

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF JANUARY 2008, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
James G. Kennedy, Vice Chairman, Stonehouse District
James O. Icenhour, Jr., Powhatan District
John J. McGlennon, Jamestown District
Mary Jones, Berkeley District

Sanford B. Wanner, County Administrator
Leo P. Rogers, County Attorney

B. MOMENT OF SILENCE

Mr. Goodson requested the Board and citizens observe a moment of silence.

C. PLEDGE OF ALLEGIANCE - Jeffrey Meekins, a sixth-grade student at James Blair Middle School and Ja'Quan Meekins, a fourth-grade student at D.J. Montague Elementary School led the Board and citizens in the Pledge of Allegiance.

D. HIGHWAY MATTERS

Mr. Jim Brewer, Virginia Department of Transportation (VDOT) Residency Administrator, noted pothole patching in the County.

Ms. Jones asked about patchwork in Westray Downs and stated she would follow up with more specific information. She also asked about the status of resurfacing in Westray Downs.

Mr. Brewer stated he could send the schedule for resurfacing to Ms. Jones.

Mr. McGlennon asked if funding was available.

Mr. Brewer stated the same amount of funding was available as the previous year.

F. PUBLIC COMMENT

1. Mr. Leonard Sazaki, 3927 Ironbound Road, commented on the County's potential airport purchase and devolution of the secondary road system; Route 60 relocation project funding; Williamsburg Area Destination Marketing Committee funding; additional employment positions; and fiscal responsibility of the Board.

2. Mr. Christopher Elmers, 144 Racefield Drive, protested stormwater management fee collections. He requested the stormwater management fee only apply to properties within the Primary Service Area (PSA).

3. Mr. Ed Oyer, 139 Indian Circle, commented on citizen disapproval of the Hampton Roads Transportation Authority; tax revenues from commercial real estate; fiscal priorities of the County; and indexing taxes.

G. CONSENT CALENDAR

Ms. Jones asked to highlight Item No. 3. She noted that the funds were a contribution by Prime Outlets for restoration of the Chisel Run tributary to Powhatan Creek.

Mr. McGlennon made a motion to adopt the items with an amendment to the minutes of the January 2, 2008, Organizational meeting.

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

1. Minutes –

- a. December 11, 2007, Regular Meeting
- b. January 2, 2008, Organizational Meeting
- c. January 8, 2008, Regular Meeting

2. Award of Contract – Human Services Center Standby Power Generator

RESOLUTION

AWARD OF CONTRACT – HUMAN SERVICES CENTER STANDBY POWER GENERATOR

WHEREAS, competitive proposal requests were advertised and received for the design and installation of a Standby Power Generator at the Human Services Center; and

WHEREAS, three proposals were received and evaluated with the preferred proposer being Hitt Electric Corporation; and

WHEREAS, staff believes that the scope of services and fees as proposed are appropriate for the work to be performed; and

WHEREAS, previously authorized Capital Improvements Program (CIP) budgeted funds are available to fund this contract.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator or his designee to execute the necessary contract documents for furnishing and installing a Standby Power Generation System at the Human Services Center for \$106,911.

3. Budget Appropriation – Prime Retail LLP Funds - \$200,000

RESOLUTION

BUDGET APPROPRIATION – PRIME RETAIL LLP FUNDS - \$200,000

WHEREAS, the Board of Supervisors of James City County has been requested to approve the appropriation of funds from Prime Retail LLP Company to the Stormwater Capital Projects Account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Stormwater Capital Projects Account:

Revenue:

Proffers \$200,000

Expenditure:

Stormwater Capital Projects \$200,000

4. Virginia Peninsulas Public Service Authority (VPPSA) Board of Directors Alternate Designee

RESOLUTION

VIRGINIA PENINSULAS PUBLIC SERVICE AUTHORITY ALTERNATE DESIGNEE

WHEREAS, the bylaws of the Virginia Peninsulas Public Service Authority (VPPSA) authorize each Governmental Member to appoint by resolution a designee of the Member jurisdictions to cast a vote.

