

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF APRIL 2010, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. 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

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – McKayla Brown, a fifth-grade student at Matthew Whaley Elementary School, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATIONS

1. James City County Volunteer Appreciation Week – April 18-24, 2010

Mr. Kennedy read the resolution of recognition and presented it to Vicki Sprigg on behalf of all the County's volunteers.

2. Public Safety Telecommunications Week, April 11-17, 2010

Mr. Kennedy read the resolution of recognition and presented it to Paula Raines on behalf of emergency telecommunications employees.

F. PUBLIC COMMENT

1. Ms. Geri Farrell, 3424 Wexford Run, on behalf of the Williamsburg-James City County Education Association, requested full financial support of the Williamsburg-James City County Public Schools budget.

2. Ms. Kensett Teller, 126 Lake Drive, on behalf of TK Asian Antiques, commented that the store is located next to the Lyman Hall home site which has an entrance on Jamestown Road. She thanked

James City County staff and Mr. Hall for developing an environmentally friendly and attractive driveway.

3. Mr. Craig Metcalfe, 4435 Landfall Drive, commented on the Shaping Our Shores master plan. He requested a concise, clear summary that reflected input from all interest groups, particularly for the Jamestown Yacht Basin. He presented his proposed version of the summary.

4. Mr. Robert Richardson, 2786 Lake Powell Road, commented on an upcoming Special Use Permit (SUP) for Courthouse Commons and stated he was concerned about a conflict with the developer and Planning Commissioner Chris Henderson. He also commented on the development of the Colonial Heritage Deer Lake development. He stated concern about using an existing lake for a Best Management Practice (BMP) and asked that the Board enact a "no outdoor water use" policy for James City Service Authority (JCSA) customers outside the Primary Service Area (PSA).

G. CONSENT CALENDAR

Mr. Icenhour made a motion to adopt the items on the Consent Calendar.

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

1. Minutes –
 - a. March 16, 2010, Joint Work Session
 - b. March 23, 2010, Work Session
 - c. March 23, 2010, Regular Meeting
2. Resolution of Recognition – James City County Volunteer Appreciation Week, April 18-24, 2010

RESOLUTION

RESOLUTION OF RECOGNITION - JAMES CITY COUNTY

VOLUNTEER APPRECIATION WEEK, APRIL 18-24, 2010

WHEREAS, April 18-24, 2010, has been designed as National Volunteer Appreciation Week; and

WHEREAS, National Volunteer Appreciation Week is about inspiring, recognizing, and encouraging people to seek out imaginative ways to engage in their communities; and

WHEREAS, volunteers work in partnership with James City County staff and in 2009 contributed 63,920 hours valued at \$1,312,278; and

WHEREAS, during this week all over the nation, service projects will be performed and volunteers recognized for their commitment to service; and

WHEREAS, the citizens of James City County are deserving of recognition for their commitment and hard work to make a real difference in the lives of their fellow citizens.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby designates the week of April 18-24, 2010, as Volunteer Appreciation Week and calls its significance to all of our citizens.

2. Resolution of Recognition – Public Safety Telecommunications Week, April 11-17, 2010

RESOLUTION

RESOLUTION OF RECOGNITION –

PUBLIC SAFETY TELECOMMUNICATIONS WEEK, APRIL 11–17, 2010

WHEREAS, emergency communications is a vital public service; and

WHEREAS, when an emergency occurs, the prompt response of law enforcement officers, firefighters, and paramedics is critical to the protection of life and preservation of property; and

WHEREAS, Public Safety Communication Officers are the first critical contact our citizens have with emergency services; and

WHEREAS, the safety of our law enforcement officers, firefighters, and paramedics is dependent upon the quality and accuracy of information obtained from citizens who telephone the James City County Emergency Communications Center; and

WHEREAS, Public Safety Communication Officers of James City County have contributed to the apprehension of criminals, suppression of fires, and treatment of patients; and

WHEREAS, it is appropriate to recognize the value and the accomplishments of public safety communication officers.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby recognizes this event and proclaims the week of April 11–17, 2010, as Public Safety Telecommunications Week.

