

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 27TH DAY OF OCTOBER 2009, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. ROLL CALL**

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

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

**B. MOMENT OF SILENCE**

**C. PLEDGE OF ALLEGIANCE** – Ms. Sarah Kadec led the Board and citizens in the Pledge of Allegiance.

**D. HIGHWAY MATTERS**

Mr. Todd Halacy, Virginia Department of Transportation (VDOT) Williamsburg Residency Administrator, stated on October 15, 2009, the Commonwealth Transportation Board (CTB) approved the 2010 Revenue Sharing Projects including one for James City County consisting of the installation of an emergency signal at Fire Station 2 on Pocahontas Trail.

**E. PUBLIC COMMENT**

1. Mr. Randy O’Neill, 109 Sheffield Road, commented on public health in the local community for young adults. He requested that the County partner with businesses and nonprofit groups to encourage public health.

2. Mr. Robert Richardson, 2786 Lake Powell Road, commented on the light on Jamestown Road in the commercial area near the shopping center. He requested that a speed study be done to see if a lower speed is justified. He commented on the Airport Feasibility Site Study and stated that he was in support of continuing the operation of the airport. He commented on the water purchase contract with Newport News Water Works and stated he wished the James City Service Authority (JCSA) Board of Directors would break the contract. He commented on the closure of the paper mill in Franklin and stated water could be drawn from there. He commented on the Planning Commission Job Descriptions and asked that the Board consider different language to address growth in relation to the Planning Commission. He stated he had not heard any opinions on the proposed coal plant in Surry County.

3. Mr. Ed Oyer, 139 Indian Circle, commented on Requests for Proposals for low-profile projects; left-turn lane near Lee Hall on Route 60 East; County-owned property; commended the Board for not pursuing the operation of the airport; traffic improvements on Route 60 East; and decreased interest and dividends equate to drastically decreased revenues.

4. Ms. Nicole Woods, on behalf of Mr. and Mrs. Melvin Woods, 506 Ironbound Road, commented on communication with citizens regarding the improvements on Ironbound Road.

**F. CONSENT CALENDAR**

Mr. Kennedy asked to pull Item No. 5, Authorization to Expend Funds for the Ironbound Road Widening Project - \$197,000.

Mr. McGlennon made a motion to adopt the remaining items on the Consent Calendar with the amendments to the Regular Meeting minutes of October 13, 2009.

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

1. Minutes - October 13, 2009, Regular Meeting
2. Resolution of Recognition - James City County Citizen Involvement

**RESOLUTION**

**RESOLUTION OF RECOGNITION – JAMES CITY COUNTY CITIZEN INVOLVEMENT**

WHEREAS, 2009 marks the 10th Anniversary of the formation of the Friends of the Powhatan Creek Watershed and the 20th Anniversary of the formation of the Historic Route 5 Association; and

WHEREAS, the community involvement and participation of these groups has helped shape government policy to meet the needs of its citizens and to protect the character of the County; and

WHEREAS, this year marks a significant milestone in the history of these organizations; and

WHEREAS, James City County would like to recognize the efforts of these groups and others such as the James City County Citizens' Coalition (J4C), the Friends of Forge Road and Toano (FORT), and the Stonehouse Community Association (SCA).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby recognize the 10th Anniversary of the Friends of the Powhatan Creek Watershed and the 20th Anniversary of the Historic Route 5 Association, and other citizen organizations that enrich our community through citizen involvement.

3. Grant Award - Kiwanis Club of Williamsburg - \$250

**RESOLUTION**

**GRANT AWARD - KIWANIS CLUB OF WILLIAMSBURG - \$250**

WHEREAS, the James City County Fire Department has been awarded a grant for \$250 from the Kiwanis Club of Williamsburg; and

WHEREAS, the funds are to be used for the purchase of two educational packages to augment fire education programs: “Fire Safety for Older Adults” and “All Ways Fire Safe at Home Toolbox;” and

WHEREAS, the grant requires no match.

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

Revenue:

Kiwanis FY 2010 \$250

Expenditure:

Kiwanis FY 2010 \$250

4. Grant Award - Criminal Justice Systems Improvement - \$37,700

**RESOLUTION**

**GRANT AWARD – CRIMINAL JUSTICE SYSTEMS IMPROVEMENT – \$37,700**

WHEREAS, the Virginia Department of Criminal Justice Services (DCJS) has awarded the James City County Police Department a Criminal Justice Systems Improvement grant in the amount of \$37,700 (\$28,275 DCJS; \$9,425 local match); and

WHEREAS, the funds will be used to expand on the current “e-summons” automated traffic summons project as well as to purchase hardware and software associated with an automated property control system; and

WHEREAS, the matching funds are available in the County’s Grant Match account.