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby appoint John Horne as its VPPSA Board of Directors alternate designee.

5. Rescue Squad Assistance Fund Grant Award - \$28,612

RESOLUTION

RESCUE SQUAD ASSISTANCE FUND GRANT AWARD - \$28,612

WHEREAS, the Virginia Department of Health-Office of Emergency Medical Services (VDH-OEMS) has awarded the James City County Fire Department a Rescue Squad Assistance Fund (RSAF) grant in the amount of \$28,612; and

WHEREAS, the grant requires a local match of \$14,306 and the funds are available in the County’s Grant Match Account; and

WHEREAS, the funds will be used to purchase training equipment upgrades, climate control drug boxes, replacement safety vests, and replacement safety cones.

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

Revenues:

RSAF – Training/Safety Equipment	\$14,306
James City County Grant Match Account	<u>14,306</u>
Total	<u>\$28,612</u>

Expenditure:

RSAF – Training/Safety Equipment	<u>\$28,612</u>
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I. BOARD CONSIDERATION

1. Case No. SUP-34-2007. Hill Family Subdivision

Mr. Luke Vinciguerra, Planner, stated Mr. James Hill has applied for a Special Use Permit (SUP) for a subdivision of his property resulting in a parcel of less than three acres in size. The parcel would be created for residential use by a member of the owner’s immediate family. The property is located at 100 Skillman Drive, further identified as Tax Map/Parcel No. 0430400001 with the proposed lot consisting of 1.1 acres and the remaining parent lot consisting of 8.923 acres. The property is zoned A-1, General Agricultural and is designated as Rural Lands by the Comprehensive Plan. The property is located outside the PSA

Staff found the proposal to be consistent with the surrounding zoning and development and Section 19-17 of the James City County Subdivision Ordinance.

Staff recommended approval of the application.

Mr. McGlennon stated appreciation for the work of staff to prohibit further subdivision and thanked Mr. Hill for his cooperation.

Mr. Kennedy made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-0034-2007. HILL FAMILY SUBDIVISION

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 (SUP) process; and

WHEREAS, the applicants have requested an SUP to allow for a family subdivision in an A-1, General Agricultural District, located at 100 Skillman Drive, further identified as Parcel No. 0430400001 on James City County Real Estate Tax Map; and

WHEREAS, a public hearing was advertised, adjoining property owners notified and a hearing was held on Case SUP-0034-2007; and

WHEREAS, the Board of Supervisors, following a public hearing are of the opinion that the SUP to allow for the above-mentioned family subdivision should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 0034-2007 as described herein with the following conditions:

1. This special use permit is valid for a family subdivision for the creation of one new lot of 1.1 acres or larger with one parent lot of approximately 8.923 acres remaining, generally as shown on the preliminary subdivision plat submitted with this application.
2. Final subdivision approval must be received from the County within twelve months from the issuance of this special use permit or the permit shall become void.
3. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

H. PUBLIC HEARING

Mr. Goodson noted the presence of Mr. Jack Fraley on behalf of the Planning Commission.