3. Appropriation of Insurance Proceeds – Police Department – \$3,429

RESOLUTION

APPROPRIATION OF INSURANCE PROCEEDS - POLICE DEPARTMENT - \$3,429

WHEREAS, James City County is committed to protecting County assets and replacing destroyed assets in an efficient manner; and

WHEREAS, James City County Vehicle No. 062801 was destroyed in an accident on February 18, 2010; and

WHEREAS, the actual cash value of Vehicle No. 062801 has been recovered from Erie Insurance Group; and

WHEREAS, the insurance proceeds recovered will be used for a replacement Police vehicle.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriations of recovered funds:

Revenue:

Insurance Recovery \$3,429

Expenditure:

Police - Vehicle Replacement \$3,429

H. PUBLIC HEARINGS

I. Case No. Z-0003-2008/MP-0003-2008. The Candle Factory

Mr. Jose Ribeiro, Senior Planner, stated Mr. Vernon Geddy, III, of Geddy, Harris, Franck & Hickman, LLP, on behalf of Candle Development, LLC, has applied to rezone approximately 64.45 acres of land from A-1, General Agricultural, District, M-1, Limited Business/Industrial, District, and MU, Mixed-Use, District to MU, Mixed-Use, District, with proffers. The development proposed with this rezoning application will allow the construction of a maximum of 175 residential units, approximately 30,000 square feet of commercial/office space, and a 90,000-square-foot assisted living facility with capacity for 96 units. Mr. Ribeiro stated the property was located at 7551, 7567, and 7559 Richmond Road, further identified as Parcel Nos.: 2321100001D, 2321100001E, and 2321100001A on the James City County Real Estate Tax Map, consisting of approximately 64.45 acres. He stated the existing zoning was A-1, General Agricultural, District; M-1, Limited Business/Industrial, District; and MU, Mixed-Use, District and the Comprehensive Plan designation was Low Density Residential and Mixed-Use.

Staff found the application consistent with the tenets of both the Zoning Ordinance and the 2009 Comprehensive Plan.

At its meeting on April 1, 2009, the Planning Commission reconsidered the rezoning of Candle Factory project and recommended approval of this application by a vote of 4 to 3. Prior to the April 2009 Board meeting, the applicant requested that this case be indefinitely deferred. As a result, the case was not considered by the Board of Supervisors at the scheduled meeting.

Staff recommended approval of the resolution.

Mr. McGlennon asked for an explanation as why the changes in the applications were not seen as significant since the SUP request was eliminated and there was a significant change in the nature of the development.

Mr. Ribeiro stated there have not been significant changes to the physical nature of the project.

Mr. McGlennon noted that cases have been remanded to the Planning Commission in the past if significant changes in proffers or other portions of the plan were made.

Mr. Rogers stated that was the case and in this case there was a recommendation of approval and the proffers were improved. He stated there was an administrative decision not to send the case back to the Planning Commission.

Mr. McGlennon stated he did not understand how staff determined that the proffers were improved.

Mr. Rogers stated that there was an administrative decision that was made and the Board is capable of sending the plan back to the Planning Commission.

Mr. Icenhour stated that the Comprehensive Plan changes also changed staff's recommendation for the project. He felt that it had warranted sending the case back to the Planning Commission.

Mr. Icenhour asked if any additional information was found on impervious cover.

Mr. Ribeiro deferred the question to the applicant.

Mr. Icenhour asked specifically about Proffer No. 5, and asked for clarification if the proffer was payable at the time of subdivision or final site plan approval. He asked what deadline would apply.

Mr. Ribeiro stated that the Candle Factory development required a plat to be submitted due to the townhome development. He stated the language of the proffer would ensure that the proffers would be paid when either of those events happened.

Mr. Icenhour asked if the proffers would be required when the first of those events occurred.

Mr. Ribeiro stated that was correct.

Mr. Icenhour asked how the plan would be altered to display parking for the assisted living facility.

Mr. Ribeiro deferred to the applicant to answer that question.

Mr. Icenhour asked if the undevelopable land was mostly on the edges. He stated he could not see any specific undevelopable land near the assisted living facility.

Mr. Ribeiro stated that was correct. He stated there would also be park areas.

