional versus negligent was a more appropriate term.

Mr. McGlennon noted his review of the materials concerning this case. He referenced the opinion of the Board of Supervisors and noted his opinion was this was not an accident. Mr. McGlennon further noted questions regarding the acquisition of permits for this particular type of job.

Ms. Parman asked the Board to pass the resolutions with the current language of negligent. She noted those were different uses and the use of unintentional acts was not cited in the County Code, but negligent acts was cited.

Mr. McGlennon sought a motion to adopt the four resolutions affirming the violations of the Erosion and Sediment Control and Stormwater Management Ordinances stemming from the negligent acts of Danny Patterson and R.A. Coleman. He noted the resolutions in the Agenda Packet were revised to correct the identification of the Article number in the County Code as referenced in the resolution from Article I to Article II.

Ms. Parman’s response was inaudible.

2. Authorization for Nine Full-Time Firefighter I-IV Positions

A motion to Approve was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Fire Chief Ryan Ashe addressed the Board noting the authorization for nine full-time firefighters. He noted the request was large and not taken lightly so he wanted to supply a data analysis overview regarding the request. He noted a 2017 discussion with the Board on staffing challenges, increased use for mutual aid with the City of Williamsburg, and response times in some areas that prompted discussion on Fire Station 6. Chief Ashe further noted ensuing budgets allowed for a slow transition to increase staff for Fire Station 6. He stated 12 of 18 positions had been filled by Spring 2020, but the Station 6 project was put on hold. Chief Ashe noted he and Mr. Stevens discussed using those positions to address some initiatives in the Strategic Plan, which included shifting some stress from the City of Williamsburg in supporting the County’s Fire Department. Chief Ashe highlighted operational staffing in a PowerPoint presentation. He noted the minimum daily operational need was 32 staff members. Chief Ashe further noted full staffing required 37 as he highlighted leave time and other factors. He continued the PowerPoint presentation highlighting data analysis on both sick and vacation leave from Fiscal Year (FY) 2017 to present and how it impacted staffing. Chief Ashe noted further analysis detailed reasons for unavailable staff, such as training, etc., during that same time span. He further noted the recruit training timeline was approximately nine months which started at the time of a vacancy through actually working at a fire station. Chief Ashe stated the nine proposed positions were not a new addition, but allowed for maintenance and sustainability of current staffing levels. He noted the average vacancy rate was 2.85%. Chief Ashe continued the PowerPoint presentation highlighting budgeted positions versus available to work during the FY2017-present timeframe. He noted the 24-hour shift breakdown per the three shifts with staffing deficits which resulted in overtime needed. Chief Ashe further noted overtime was not just a budget item, but a generational work-life balance item also. He added if a firefighter worked a 24-hour shift on both Tuesday and Thursday, but had overtime or mandatory overtime on Wednesday, then that firefighter would be at the

station for 72 hours without going home. Chief Ashe noted a mandatory overtime system had been implemented in June 2021 to ensure coverage. He further noted analysis of injuries due to fatigue and other factors was being reviewed. Chief Ashe stated staff overtime was also required for certifications, professional development, support to the regional fire academy instruction, and other factors. He continued the PowerPoint presentation highlighting \$1.2 million was spent on overtime in FY2017 with a decrease to approximately \$600,000 annually from FY2018-2020. Chief Ashe noted the increase in overtime currently, with the difference being funded with General Fund savings. He further noted the overtime budget for the current year was exceeded. Chief Ashe noted change was needed, which included shifting the green line in the chart or removal of a service unit. He further noted the need to respond to James City County calls and that would shift service back to the City of Williamsburg. Chief Ashe noted the overlay graph which highlighted cost, available staff, overtime, and other factors during the same timeline. He further noted the correlation between the drop in overtime with extra staff and the increase in overtime when extra staff was used for daily fire apparatus and other needs. Chief Ashe noted the request for the nine positions was to offset the average unavailable number. He further noted overtime would not be completely eliminated, but this request was to have overtime be more manageable. Chief Ashe continued the presentation highlighting the two options, adding he felt the overtime option was not a long-term sustainable option. He noted the cost of overtime in comparison to benefits for nine additional firefighters and discussion with Human Resources and Financial and Management Services on those points. Chief Ashe further noted the funding for nine positions in relation to the vacancy rate.

Mr. Icenhour noted the last slide was very informative. He referenced the analogy to the airline industry with staffing and overtime. He noted the limitations on staff and the amount of overtime. Mr. Icenhour noted the importance of proper staffing to avoid employee burnout. He further noted he was in complete support of Chief Ashe's request.

Chief Ashe noted he had discussed with Mr. Stevens and Mr. Brad Rinehimer, Assistant County Administrator, that payment would either come from the overtime account or the salary account. He stated the numbers represented in the presentation were annual. Chief Ashe noted the monetary amount referenced in the memorandum and resolution were based on the hire of five people in February with the remaining four to be hired in April.

Mr. Hipple asked about the cost of an additional staff member with a savings of approximately \$100,000.

Chief Ashe responded the calculations were based on groups of three to parallel the three shifts. He noted the data analysis supported nine, but not 12 positions.