1. Case No. Z-0004-2007/MP-0004-2007. Stonehouse Amendment

Ms. Ellen Cook, Planner, stated that David Guy has applied, on behalf of GS Stonehouse Green Land Sub, LLC, for an amendment of the master plan and proffers to change land use designations within the development; make revisions to the approved proffers related to traffic improvements, environmental protections, and other matters; incorporate Tax Parcel Nos. 0630100001, 1310100008A, 1310100019, all currently zoned A-1, General Agricultural, into the Planned Unit Development (PUD-R and/or PUD-C) Zoning District; and adjust the boundary line between PUD-Commercial and PUD Residential. The properties are located at 3820 Rochambeau Drive, also known as Tax Parcel No.: 1310100008A; 170 Sand Hill Road, also known as Tax Parcel Nos.: 1310100019; 3900, 3600 Mt. Laurel Road, also known as Tax Parcel Nos. 1310100022, 130100021; 9100, 9150, 9250, 9300, 4051, 9400, 9650, 9700, 9750, 9800, 9801, 9751, 9601, 9501, 9404, 9451, 9301, 9251, 9475, 9101, 9455, 9770 Six Mount Zion Road, also known as Tax Parcel Nos.:0540100013, 0540100012, 0540100011, 0540100009, 0630100003, 0540100010, 0630100001, 0630100003, 0630100002, 0610100002, 0610100001, 0630100002, 0540100009, 0540100008, 0540100007, 0540100006, 0540100005, 0540100004, 0540100014, 0540100002, 0530100021, 0640100001; 4100, 4130, 4150, 4170 Ware Creek Road, also known as Tax Parcel Nos.: 0630100004,0640100002, 1320100028, 1320100027; 9551, 9501, 9675, 10251 Sycamore Landing Road, also known as Tax Parcel Nos.: 0740100020

and 0740100022, 0740100029, 0740100021, 0710100001; 9020 Westmont Drive, also known as Tax Parcel Nos.: 1210100048; 9225, 9300, 9354, 9235, 9360, 9370, 9354, 9415, 9423, 9431, 9451 Fieldstone Parkway, also known as Tax Parcel Nos.: 0440100028, 0440100027, 0440100025, 0440100029, 0440100030, 0530100009, 0440100025, 0530100025, 0530100024, 0530100023, 0530100022; 9400, 9760, 3029 Mill Pond Run, also known as Tax Parcel Nos.: 0440100025A, 0530100010, 0530100020; and unaddressed parcels which are Tax Map Nos. 1210100047, and 0440100026. The parcels consist of approximately 4,537 acres which are zoned PUD, Planned Unit Development, A-1, General Agricultural, and are proposed to be zoned PUD, Planned Unit Development. The parcels are designated by the Comprehensive Plan for Mixed Use (Majority), Conservation Area, Rural Lands, and Low-Density Residential development. The properties are located within the PSA.

Staff found the proposed amendments generally consistent with the Comprehensive Plan and with surrounding development.

At its December 5, 2007, meeting, the Planning Commission recommended approval by a 6-1 vote.

Staff recommended approval of the application.

Mr. Icenhour asked about the remaining number of units and verified that there was a mixed variety of housing.

Ms. Cook stated this was correct.

Mr. Icenhour asked if the original plan only proffered land to be offered for schools.

Ms. Cook stated this was correct.

Mr. Icenhour asked if the remaining property, other than the parcel to contain the schools was substantially different.

Ms. Cook stated this was correct.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon Geddy, III, on behalf of the applicant, gave a brief overview of the companies behind the Stonehouse development and the requested zoning amendment. He highlighted the flexibility provided, marketability of the nonresidential areas, and transportation improvement proffer updates. He noted the developer's community relations and feedback received. Mr. Geddy described the new Master Plan and noted recreation areas, commercial development areas, and buffers. Mr. Geddy requested approval of the application.

2. Mr. Bob Spencer, on behalf of Stonehouse Homeowners Association, stated his organization and the developer had been in discussion about the application and they felt it was an asset to the community.

3. Mr. Mark Rinaldi, Chair of the Economic Development Authority (EDA), stated members of the EDA met with the developer on two occasions, and discussions were held with the other EDA Directors. He stated the process with the staff and applicant was collaborative. He stated support for the application that

has incorporated the key issues raised by the EDA. He then, speaking on behalf of a member of the Sycamore Landing community, stated concerns of the neighborhood, and that the developer's staff accommodated their requests.

4. Sarah Kadec, 3504 Hunters Ridge, on behalf of the James City County Citizen's Coalition, (J4Cs) stated that the process of this application was too slow. She stated the current proposal is superior to the previous proposal in environmental aspects. She requested approval on behalf of the J4Cs membership.