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

Revenues:

DCJS – Automated Traffic Summons	\$28,275
County’s Grant Match account	<u>9,425</u>
Total	<u>\$37,700</u>

Expenditures:

DCJS – Property Control	\$ 9,500
“e-summons” Automated Traffic Summons Project	<u>28,200</u>
Total	<u>\$37,700</u>

6. Airport Site Selection Study

**RESOLUTION**

**AIRPORT SITE SELECTION STUDY**

WHEREAS, in August 2006 the Board of Supervisor initiated an Airport Feasibility Study as a result of the current owner of Williamsburg-Jamestown Airport (JGG) indicating a desire to sell the property; and

WHEREAS, as part of the Study process the Board of Supervisors established a Community Airport Committee (CAC) with the following members: Carl Gerhold, Digby Solomon, Tim Caviness, Mark Willis, Steve Montgomery, Steven Hicks with James City County, and Tucker Edmonds as Chair; and

WHEREAS, during the Study process, input and discussion was coordinated with Kimball Consultants, CAC, Federal Aviation Administration, Virginia Department of Aviation (DOAV), and the general public; and

WHEREAS, a public workshop was held on October 27, 2008, with public comments included as part of the Airport Feasibility Study; and

WHEREAS, the Airport Feasibility Study and CAC’s recommendations were presented at the May 26, 2009, Board of Supervisors Work Session requesting that the County adopt a role as a facilitator to identify an appropriate Airport Sponsors and to review the JGG’s existing expansion restrictions; and

WHEREAS, DOAV has advised the County a resolution is needed to be an Airport Sponsor to pursue a Site Selection Study.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, based on reviewing CAC’s recommendations, that James City County will not be an Airport Sponsor and will not pursue a Site Selection Study based on the limited amount of land available within the Primary Service Area, the criteria for a new airport, and current limitations on JGG.

7. County/State Project Administration Agreement, American Recovery and Reinvestment Act, Overlay/Resurfacing Various Routes Countywide

**RESOLUTION**

**COUNTY/STATE PROJECT ADMINISTRATION AGREEMENT, AMERICAN RECOVERY**

**AND REINVESTMENT ACT, OVERLAY/RESURFACING VARIOUS ROUTES**

**COUNTYWIDE (UPC NO. 95044)**

WHEREAS, in accordance with the Code of Virginia to provide localities the opportunity to administer projects finance by American Recovery and Reinvestment Act (ARRA) in accordance with the Guide for Local Administration of Virginia Department of Transportation (VDOT); and

WHEREAS, the Board of Supervisors of James City County, Virginia, has expressed its desire to administer the work of the overlay/resurfacing contract UPC No. 95044 in the amount of \$518,394.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Project Administration Agreement for the Overlay/Resurfacing Contract UPC No. 95044.

5. Authorization to Expend Funds for the Ironbound Road Widening Project - \$197,000

Mr. Wanner stated that the authorization to expend funds for the Ironbound Road widening is \$197,000. He stated that the widening of Ironbound Road to a slower-speed boulevard began over ten years ago. He stated that part of the project included plans to put overhead utilities underground from Strawberry Plains Road to Longhill Connector Road. He stated that due to revised VDOT cost estimates and insufficient funding, the County decided to place the utilities above ground from Magazine Road to Longhill Connector Road. He stated that the decision to keep the utilities aboveground saved the County approximately \$1.1 million. Staff recently learned that Verizon and Cox must assume responsibility to place their utilities underground, which reduced the County's cost to lay the underground utilities to \$570,000. Mr. Wanner noted that since part of this section of Ironbound Road is located within the City of Williamsburg, the City has agreed to contribute half of the cost of the section within the City limits. He stated the total County contribution is \$394,000 and the City's share was \$176,000. He stated half of the funds, \$197,000, are due within 90 days of approval and the remaining half would be due in one year.

Mr. Wanner indicated the delay in the project has been due to the requirement to escrow the funds through the State. He stated that it has taken this long to amass the money for the project. He stated that the project is scheduled to go to bid in spring 2010. He recommended approval of the resolution.

Mr. McGlennon stated that he felt this was an important improvement not only for the community appearance, but also to improve utility service in the area. He stated he was uneasy with the funding source as the funds were coming from the Greenspace fund. He stated that he felt it was consistent with the purpose of the Greenspace fund, but he that he would advocate a restoration of the funding for utility undergrounding as the economy improves, and that he felt it was important to act on this project in the meantime.

Ms. Jones thanked the citizens who attended the community meeting and helped encourage dialogue among the homeowners, the County, and the City of Williamsburg. She commented that staff from the City of Williamsburg and Mr. Halacy from VDOT has worked to find a solution to allow for undergrounding the utilities. She stated the importance of communicating the decisions for the project.

Ms. Jones made a motion to adopt the resolution.

Mr. Kennedy commented that he was also concerned that the Greenspace fund was used for this project. He stated that the Greenspace fund should be evaluated to make it more flexible.

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

## **RESOLUTION**

### **AUTHORIZATION TO EXPEND FUNDS FOR**

#### **IRONBOUND ROAD WIDENING PROJECT - \$197,000**

WHEREAS, the Board of Supervisors has approved a road-widening project on Ironbound Road; and

WHEREAS, current plans do not include underground utilities for the part of the project from Magazine Road to the Ironbound Road and Longhill Connector Road intersection; and

WHEREAS, the Board desires underground utilities along this section of Ironbound Road to minimize impact on private property owners and improve visual appearance.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes an expenditure of \$197,000 in FY 2010 from the Greenspace Fund.

### **G. PUBLIC HEARINGS**

Mr. Kennedy recognized Mr. Rich Krapf, Planning Commission Chairman, in attendance.