Mr. Hipple noted the savings. He further noted the 10th person would assist with vacancies, sick leave, and other situations. Mr. Hipple noted his support of the nine requested positions, adding he would also support 10 positions. He further noted keeping staff from being overworked.

Mr. Icenhour noted overtime was one thing, but mandatory overtime was something that needed to be addressed.

Ms. Sadler noted her agreement with Mr. Icenhour and Mr. Hipple and thanked Chief Ashe for all the department's work. She further noted her support of the positions to ensure continued support to the community.

Ms. Larson thanked Chief Ashe for the data. She noted Chief Ashe's reference to the leave policy in place since the 1980s. Ms. Larson asked if the policy had been reevaluated.

Chief Ashe noted yes. He further noted the policy was based on coverage with four fire

stations though the County now had a fifth station. Chief Ashe explained there was inadequate coverage for vacation leave based on the four stations.

Ms. Larson noted she was referring to decreasing the number.

Chief Ashe replied yes, adding sometimes leave was restricted. He noted time off and mandatory overtime and maintaining a balance.

Ms. Larson referenced the \$70,000 for salary and benefits per position. She asked how that amount compared with neighboring localities. Ms. Larson noted the cost of training and if staff was going to other areas for more pay. She further noted a greater budget impact as employees remained working longer for the County. Ms. Larson stated she felt the request for the positions was justified, but she was curious if the County was paying enough or were people going elsewhere.

Chief Ashe noted Mr. Stevens had addressed County salaries with the Board. He further noted some neighboring localities paid less than James City County while others paid more. Chief Ashe added that point was always being evaluated. He noted during 2016-2017, the Career Ladder and Advanced Life Support which paid intermediates and paramedics, was well below the County's partners. Chief Ashe further noted addressing those points. He added the continuation of losing staff, but in terms of career changes. Chief Ashe noted the career changes were not money-based as previously, but schedule-based with Monday-Friday, 8 a.m.-4 p.m. work shifts to address family changes.

Mr. Stevens noted further discussion on salaries with the Board at its annual retreat. He further noted Police Chief Eric Peterson had discussed salaries, adding of 19 agencies, James City County ranked third from the bottom when graduates came out of the academy. Mr. Stevens noted the difficulty in hiring Convenience Center attendants with the County paying \$12 per hour and the City of Williamsburg paying \$15 per hour. He further noted vacancies with the Planning staff, adding wages were not competitive. Mr. Stevens added that could be market-driven, but it was challenging for many County departments.

Ms. Larson thanked Mr. Stevens.

Mr. McGlennon thanked Chief Ashe for the valuable data provided in the presentation. He referenced Mr. Stevens' comments on retention of qualified staff. Mr. McGlennon noted the outstanding staff in public service.

Chief Ashe noted the County was fortunate to have its dedicated staff. He further noted this request was an important step in helping to achieve a work-life balance.

Mr. McGlennon acknowledged the need for people to recognize that balance and the aspect of personal mental health and work.

Ms. Larson cited a recent personal situation that involved Fire Station 3 and a family member. She noted the level of professionalism and compassion and was appreciative. Ms. Larson added she knew staff handled calls in that manner on a regular basis, but she was very thankful.

Chief Ashe thanked Ms. Larson.

3. Ordinance to amend James City County Code section 20-45 to allow the Commissioner of the Revenue to assess a penalty for late returns (Action deferred at Nov. 9, 2021 Regular Meeting)

This item was moved to Public Hearings as Item No. 3 with an earlier Agenda amendment vote.

I. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour noted he had nothing to report.

Mr. Hipple noted discussion on black lights which were LED lights. He requested the Planning Commission look into the lights based on the specifics of that style. Mr. Hipple noted half of the Chesapeake Bay Bridge Tunnel had these black lights. He further noted the design did not cast out extra light. Mr. Hipple noted the possibility of these lights being addressed in County Ordinances. He further noted the cost difference between the LED and traditional lights was minimal in addition to energy saving features. Mr. Hipple noted the Commonwealth Transportation Board (CTB) had a meeting today. He further noted CBT's consideration of a P-3 tolling along Interstate 64 (I-64) to build the remainder of the interstate project. Mr. Hipple noted the funding and projected timeline, adding he was not in favor. Mr. Hipple further noted the P-3 would run from Interstate 295 (I-295) to the James City County line at Lightfoot with a gap from Lightfoot to Jefferson Avenue. He noted taxpayer money which supported Hampton Roads Transportation Accountability Committee (HRTAC) and funding for the roads and expressed concern that citizens would be taxed again with the P-3 toll. Mr. Hipple further noted long-term concerns with the proposal and possibility of the P-3 toll.

Ms. Larson noted she had heard the route was Interstate 95 to Exit 234 (I-64) with a separate turnpike.

Mr. Hipple noted it would add to the existing interstate to make it three lanes.

Ms. Larson asked about the toll.

Mr. Hipple noted two additional running lanes which would be tolled.

Ms. Larson asked if those lanes would be attached to the existing highway.