5. Ms. Colleen Lynch, 9409 Ashlock Court, on behalf of the Stonehouse Glen subdivision, requested approval and noted that the applicant has worked with the neighboring community.

6. Mr. Ed Oyer, 139 Indian Circle, stated the development would put a significant strain on water levels for the County. He suggested that the developer designate some property for a desalination plant on the York River.

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

Mr. Kennedy asked Mr. Rogers about the issue regarding when cash proffers were collected by the County.

Mr. Rogers stated there was a proposal by the applicant at the time of subdivision site plan approval unless the County adopts a comprehensive cash proffer policy to adopt at a later date.

Mr. Goodson asked if the proffer would change if a new policy relating to the timing of proffer collection was adopted by the Board after this item was adopted.

Mr. Rogers stated it would be an amendment to proffer 8-f to collect proffers at the time of subdivision site plan approval. He stated that if it was established to be at a later time in the process by the County policy, the collection would take place at the later time.

Mr. Goodson stated that there was a bill in the General Assembly related to impact fees to be collected at issuance of a building permit.

Mr. Rogers stated that impact fees and cash proffers were collected differently.

Mr. Goodson stated the proffer policy could change and affect that proffer.

Mr. Rogers stated that was correct.

Mr. McGlennon stated that what was proposed was consistent with the past proffer policy.

Mr. Rogers stated this was correct, and what was proffered was what the County has historically done.

Mr. Icenhour noted that the policy change would affect everyone. He said it was a substantial improvement.

Mr. McGlennon stated there was a disincentive to change the policy in the future.

Ms. Jones stated the proffer was specifically a payment at permit during the Planning Commission evaluation. She asked whether the payment time was a policy or a practice.

Mr. Rogers stated that the practice is a policy. He stated it has been the policy and practice to seek proffers at the time of subdivision and site plan approval.

Mr. McGlennon stated there was a significant cash proffer of approximately \$10 million, but the value of the development is roughly \$2 billion.

Mr. Goodson stated there would be many jobs being created.

Mr. McGlennon stated the taxpayers would still be paying a good portion of the cost for the school children generated.

Mr. Icenhour stated there would be roughly 650 students, equating to roughly \$40-\$50 million in expenses.

Mr. Goodson stated no school children were generated.

Mr. Icenhour stated the school children were projected with the original application.

Mr. McGlennon thanked staff and the developer for this project and noted that there were no additional units proposed with more improvements. He noted that there was a significant proffer of \$1,000 toward affordable housing per unit, and roughly 125 homes that would be sold at a lower cost. He stated that the environmental, educational and recreational components, and the approach that were taken was worth support.

Mr. Kennedy thanked staff for its work and stated that this application was a superior project. He stated his support and made a motion to approve the application.

Mr. Icenhour stated there was an outstanding level of community support and involvement.

Mr. Kennedy stated he would like to approve the proffers as amended.

Mr. Goodson stated he supported the case and though he did not agree with the cash proffer policy, he appreciated the efforts of the developer to meet the policy.

Ms. Jones stated the applicant has set a high standard to help address many concerns of the community. She stated her support.

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

RESOLUTION

CASE NO. Z-0004-2007/MP-0004/2007. STONEHOUSE AMENDMENT

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, 1950, as amended, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. Z-0004-2007/MP-

0004-2007, with Master Plan, for rezoning approximately 4,537 acres from Planned Unit Development, with proffers, to Planned Unit Development, with amended proffers, and from A-1, General Agricultural, to Planned Unit Development, with proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on December 5, 2007, recommended approval by a vote of 6 to 1; and

WHEREAS, the Board acknowledges that the traffic proffers contained in the previous Stonehouse Amended and Restated Proffer Set (dated August 6, 1999) shall be considered satisfied and superseded by the adoption of the traffic proffers associated with this application (dated January 15, 2008), as provided for by Proffer 3(i) in the 1999 Proffer set; and