1. **Case No. SUP-0020-2009. Vossel and Gross Family Subdivision Amendment**

Ms. Leanne Reidenbach, Senior Planner, stated that Mr. Charles Calhoun has applied on behalf of the Vossel and Gross families to amend an existing Special Use Permit (SUP) to allow adjustment of the boundary line between their properties. The original SUP-0026-2004 was granted to allow the creation of two lots, each less than three acres, for family residential use. Lot 1A is owned by Michael and Melina Gross while lot 1B is owned by Mrs. Gross' parents, Richard and Linda Vossel. The conditions of the 2004 SUP specified the exact size of each new lot as 2.269 acres and 2.74 acres respectively. The Vossels applied for a boundary line adjustment in June 2009, and the County Attorney's office determined that an SUP amendment was required to change the aforementioned lot sizes specified by the original conditions. The purpose of the boundary line adjustment is to provide an increased buffer between the property line and existing residence on lot 1B. After the boundary line adjustment and right-of-way dedication, both lots will remain under three acres. The lots currently use a shared 20-foot access easement and gravel driveway, which will remain the primary point of access.

Ms. Reidenbach stated that the property is located in the A-1, General Agricultural, District. The minimum lot size in A-1 for single-family detached units is three acres. Section 24-214 Paragraph (d) of the Zoning Ordinance allows for a minimum lot size of less than three acres, but more than one acre, if the creation of said lot is for use by a member of the owner's immediate family (children 18 years of age or older or parents of an owner) and an SUP is issued. The Zoning Ordinance requires the Board of Supervisors to review and approve this type of application. She noted the application submitted is for an SUP only; should the Board approve the SUP, the applicant will need to resubmit the proposed boundary line adjustment plat for further administrative review and comment.

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

Staff recommended approval of the resolution.

Mr. Goodson asked for confirmation that the sizes of the lots were inadequate when the property line was being placed.

Ms. Reidenbach stated that the purpose of the amendment was to create more of a buffer between the front property line and the house on the rear parcel.

Mr. Goodson asked if there was a plat at the time that it was approved previously.

Ms. Reidenbach stated the plat existed when the case was previously approved, which provided the specific lot sizes that were written into the conditions.

Mr. Goodson asked if there was an easier way to make these slight adjustments without forcing the applicant to go through the entire SUP process again.

Ms. Reidenbach stated that typically that is the case, but this case and the subsequent subdivision case have amended language for the condition indicating that any subdivision be generally in accordance with the plat submitted. She stated that staff feels that would permit flexibility with boundary line adjustments.

Mr. Kennedy opened the Public Hearing.

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

Mr. Goodson made a motion to adopt the resolution.

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

## **RESOLUTION**

### **CASE NO. SUP-0020-2009. VOSSEL AND GROSS FAMILY SUBDIVISION AMENDMENT**

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 boundary line adjustment of an existing family subdivision in an A-1, General Agricultural District, located at 9040 and 9050 Barnes Road, further identified as James City County Real Estate Tax Map Nos. 1020200001A and 1020200001B; 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 boundary line adjustment 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. SUP-0020-2009 as described herein with the following conditions:

1. This SUP is valid for a boundary line adjustment for an existing family subdivision, which originally created two lots. The adjustment shall be generally as shown on the plan drawn by LandTech Resources, Inc., titled "Proposed Boundary Line Adjustment Between Parcels 1A and 1B Sunny Mane Crest Located on Barnes Road," and dated September 18, 2009.
2. Only one entrance serving both lots shall be allowed onto Barnes Road
3. Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the permit shall become void.
4. The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Case No. SUP-0018-2009. Robinson Family Subdivision

Mr. Jose Ribeiro, Senior Planner, stated that Mr. Herman Robinson has applied for an SUP to allow for a family subdivision of a parent parcel of 3.72 acres. The proposed subdivision would create a new lot of 1.00 acre, leaving a parent parcel of 2.72 acres. The subject parcel is zoned A-1, General Agriculture, and is located at 8788 Richmond Road. The property has been in the name of Elizabeth Wise Robinson since January 2008, as an heir to the Victoria Wise Estate. The 3.72-acre parcel has maintained its current configuration since 1967 when it was last subdivided.

Mr. Ribeiro stated the subject property is partially wooded and currently contains two dwelling units and two metal sheds. A stream crosses the eastern portion of the property and part of its 100-foot Resource Protection Area (RPA) buffer area crosses the eastern edge of the proposed 1.00 acre parcel. Currently, vehicular access from the parent parcel to Richmond Road is achieved via an existing gravel driveway. A 25-foot-wide ingress/egress easement for the benefit of the new 1.00-acre parcel is being proposed. A shared driveway agreement between these parcels will ensure that there will only be one entrance onto Richmond Road. A 10-foot-wide, all-weather driveway, placed within this easement, would be required to provide access to the lots, pursuant to Section 19-17(4) of the James City County Subdivision Ordinance. The majority of the surrounding properties to the north and east of the subject parcel are three acres or larger in size and zoned A-1. However, west of the subject parcel, properties are less than three acres in size. These properties, further identified as James City County Real Estate Tax Map Nos. 112010020A, 1120100021, and 1120100022 were once part of a larger parcel but were subdivided in 1962. All surrounding properties are being used for single-family residences and agricultural uses.

Mr. Riberio stated if the proposed family subdivision is approved, the 1.00-acre parcel (Parcel A-2) would be conveyed to Mr. Herman Robinson and used for a single-family residence. No new residential structure is proposed to be built as Mr. Robinson has lived in an existing dwelling unit on the proposed 1.00-

acre parcel since approximately 1980. The minimum lot size in the A-1 Zoning District for single-family dwellings is three acres. Section 24-214(d), however, allows for a minimum lot size of less than three acres (but not less than one) if the creation of said lot is for use by a member of the owner's immediate family, (children 18 years of age or older, or parents of an owner), with the issuance of an SUP by the Board of Supervisors.