Mr. Hipple noted it would match what was currently on I-64 and run up to 295. He further noted if traffic became congested, a toll could be paid to bypass the congestion. Mr. Hipple stated two lanes would still be free, but the third lane would be tolled though the specifics were not known yet.

Ms. Larson noted I-895 drivers were tolled both ways with tolls for use of the interstate and when exiting the interstate.

Mr. Hipple noted he wanted to make the Board aware of the toll possibility. He further noted HRTAC could only use its funding for new roads. Mr. Hipple added he was not in favor of the proposal but would keep the Board informed as more information was available.

Mr. McGlennon asked Mr. Hipple to keep the Board informed, particularly if the Board needed to become involved on the matter. He noted Mr. Sheppard Miller, CTB Chairperson, was from the Hampton Roads area and familiar with the area transportation issues and work.

Mr. Hipple noted Mr. Miller's partnership had been very helpful. He further noted Mr. McGlennon's involvement with the Hampton Roads Transportation Planning Organization (HRTPO) and the Hampton Roads Planning District Commission (HRPDC) would be helpful also.

Ms. Larson referenced the recent weather delay and the traffic impact. She noted the need for

underground power lines in the local area. Ms. Larson expressed her frustration with power outages in modern times, particularly as the recent storm was not huge with excessive snow totals.

Ms. Sadler asked Mr. Stevens for an update on the Toano convenience center. She noted she had received several citizen emails.

Mr. Stevens noted the County operated three convenience centers with locations at Tewning Road, Jolly Pond Road, and Toano. He further noted the temporary closing of the Toano site with reduced hours at the Tewning Road site due to staffing issues. Mr. Stevens stated the Solid Waste Division which oversees the operations of these sites has nine positions of which four are full-time and five are part-time. He noted there are currently four vacant positions, one out sick, and one under quarantine as of today which left only three staff members. Mr. Stevens further noted this had been the case for several months. He noted the Buildings and Grounds Division in General Services had been considered for staffing, but seven of those 30 positions were vacant causing staff issues there also. Mr. Stevens noted Parks and Recreation staff had previously assisted, but that division was currently having similar staffing vacancies. He further noted the inconvenience to County residents. Mr. Stevens noted reviewing other options, adding a recent hire as well as a job offer being made later in the week. He further noted discussion of temporary closing Tewning Road several days a week while reopening Toano several days a week. Mr. Stevens added the logistics of moving equipment and staffing were factors for consideration. He noted the goal was to reopen the site in the next several weeks.

Ms. Sadler noted communication from residents asking for temporary signage on Richmond Road to list the operating hours. She asked Mr. Stevens about the possibility of the signage.

Mr. Stevens noted signage at the convenience center itself could be addressed as well as options. He further noted the signage was a good suggestion.

Ms. Sadler thanked Mr. Stevens.

Mr. McGlennon echoed Mr. Stevens' earlier comment about the surge in COVID-19 cases. He encouraged the community to get vaccinated, wear masks, and follow the safety protocols. Mr. McGlennon thanked the video team for its compilation of Betty White performances from the public domain in honor of her 100th birthday. Mr. McGlennon noted a local resident, Mr. Bert Aaron, who had passed away just shy of his 100th birthday. He further noted the accolades of Mr. Aaron and his service to the community. Mr. McGlennon extended his sympathy to Mr. Aaron's family.

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Stevens noted the high level of COVID-19 cases within the County's workforce and the community. He reiterated the safety protocols. Mr. Stevens requested patience from County residents regarding normal service deliveries impacted with staffing shortages that were pre-pandemic and have worsened in some areas for the County. He noted the continuation of emergency services, but other delivery areas such as building inspections, Parks and Recreation, and convenience center sites may be slower or less frequent. Mr. Stevens noted news from the local hospital system regarding the current variant and vaccinations. He further noted maintaining patience and vigilance in protecting against the virus, adding consideration of the vaccine and/or booster.

K. CLOSED SESSION

Mr. McGlennon noted the personnel consideration was for the Planning Commission and

Thomas Nelson Community College.

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 and pertaining to the Planning Commission

A motion to Enter a Closed Session was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

At approximately 7:50 p.m., the Board of Supervisors entered a Closed Session.

At approximately 7:54 p.m., the Board re-entered Open Session.

A motion to Certify the Board only spoke about those matters indicated that it would speak about in Closed Session was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. McGlennon sought a motion for nomination for the at-large position on the Planning Commission.

A motion to Nominate Mr. John Halderman for that position was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. McGlennon sought a motion for the appointment to the Thomas Nelson Community College Board.

A motion to Nominate Joe Fuentes was made by James Icenhour, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Ms. Larson noted Mr. Fuentes' appointment was for the seat previously occupied by Ms. Mary Ann Maimone prior to her death. She further noted her appreciation of Ms. Maimone's service to that Board and to her family for that service also.

L. ADJOURNMENT

1. Adjourn until 1 p.m. on January 25, 2022

A motion to Adjourn was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

At approximately 7:56 p.m., Mr. McGlennon adjourned the Board of Supervisors.


Deputy Clerk