WHEREAS, the properties are located at the following James City County Real Estate Tax Map Nos. and addresses:

1. 3820 Rochambeau Drive, also known as Tax Parcel No.: 1310100008A.
2. 170 Sand Hill Road, also known as Tax Parcel No.: 1310100019.
3. 3900, 3600 Mt. Laurel Road, also known as Tax Parcel Nos.: 1310100022, 130100021.
4. 9100, 9150, 9250, 9300, 4051, 9400, 9650, 9700, 9750, 9800, 9801, 9751, 9601, 9501, 9404, 9451, 9301, 9251, 9475, 9101, 9455, 9770 Six Mount Zion Road, also known as Tax Parcel Nos.: 0540100013, 0540100012, 0540100011, 0540100009, 0630100003, 0540100010, 0630100001, 0630100003, 0630100002, 0610100002, 0610100001, 0630100002, 0540100009, 0540100008, 0540100007, 0540100006, 0540100005, 0540100004, 0540100014, 0540100002, 0530100021, 0640100001.
5. 4100, 4130, 4150, 4170 Ware Creek Road, also known as Tax Parcel Nos.: 0630100004, 0640100002, 1320100028, 1320100027.
6. 9551, 9501, 9675, 10251 Sycamore Landing Road, also known as Tax Parcel Nos.: 0740100020 and 0740100022, 0740100029, 0740100021, 0710100001.
7. 9020 Westmont Drive, also known as Tax Parcel No.: 1210100048.
8. 9225, 9300, 9354, 9235, 9360, 9370, 9354, 9415, 9423, 9431, 9451 Fieldstone Parkway, also known as Tax Parcel Nos.: 0440100028, 0440100027, 0440100025, 0440100029, 0440100030, 0530100009, 0440100025, 0530100025, 0530100024, 0530100023, 0530100022.
9. 9400, 9760, 3029 Mill Pond Run, also known as Tax Parcel Nos.: 0440100025A, 0530100010, 0530100020.
10. Unaddressed parcels which are Tax Map Nos.: 1210100047, 0440100026.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, following a public hearing, does hereby approve Case No. Z-0004-2007/MP-0004-2007 and accept the voluntary proffers.

J. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on water being a national concern and gas taxes rising.
2. Mr. Christopher Elmers, 144 Racefield Drive, commented on stormwater management fees, the Toano Convenience Center, and County garbage collection.

Mr. Goodson noted that there was an optional County garbage collection program being considered and the convenience centers would remain open.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated the Board should recess for a meeting of the James City Service Authority (JCSA), and then the Board would need to have a Closed Session meeting for 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, specifically for appointments to the Planning Commission and the Community Participation Team (CPT); consideration of two acquisitions of parcels of property for public use pursuant to Section 2.2-3711(A)(3) of the Code of Virginia; and consideration of a Personnel Matter Involving the Six-Month Performance Evaluation of the County Administrator, Pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. He stated that when the Board completed its business, it should recess to February 7, 2008, at 9:00 a.m. at the Government Complex for VML/VACo Legislative Day in Richmond. He stated the Governor would be speaking and then the Board would have an opportunity to speak with the County's State legislators. He noted that the item leftover from the work session would be discussed during Board Requests and Directives.

L. BOARD REQUESTS AND DIRECTIVES

Mr. Goodson stated that if there was a desire of the Board to have a resolution for the General Assembly regarding the Hampton Roads Transportation Authority, he requested that the discussion be held on February 26, 2008.

Ms. Jones stated that the budget next year would be for stormwater management projects to be funded in the General Fund.

Mr. McGlennon stated that seemed to be a majority opinion, but the County Administrator would present an optional budget.

Ms. Jones asked the timeline for this information.

Mr. Wanner stated it would be available by the end of March.

Ms. Jones stated her concern for the stormwater utility continuing in the wrong direction.

Mr. McGlennon stated the credit program would apply only to the current year, and the credit program was built into the budget for this year.