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

Staff recommended approval of the resolution.

Mr. Goodson commented that this was a grandfathered zoning situation and the current zoning would not allow this.

Mr. Ribeiro stated that was correct.

Mr. Kennedy opened the Public Hearing.

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

Mr. McGlennon made a motion to adopt the resolution.

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

## **RESOLUTION**

### **CASE NO. SUP-0018-2009. ROBINSON 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 applicant has requested an SUP to allow for a family subdivision on a lot zoned A-1 General Agriculture, located at 8788 Richmond Road, further identified as James City County Real Estate Tax Map/Parcel No. 1120100020; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing held on Case SUP-0018-2009; and

WHEREAS, the Board of Supervisors, following a public hearing, is 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 SUP No. 0018-2009 as described herein with the following conditions:

1. This SUP is valid for a family subdivision which creates one new lot generally as shown on the exhibit submitted with this application titled "Family Subdivision Being Part of the

Property Owned by Elizabeth Wise Robinson,” prepared by AES Consulting Engineers, and dated October 1, 2009.

2. Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or this permit shall become void.
3. Only one entrance shall be allowed onto Richmond Road. A shared driveway agreement for these parcels shall be completed prior to final subdivision approval and submitted to the County attorney for review and approval.
4. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. Case No. S-0012-200. Chanco’s Grant Vacation of Recreation Area Designation

Ms. Christy Parrish, Proffer Administrator, stated Mr. and Mrs. Coronado have submitted a request to vacate the “Recreation Area” designation, as shown on subdivision plat entitled “CHANCO’S GRANT SECTION II SUBDIVISION PLAT” to a numbered lot. This request is made for the purpose of constructing a single-family dwelling on the property. The existing 32,670-square-foot parcel is located at 4525 William Bedford in the existing Chanco’s Grant subdivision and can be further identified as Parcel No. (08-0-0035-A) on James City County Real Estate Tax Map No. (47-1). The Board of Supervisors held a public hearing on July 14, 2009, and deferred the request to allow time for additional research regarding the delinquent tax sale and disbursement of funds and to allow the residents of Chanco’s Grant to meet and discuss the matter.

Ms. Parrish outlined the history of the parcel, including the development, the sale history, the disbursement of funds, and the allocation of surplus funds. She stated there was a neighborhood meeting in Chanco’s Grant on October 8, 2009, to discuss the views of the neighborhood residents in relation to the lot. She stated that an ordinance to vacate the recreation area designation has been prepared for the Board’s consideration.

Mr. Kennedy opened the Public Hearing.

1. Ms. Barb Carell, 2908 Richard Buck North, thanked the Board and staff for helping organize the neighborhood in relation to the case. She commented that Chanco’s Grant was required to have a recreation parcel deeded to the homeowners; however, when the parcel was sold the citizens were unaware of whom to contact.

2. Ms. Darlene Prevish, 2900 Francis Chapman West, stated that since the last Board meeting when this item was considered, the neighborhood had contacted the Neighborhood Connections office. She stated a community meeting was held on October 8, 2009, and they decided to survey the residents in the neighborhood. She reviewed the results of the survey of about 120 homes. She noted that at least 12 are rental homes and survey responses were received from 60 of the residents. She stated that 10 residents wished to have a home built on the property, four people had no interest, and eight wished for the County to buy the property and maintain it. She stated the majority of the residents wished to have the property rehabilitated and left as open space.

3. Mr. Ryan Fitzgerald, 2906 John Proctor East, commented that 48 percent of residents responded, and 64 percent were in favor of a legal entity taking control of the lot. He stated that 42 percent wanted the

parcel to be cleaned up for open space and 36 percent felt that it should be left as-is. He stated that 63 percent of respondents were willing to pay an annual fee to maintain the property. He stated the residents of Chanco's Grant request that the Board deny the ordinance to vacate the property.

4. Mr. Gualberto Coronado, 3932 Vass Lane, property owner, stated he and his family do not plan to create a recreational area on this property. He stated that the residents of Chanco's Grant should have purchased the property if they wished to maintain it as a community space. He stated the Board should reimburse his expenses in preparing the property for a residential lot if this item is not approved.

5. Mr. Mark DellaPosta, 3807 Longhill Road, on behalf of the applicant, stated the residents of Chanco's Grant should have acted previously on this matter. He stated that the property was sold and taxed as a residential lot. He stated that his clients want to build a green-built residence on the lot. He requested approval of the vacation of the recreation designation.

6. Mr. Robert Richardson, 2786 Lake Powell Road, commented on the value of greenspace and its impact on health in closer proximity. He stated that greenspace within residential communities was important to people's health.

7. Ms. Mary Pugh, 2908 Francis Chapman West, stated that she understood that the recreation area was required for her subdivision. She stated that she was afraid that the County would require the residents to purchase another parcel of property. She stated concern that her deed was not valid.

8. Mr. Todd Cox, 2908 Richard Grove South, commented that there were other residential neighborhoods where a residence could be built and the residents of Chanco's Grant have interest in the property in question. He stated concern about the disruption that construction would cause to the community.

9. Ms. Michelle Fitzgerald, 2906 John Proctor East, commented on notice given when the property was sold previously. She questioned if the recreation designation existed on the lot when the property was sold. She commented that the proposed home would not fit into the character of the neighborhood. She asked if the children in the neighborhood had rights to go onto the property.