Ms. Jones stated she would like to give direction for next year's budget.

Mr. Goodson stated the guidance was clear.

Mr. Wanner stated he was directed to show the impact of funding stormwater management in the General Fund.

Mr. McGlennon stated it would be difficult to fund such a large expenditure with an already strained budget.

Ms. Jones stated schools compete for funding from the General Fund, and stormwater management should be considered similarly as a very important program.

Mr. Goodson stated the last item on the work session was regarding Section 24-283 and announced that the Board would hold the discussion for that item during Board Requests and Directives.

Mr. McGlennon requested to move forward with the JCSA meeting to allow citizens to speak to the public hearings.

At 8:26 p.m. Mr. Goodson recessed the Board.

At 8:48 p.m., Mr. Goodson reconvened the Board of Supervisors to hold the scheduled work session discussion relating to the Zoning Ordinance amendment for Section 24-283.

Mr. Rogers stated there were two memorandums provided, one with a legal opinion and the other with interpretation by the Deputy Zoning Administrator. He stated there are zoning designations that did not previously exist, and staff looks toward who owns the property. He stated the developer can be put into control over the same homeowners association and staff would accept the application. He stated this is just the property owner's right to request a rezoning and there could be restrictions set in place. He stated there was discussion about whether staff should or should not have accepted the application. He stated the County is allowed to accept it, acting within previous history, but sometimes the ordinance can be changed to make things clearer. He stated that though the ordinance says control of 400 acres is required, it does not say when control must be held. He noted that the ordinance implies that this control must be held at the time of application, but this may not be clear. He stated that he looked at Section 24-283 and found that the way it was being construed was not how staff applied it. He said staff then made it more consistent in an initiating resolution requesting a zoning ordinance amendment. He noted that it was good zoning practice to give clarity over a period of time. He stated that it gives the Board time to see what staff is doing and evaluate it. He stated there were many public improvements required of an R-4 community and that the homeowners association was established prior to that time. Mr. Rogers stated that a sliding scale of ownership or control is difficult to define and problematic. He noted that there has been sentiment to have involvement of the homeowners association. He said that the issue was the ability to apply and the need to have consent from another body to add land in a community. He stated that he was not aware of such a Code section.

Mr. McGlennon stated nothing prevents a property owner from applying for a rezoning outside the development.

Mr. Rogers stated this was correct, but R-4 requirements were stricter as other zoning designations, so it could apply to other zoning districts and it may or may not suit the needs of the community.

Mr. McGlennon asked if the additions to developments have historically provided consistent development with the rest of the community or if they had a significantly different purpose.

Mr. Rogers stated that the amendments have been integrated into the R-4 community by roads and other means, even though they may not be geographically connected. He noted that Greensprings also has many areas of separation, but was developed under the same master plan.

Mr. McGlennon asked if the nature of development of the addition was consistent with the existing community.

Mr. Porter stated this was correct and noted that Ford's Colony is an example of a community that has been expanded four times.

Mr. McGlennon stated the controversy was generated because the additions were quite different from the present development.

Mr. Porter stated that this was somewhat the case, but the nature of the new development was reasonable within a planned community.

Mr. McGlennon stated that this was not part of the original plan for the community.

Mr. Porter confirmed that this was correct.

Mr. McGlennon stated the initiating resolution was not specific to a particular case, but rather pertained to the language in the ordinance. He stated he agreed with Mr. Rogers on assigning the point of determination for when someone or some entity was no longer the owner.

Mr. Icenhour asked about the assertion that the County must accept the application. He asked if this was correct.

Mr. Rogers stated that in the past, staff has turned down applications that do not meet the prescribed criteria.

Mr. Icenhour stated his concern for property rights for the R-4 communities in the County. He stated when they start out, they are under developer control, and then with maturity they go under homeowner control. He asked how an instance would be handled if there were two separate applications to amend the master plan of a planned community from two entities that claimed ownership, such as the developer and the homeowners association.

Mr. Rogers noted that in the Code an application for rezoning only requires one owner. He stated there has not been an instance where the homeowners association has added property.

Mr. Icenhour stated it may occur in Ford's Colony as the homeowners association is putting the community management out to bid and the property is owned by the current owner. He stated that if the homeowners association had a different property management agent and did not have access to the property, it could choose to offer the property for sale contingent upon incorporating the property into the Ford's Colony master plan to maintain the facilities. He stated there was a possibility that the homeowners association may make an application in conflict with the developer's. He stated there should be a definition of transfer of ownership of property. He stated there were four amendments to the Ford's Colony master plan, but the units did not change and land was added internal to the boundaries. He stated there was a net decrease in density and an improvement of the property. He stated in the last case that the homeowners association's appointed Board interviewed the residents and requested approval. He stated that at this time the Board is not in agreement with the master plan change. He commented that the developer could possibly come back to a community maintained by a homeowners association and make changes that may not be embraced by the

homeowners. He stated that he would like to create an opportunity for the homeowners association to have input when there is conflict to protect homeowners' property rights and expressed a need to define the transfer of control of property.

Mr. Goodson stated the opinion of professional staff was provided, and staff requested a clarification of the language of the ordinance. He stated he supported the language change. He asked if there was any change in Mr. Rogers's opinion of the interpretation of the law.

Mr. Rogers stated there was no change in his opinion from the legal perspective. He stated there was a policy matter and asked for consideration of what changes may be made. He stated it was important to respond to and get feedback from the Board and the Policy Committee of the Planning Commission. He stated property values may be affected by the Board. He stated the issue was the application itself and whether or not it can be made. He stated the application to rezone does not generally affect property rights or property values. He said that homeowners may need to protect their rights by being heard by the Board. He stated he would like to make a distinction in ownership. He stated the homeowners association is established as a corporate entity which exists before the sale of the first lot. He stated he would like to see an established sliding scale of control. He stated that it would be difficult for staff to determine ownership and control upon receipt of an application. He stated in the case of rezonings, property owners and the homeowners association should be notified in order to be given an opportunity to protect their property rights. He stated the way that was developed meant they did not have to increase the cap. He stated it did not have to meet the original master plan concept. He said the question was whether or not the owner of the additional property should be able to apply and under what standard. He stated this gets resolved during the zoning process rather than the application process.

Mr. Goodson asked if any Board members would like to change the ordinance aside from clarifying the language. He stated he would like to clarify the language with the intent to maintain the current practice.

Mr. Icenhour stated staff should be given better direction from the Board.

Mr. Goodson stated that the Code provides the opportunity for a landowner to make an application.

Mr. Icenhour stated there was no sliding ownership and he felt it was clearly defined.

Mr. Kennedy stated Mr. Rogers has not had occasion to look further into this issue.

Mr. Icenhour stated he wanted to give an opportunity for public input. He stated that he had spoken to Mr. Rogers and he was willing to speak to people about the issue.

Mr. Kennedy noted that he understood there were bids out for a new property manager.

Mr. Icenhour stated this has been ongoing and the issue at hand was the definition of ownership.

Mr. Kennedy stated this was a foundation ordinance for all R-4 communities.

Mr. Icenhour stated the residents of Ford's Colony looked at the Code and the issue of ownership was clear. He stated there was only confusion due to interpretation of the Code.

Mr. Goodson stated that staff can give a ruling on this item to maintain the current interpretation or the ordinance can be changed.

Mr. McGlennon stated both avenues can be taken. He stated he would like to consider an ordinance to clarify this issue.

Mr. Icenhour stated staff could come forward at the next work session to follow up on this matter.

Mr. Goodson stated he felt the traditional interpretation was appropriate.

Mr. McGlennon stated discussion of ownership is more complicated than the Board has considered in the past.

Ms. Jones stated the item should go through a public process.

Mr. Icenhour stated this was a separate issue.