10. Mr. Todd Freneaux, 2911 Richard Grove South, requested that the Board maintain the recreation designation on the property in the best interest of the majority of residents.

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

Mr. Goodson stated that he was unaware that all the deeds in Section II referred to the lot. He stated he felt that each homeowner with a deeded lot in the section had a stake in the parcel.

Mr. Rogers stated that reference in the deed did not assign ownership interest in the lot. He stated it was referred to as a community amenity.

Mr. Goodson asked if the deeds would need to be changed if the lot designation was vacated.

Mr. Rogers stated that it would not change the deed or affect the property rights to the resident's own house. He said it would impact the neighborhood.

Mr. Goodson asked for confirmation that even though the notation of a recreation lot was indicated on the deeds, the property owners had no rights to the property.

Mr. Rogers stated that was correct. He stated the developer would have to transfer the lot to the community.

Mr. Goodson asked if the property owners had any right to the recreation area since it was included in the deed as a right given when they bought their properties.

Mr. Rogers stated that in order for the property owners to have any ownership rights to the property, the deed would have to indicate a percentage share of the lot transferred from the developer to a particular lot to a homeowner and then the lot would be owned in common by the community.

Mr. Goodson stated he was unaware until presently that the parcel was referred to in all the deeds.

Mr. Icenhour stated that he is in a similar situation wherein he owns property that guarantees him access to a public boat dock. He stated there is no mention of that amenity in the deed. He stated the only reference was on the plat indicating that it was a public boat dock. He stated that he felt this was a similar vested legal right of use of that property. He stated that he felt that it should have been clear to the purchaser that the lot was for recreational use. He stated that the County sold the property and notice was not given that the residents lost their rights to access the designated recreation area.

Mr. Rogers stated that this item did not slip unnoticed through the court system. He stated that it was noted as a recreation lot. He stated that since the developer did not turn the parcel over to the community, it was taxed and after 20 years, it was put up for sale to recover back taxes. He stated there was notice given in the newspaper and each property owner that was determined to have an interest was served with notice. He stated that the purchaser was given notice that the lot had a recreation designation. He stated that when the development was developed, the developer should have established an association to handle the recreation area, but did not. He stated the land was taxable and was ultimately put up for sale. He stated that the recreation designation stayed with the property through the sale.

Mr. Goodson asked which section or phase of the development received notice of the sale.

Ms. Parrish stated that the residents within Section II received notice.

Mr. Goodson asked who had interest in the property.

Ms. Parrish stated that the lot was within Section II of Chanco's Grant.

Mr. Goodson asked if all the lots in Chanco's Grant had the recreation area listed as an amenity in their deeds.

Mr. Rogers stated that he was unaware if all the deeds had the amenity listed, but the court looked at the property in 2003 to see what lots required notice. He stated that since the lot was located in Section II, the court gave notice to all lot owners in Section II since they would have bought their properties with the expectation of a recreation lot.

Mr. Goodson asked if all property owners in Section II received notice.

Mr. Rogers stated that was correct.

Mr. Goodson stated that there was confusion about the section or phase that was referenced in the documentation. He asked what the difference was and who ultimately received notice of the sale.

Ms. Parrish indicated that the area referenced was Section II, of which all property owners received notice.

Mr. Rogers noted that Judge Powell appointed a special commissioner to determine who had property rights and who should receive notice of the sale. He stated the commission decided that the residents in Section II should receive notice. Mr. Rogers indicated he had a listing of all the individuals who were served with notice in the case provided by Kaufman and Canoles, which conducted the sale.

Mr. Goodson stated if he knew that some people who had the designation in their plats were not given notice, he felt that would change his opinion on the case.

Mr. Rogers stated he could not provide that information at this time.

Ms. Jones stated that the purpose of this Board item was to determine whether the property should be designated as a recreation lot or if the designation should be vacated.

Mr. Rogers stated that was correct. He stated that this was not a question of ownership. He stated it was a matter of whether a recreation designation should be maintained as part of a subdivision plat or if that designation should be vacated.

Ms. Jones commented on future decisions that would need to be made if the Board decided to have the recreation designation remain.

Mr. McGlennon asked if the property owners were notified that the parcel was going to be auctioned.

Mr. Rogers stated that was correct.

Mr. McGlennon asked if they would have been notified that the designation of the lot as a recreation area would be changed.

Mr. Rogers stated that they would not. He stated that it was sold with the designation as a recreation lot. He stated the court could not make that decision.

Mr. McGlennon stated that this would have changed a resident's reaction because the property owners who received the notice may not have anticipated the change in designation of the lot even if the ownership changed. He stated his sympathy for the purchaser of the lot who likely assumed he would be able to build a home on the lot. He stated that the type of home to possibly be built was irrelevant at this point. He asked if there was any way to resolve the issue of how the property would be considered for the future.

Mr. Icenhour stated he was concerned about how the sale of the property was handled. He stated he was not in favor of vacating the designation.

Mr. McGlennon asked if in the event a homeowners association (HOA) had been formed, the property could have been tax-exempt under General Assembly legislation from 2004.

Mr. Rogers stated if there was a mandatory HOA, the property would be tax-exempt anyway and if there was a voluntary HOA, the property could become tax-exempt under the 2004 legislation.

Mr. McGlennon noted that the developer was a player in the process that resulted in this situation.

Ms. Jones stated that there was no guarantee that the zoning would change. She stated that she was hesitant to spend County money to reimburse the property owner, but she was interested in a resolution and thankful for the collaboration of the community. She stated she was not inclined to vacate the recreation area designation. She stated she felt that would be a step backward for the community.

Mr. Goodson stated that he did not see any reason why the residents of Chanco's Grant do not have a vested interest in this property. He stated he would be happy to consider a deferral for more information.

Mr. McGlennon stated that the issue of ownership would warrant continued discussion. He stated there were two competing owners through the ownership and the right of use of the property. He asked for further discussion between staff and the applicant to come to a resolution.

Mr. Kennedy stated his concern that there were essentially two property owners. He stated that through no fault of their own, there is an issue. He stated there was information lacking and only Phase II was the only area required to be notified. He stated he would like to see if Phase II was the only area that was allowed access. He stated he was unaware if there was any fee required. He stated that there were the issues of back taxes and fees that were on the property. He stated he was unsure if the fees and taxes could be waived when other homeowners associations were charged taxes prior to the 2004 legislation took effect.

Mr. Rogers stated that the 2004 law allowed the County to make a property non-taxable. He stated that the County never took action on this property because it was sold before the 2004 legislation took effect.

Mr. Kennedy stated that he understood, but if the property was to remain a recreation lot, there was still an issue of back taxes. He stated that many residents indicated they were willing to pay an annual fee for the use of the recreation lot and he was unsure if that would mitigate the delinquent taxes. He stated that information was lacking. He stated that the Board could vote not to take action on this item.

Mr. McGlennon stated that the issue of back taxes has been resolved through the sale.

Mr. Kennedy stated if the lot was given back to the residents of Chanco's Grant, the taxes would still apply.

Mr. McGlennon stated that was a consideration if the property was purchased back. He stated he would ideally like to see the energy of the community result in a voluntary homeowners association that would take over the maintenance of the property in order to clarify who was responsible for the property. He stated that was an incentive to continue discussion to resolve ownership issues.

Ms. Jones stated that it would be useful to determine whether or not to vacate the recreation lot.

Mr. Goodson stated he would support a motion not to act on this item at this time to avoid impeding any resolution to the question of ownership.

Ms. Jones noted that this case only changed the lot's designation.

Mr. Rogers stated that this was not a rezoning case, so a denial would not prohibit the case from coming forward again at a later date. He noted that tax matter has been resolved and the court has resolved the land title ownership interest. He stated in 2003 the special commissioner was appointed, notices were sent out, Judge Powell held hearings on the matter, and determined that the court had to issue the deed through the foreclosure which would clear the title of the property to the current property owner. He stated that once the

court has issued its order, which is the order that follows for the title. The Board could only determine the lot designation.

Mr. Goodson stated the homeowners have a right to a recreational lot regardless of who owns the property.

Mr. Rogers agreed. He stated that whether it was in the deed or subdivision plat, there was an expectation of a recreation lot in the subdivision. He stated that expectation would be taken away by removing the designation.

Mr. Kennedy asked if the property owner who bought the property at auction would be required to furnish a recreation area for Section II of Chanco's Grant.

Mr. Rogers stated that the purchaser bought the lot with notice that it was a recreation lot and the understanding that the designation would have to be vacated by the Board of Supervisors if there was to be a residential home built on the parcel. He stated that if the recreation designation lot was not removed, that was the consequence of purchasing the property at a foreclosure sale with a recreation designation.

Mr. Goodson asked if the designation was on the deed of the lot.

Mr. Rogers stated he was unsure since there was a foreclosure deed that he has not seen, but it was on the plat which was referenced by the deed.

Mr. Goodson made a motion to deny the vacation of the recreation lot designation.

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

The ordinance was not approved.

4. Authorization of Conveyance of Matoaka Elementary School Property to Williamsburg-James City County Public Schools

Mr. Rogers stated the County acquired the property on Brick Bat Road for construction. He stated the school was open and operating. He stated the County now needed to turn the property over to the schools. He stated the resolution would authorize the County Administrator to execute the necessary documents to convey the property to Williamsburg-James City County Public Schools.

Mr. Kennedy opened the Public Hearing.

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

Mr. Icenhour made a motion to adopt the resolution.

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

**RESOLUTION**

**AUTHORIZATION OF CONVEYANCE OF MATOAKA ELEMENTARY SCHOOL PROPERTY**

**TO WILLIAMSBURG-JAMES CITY COUNTY PUBLIC SCHOOLS**

WHEREAS, the County is the owner of certain real property identified as Parcel No. 3630100001A on the James City County Real Estate Tax Map (the "Property"); and

WHEREAS, the County desires to transfer ownership of the Property to the Williamsburg-James City County Public Schools (the "Schools") under certain terms and conditions to be set forth by deed; and

WHEREAS, the Property to be conveyed contains 40.285 acres and is more commonly known as 4001 Brick Bat Road, Williamsburg, Virginia 23188, on which Matoaka Elementary School has been operating since September 2007; and

WHEREAS, the Board of Supervisors of James City County, following a public hearing, is of the opinion that it is in the public interest to convey the Property to the Schools.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute any and all documents necessary to convey the Property to the Schools.