Mr. Goodson asked if the Board would like to clarify the language.

Mr. Kennedy stated he appreciated the concern, but he did not want to go back through past applications to do this.

Mr. Rogers stated he felt the Ford's Colony application was too far into the process to make an ordinance change that would affect that case. He stated the Board can do it for other generations of developments. He stated that staff can create a different ordinance and clarify or change it, if it is the pleasure of the Board.

Mr. Kennedy stated he would like to clean up the language of the resolution and revisit the matter at a later date if necessary.

Mr. Icenhour stated there should be a decision soon.

Mr. Kennedy stated his support for changing the language.

Mr. Goodson asked if a new initiating resolution was necessary.

Mr. Rogers stated the Board could pass the resolution from October 23, 2007. He stated this normally happens at the Planning Commission level, but the Board can do this to notify the citizens of the change. He stated the resolution just allows evaluation of the Code.

Mr. Icenhour asked if the ordinance revision would then come back before the Board.

Mr. Porter stated it would come from the Planning Commission with a recommendation.

Mr. Rogers stated it may go to the Policy Committee.

Mr. Goodson stated he felt the process should move forward.

Mr. Kennedy made a motion to approve the initiating resolution from October 23, 2007.

Mr. Porter noted the attendance of Mr. Reese Peck of the Planning Commission.

Mr. Wanner stated the motion was for the resolution of October 23, 2007.

Mr. Goodson stated the resolution was posted online for the public.

Mr. Rogers stated the resolution before the Board in October initiated a broad assessment of the R-4 Planned Community designation in the zoning ordinance. He stated the resolution in November initiated examination of the definition of R-4 zoning. He stated his opinion was that revising only the definition would not solve the problem.

Mr. McGlennon made a request to consider the initiating resolution at the next regular Board meeting in order to make the document available to the public and be able to view the language.

Mr. Goodson requested a motion to recess into Closed Session.

Mr. McGlennon made a motion to recess into Closed Session after a break.

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

M. CLOSED SESSION

At 9:28 p.m., Mr. McGlennon made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a Personnel Matter, the appointment of individuals to County boards and/or commissions, specifically the Planning Commission and the Community Participation Team (CPT); and Section 2.2-3711(A)(3) of the Code of Virginia for the consideration of two acquisitions of parcels of property for public use.

At 10:26 p.m. Mr. Goodson reconvened the Board into Open Session.

Mr. Kennedy made a motion to adopt the Closed Session resolution.

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,

hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1), to consider a Personnel Matter Involving the Six-Month Performance Evaluation of the County Administrator.

Mr. Kennedy made a motion to appoint Marilyn Taylor to the Community Participation Team.

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

Ms. Jones made a motion to reappoint Jack Fraley to a four-year term on the Planning Commission set to expire on January 31, 2012.

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

Mr. McGlennon made a motion to appoint Joe Poole, III to a four-year term on the Planning Commission set to expire on January 31, 2012.

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

Mr. Kennedy made a motion to appoint Chris Henderson to an unexpired term on the Planning Commission set to expire on January 31, 2009.

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

Mr. McGlennon made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a Personnel Matter Involving the Six-Month Performance Evaluation of the County Administrator.

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

At 11:52 p.m., Mr. Goodson reconvened the Board into Open Session.

Mr. 11:52 made a motion to adopt the Closed Session resolution.

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

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

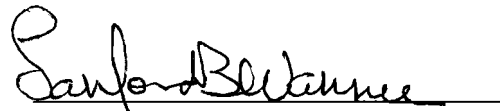
NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions; Section 2.2-3711(A)(3), to consider two acquisitions of parcels of property for public use.

N. **RECESS** to 9 a.m. on February 7, 2008.

Mr. McGlennon made a motion to recess.

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

At 11:53 p.m., Mr. Goodson recessed the Board to February 7, 2008, at 9 a.m.



Sanford B. Wanner
Clerk to the Board