5. **Restrictive Covenants - Warhill Stream Restoration - Parcel No. 3210100012 (in part)**

Ms. Fran Geissler, Stormwater Director, stated a restrictive covenant was a condition of the Ironbound Square Regional Stormwater Management Facility Army Corps of Engineers permit due to aquatic impacts since the facility is located in an RPA. She stated that the facility could not be kept out of the RPA to locate the pond to serve the expansion of Ironbound Road and additional housing in Ironbound Square. She stated the Army Corps of Engineers have requested that the County undertake a means of mitigation of the encroachment on the RPA through stream restoration project within the James River Watershed. She stated a variable width conservation easement was located on the Warhill property near the stadium and Williamsburg Indoor Sports Complex (WISC) building beside the utility easement next to Warhill High School. She stated the stream restoration was on County-owned property of about 500 linear feet. She stated this mitigated the stormwater facility being located in an RPA.

Ms. Jones asked how the location of the easement was chosen.

Ms. Geissler stated the property needed stream restoration and it was in a part of the parcel that was already protected by RPA and Wetlands designations.

Mr. Kennedy stated there have been challenges with Ironbound Square through the years with various issues. He stated he was unhappy with the project and the additional costs.

Ms. Jones stated she agreed with Mr. Kennedy's concerns.

Mr. McGlennon noted the stormwater management facility would benefit the neighborhood significantly. He stated that previously the stormwater was not being treated. He stated in addition, an existing

stream bed would be improved. He stated the creation of the stormwater treatment facility and the restoration of the stream bed were very positive aspects of the project.

Mr. Kennedy stated he agreed with Mr. McGlennon's comments, but he was unhappy with the process that took place.

Mr. Wanner stated the stormwater basin was required for the road widening.

Mr. McGlennon stated that he felt that great pride would be taken in the revitalization of Ironbound Road.

Mr. Goodson asked about the cost of the stream restoration.

Ms. Geissler stated that roughly \$750,000 was set aside for the construction of the Best Management Practice (BMP) and the stream restoration project at Warhill as well as other associated construction costs.

Mr. Icenhour asked if the funding for this was all part of the Ironbound Square project.

Ms. Geissler stated that the funds were in the Water Quality Capital Fund.

Mr. Icenhour confirmed that the property would be kept natural and the stream restoration would be done as part of the stream bed restoration project.

Ms. Geissler stated that was correct.

Mr. Kennedy opened the Public Hearing.

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

Mr. McGlennon made a motion to adopt the resolution.

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

## **RESOLUTION**

### **RESTRICTIVE COVENANT – WARHILL STREAM RESTORATION –**

#### **PARCEL NO. 3210100012 (IN PART)**

WHEREAS, James City County owns 7.604 acres located at the Warhill Sports Complex, designated as Parcel No. 3210100012 on James City County Real Estate Tax Map/Parcel No. 3210100012, Page 32, Lot No. 12 (the Property); and

WHEREAS, James City County has agreed to restore a portion of an unnamed tributary to Powhatan Creek as part of construction of the Ironbound Square Regional Stormwater Management Facility; and

WHEREAS, the United States Army Corps of Engineers requires a restrictive covenant on the stream restoration site to ensure that the area remains in a natural state; and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that it is in the public's interest to establish the restrictive covenants.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute any and all documents necessary to establish a restrictive covenant maintaining 7.604 acres in a natural state.

6. Ordinance to Amend James City County Code, Chapter 20, Taxation, by Adding Section 20-7.6, Probate and Administration Tax

Mr. Wanner stated that the ordinance amendment proposed would allow for a local tax to be imposed for probate or grant administration of a will in order to provide resources to the Clerk of the Circuit Court. He noted that the funding contributions to this office have been significantly reduced by the State and he felt they would continue to decline. He stated the amount of the tax would be one-third of the State tax levied for such purposes. He noted that State tax is 10 cents for every \$100 of estate value. He stated the County would then impose a tax of 3 and 1/3 cents for every \$100 of estate value. He stated if the tax was imposed, the clerk would receive an estimated \$25,000 annually to offset costs for technology improvements. He stated that the County was working in partnership with the City of Williamsburg since this was a shared office and to ensure that any local estate tax would be uniformly enforced.

Mr. Wanner stated the City Council of Williamsburg tabled action on this item on October 8, 2009, pending Board of Supervisors action. He recommended that the Board table this item pending FY 2011 budget guidance to the County Administrator in January.

Mr. Kennedy opened the Public Hearing.

1. Mr. Robert Spencer, 9123 Three Bushel Drive, stated that the probate charge would not affect people who receive property through trust. He stated that was unfair and that he did not believe that there would be a significant amount of revenue. He stated his opposition. He further stated that court fees should be increased in order to generate revenue for the Clerk of the Circuit Court's office.

2. Mr. Ed Oyer, 139 Indian Circle, stated that even if \$25,000 was collected, the cost of administration of the tax would exceed the revenue. He stated his opposition.

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

Mr. McGlennon stated that Mr. Spencer and Mr. Oyer raised significant issues. He noted that the Clerk of the Circuit Court's office has had significantly reduced contributions from the State. He stated that a more logical action would be to increase fees. He stated that the General Assembly would not allow the increase of fees, but would only allow this type of additional tax to defray the cost. He stated that he did not agree with this particular method, but he noted that he did not feel the general taxpayer should pay the operation costs of the Clerk of the Circuit Court in these cases.

Mr. Icenhour made a motion to defer action pending FY 2011 budget guidance.

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

## **H. BOARD CONSIDERATION**

### **1. Planning Commission Job Description**

Mr. Wanner stated that in September 2009 the Board of Supervisors considered the matter of the Planning Commission Job description. He stated that following the meeting, staff met with Chairman Krapf to make adjustments to the language of the job description. He stated that the item was back for the Board's consideration as requested.

Mr. Icenhour stated he was in favor of a Job Description, but he felt that it would be more appropriate to handle the description as a Board policy. He stated concern about the role of negotiating proffers and conditions to allow professional staff to take on that responsibility. He stated he felt that would be better addressed through a separate Board policy. He commented on the requirements on the working relationship with staff and stated that the request should move through the proper chain of commands. He stated that he felt the request should move through the County Administrator. He stated that he felt it was important to require disclosure when meeting with developers. He wished to separate the matters to deal with the issues as Board policies.

Mr. McGlennon stated he felt the best Planning Commissioners do not need this tool to do the job well. He stated it would put unnecessary restrictions on Planning Commissioners as well as on the Board, to meet with individuals and discuss development proposals. He stated he was reluctant to adopt the item presented.

Ms. Jones stated that the effort was to ensure openness and clarity in operations. She stated that this item was deferred to allow for communication and collaboration. She stated her concern with the requirement that the Planning Commission Chairman authorize commissioners to meet with individuals about developments. She stated she did not agree that a staff person be required to meet with them and any developer. She said she agreed with notification of the meeting and a briefing.

Mr. Goodson stated that he felt the County should have a Board policy indicating how a Planning Commissioner should conduct themselves when acting as a member of the Planning Commission.

Mr. Kennedy stated his appreciation for the work staff put into this matter and stated that he was a proponent of openness and clarity in operations. He stated that he did not feel it was an intrusion to discuss who he met with in relation to a development and he felt that staff may need to be included. He stated that some localities have a sheet that indicates who met and the discussion topic. He stated that it would be applicable if a specific case or a specific piece of development was a reasonable expectation. He stated he felt a job description was necessary and needed with growth in the community.

This item was deferred indefinitely.

## **I. PUBLIC COMMENT**

1. Mr. Robert Richardson, 2786 Lake Powell Road, stated that he was in favor of the Planning Commission Job Description and stated that many of the issues were addressed in the Code of Ethics. He stated there needed to be a review of ethics violations.

2. Mr. Robert Spencer, 9123 Three Bushel Drive, commented that there should be a policy implemented in relation to the Planning Commission's duties. He stated that all meetings should have at least three people present to ensure accuracy.

3. Mr. Ed Oyer, 139 Indian Circle, commented on Verizon fiber optic cable and stated the contractor, MasTec, was very respectful of the property owners' lawns. He commented that rules for the Planning Commissioners should have consequences attached.

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

Mr. Wanner stated that Williamsburg Landing celebrated its 25-year anniversary and at its anniversary the County was honored for its contributions to the facility. He stated that he attended the Virginia Municipal League Annual Conference in Roanoke, Virginia, and stated that Mr. Goodson was recognized as a Certified Local Government Official. He stated that when the Board completed its business, it should recess to 4 p.m. on November 10, 2009, for a special work session on the Comprehensive Plan, which would be considered as a public hearing during the regular meeting that evening at 7:00 p.m.

## **K. BOARD REQUESTS AND DIRECTIVES**

Mr. Icenhour nominated Mr. Goodson to be the primary voting delegate for the Virginia Association of Counties (VACo) Annual Conference.

Mr. Goodson nominated Mr. Icenhour to serve as the alternate voting delegate for the VACo Annual Conference.

Mr. Goodson asked that the motions be considered together.

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

Mr. Icenhour commented on the resolution of issues with the clearing of sewer easements in Longhill Station and noted that he and the residents were pleased with the results. He thanked Mr. Foster and Officer McMichael for their contributions to the matter. He thanked Mr. Steven Hicks and Ms. Stephanie Luton for following up with the necessary road repairs at the Villages of Westminster. He noted that he had received a memorandum from Prime Outlets regarding the progress of plans for Black Friday and was pleased with the suggestions to protect the surrounding community's quality of life. He stated that signage would be placed to indicate that a parking area was full and to direct motorists to auxiliary parking lots. He said police would be stationed at the entrance of Chisel Run to prevent shoppers from parking in the neighborhood. He asked about a temporary ordinance to prohibit on-street parking during Black Friday.

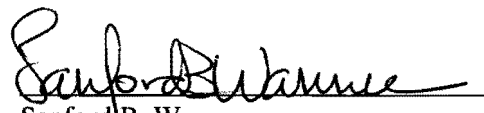
Mr. Powell stated that it was under discussion and may not be necessary. He stated that if needed, it would come before the Board at its November 24, 2009, meeting.

Ms. Jones stated she attended the Youth Aeronautical Education Foundation fund-raiser which highlighted students in the program. She stated she attended her last Regional Issues Committee (RIC) meeting as chair and Chesapeake Bank President Marshall Warner addressed the RIC about the economic outlook.

Mr. McGlennon stated he attended the Williamsburg Landing anniversary celebration, the Friends of Greensprings Day to see how much is in place for the historical significance of the site, and represented the Board at the AVID Medical expansion at Stonehouse Commerce Park. He noted that several hundred jobs would be created with this new expansion and that AVID Medical was very thankful to the County for its assistance with the expansion.

**L. RECESS** to 4 p.m. on November 10, 2009.

At 9:03 p.m., Mr. Kennedy recessed the Board until 4 p.m. on November 10, 2009.

  
Sanford B. Wanner  
Clerk to the Board

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