Mr. Kennedy opened the public hearing.

1. Mr. Vernon Geddy, on behalf of Candle Development LLC, reviewed the rezoning application including the development team, project goals, the project development plan and its features, environmental protections, and buffers. He displayed the new Comprehensive Land Use map to illustrate the new designations for the property. He reviewed the components of the plan, including the office spaces, assisted living facility, residential areas, mixed-cost housing, open space and recreation facilities, sustainable building, and site design. He reviewed traffic impacts and proffered improvements and cash proffers for the project. He noted public benefits of increased mixed-cost housing, open space, community character on Route 60, and environmental benefits. He requested approval of the application.

Mr. Pete Henderson commented that over the course of the project, it has improved as a result of input from staff, the Planning Commission, the Board, and consultants. He stated he believed it would benefit the County and requested approval.

Mr. Goodson commented on the fiscal impacts of the project over the next five years, which turn negative after that time frame. He asked if this projection was based on the current use of the property.

Mr. Geddy stated the only current revenue was based on real estate taxes. He indicated the fiscal impact would increase due to construction activity. He commented that at buildout the fiscal impacts would turn slightly negative, but later improves in the long term.

Mr. Goodson stated the Board was faced with the choice of approving the development or a possible by-right development.

Mr. McGlennon stated that much of the fiscal impact was related to the assisted living facility.

Mr. Geddy stated that was correct.

Mr. McGlennon asked if that was going to be part of the first phase of development.

Mr. Geddy stated that it was not anticipated to be in the first part of construction.

Mr. McGlennon stated there was no guarantee that the assisted living facility would ever be built.

Mr. Geddy stated that was correct.

Mr. McGlennon stated that the anticipated by-right development would be a low-density residential development.

Mr. Geddy stated that was correct. He stated that this area was where the Comprehensive Plan suggested development ought to occur. He stated that a by-right, low density subdivision would create sprawl.

Mr. McGlennon stated the Comprehensive Plan did not indicate a low-density residential project here. He stated that significant public benefits should be present.

Mr. Geddy stated that was correct.

Mr. McGlennon asked if this was significantly denser than the by-right development could be.

Mr. Geddy stated it was slightly denser. He stated this was a very rural style of subdivision.

Mr. Icenhour asked about the right-of-way reservation in Proffer No. 21, which indicated connectivity. He stated there was no commitment to connectivity and asked how this would comply with Virginia Department of Transportation (VDOT)'s requirements.

Mr. Rogers stated this property was grandfathered from VDOT's interconnectivity requirements. He stated the developer has agreed to a reservation of that right-of-way in case the Board decides that it wishes to have a connection into the adjacent land-locked, undeveloped property.

Mr. Geddy stated the applicant was flexible on this issue. He stated that it was reserved.

Mr. Rogers stated that Mr. Geddy has agreed to a revised proffer that did not require interconnection which left it at the discretion of the Board.

Mr. Icenhour stated his concern that there was no firm commitment for the development of the assisted living facility, which would be the main economic factor in this case. He asked what the value would be of the assisted living facility to the developer rather than additional housing.

Mr. Geddy stated that the major driving factor for the assisted living facility was the increasing aging population. He stated that the assisted living facility was a valuable part of the project.

Mr. Icenhour stated that at this point, the developer could remove the assisted living facility from the project.

Mr. Geddy stated that was correct, but anything different would need to come before the Board.

Mr. Icenhour commented on the phased clearing at the progression of construction. He asked if trees would be clear cut around single-family homes.

Mr. Geddy stated that the lots for the single-family homes were relatively small, but realistically it would be difficult to save many trees during construction.

Ms. Jones commented on Proffer No. 11 about sustainability building and noted that the attached units had no sustainable building practices.

Mr. Geddy stated that the townhomes were not proffered for the EarthCraft multifamily home certification since the developer was not very familiar with the certification. He stated that he/she would have other energy efficiencies.

Mr. Kennedy stated his concern for the assisted living facility. He asked if there was any commitment that a number of units would be built before the facility was constructed.

Mr. Geddy noted that the plans incorporated an assisted living facility rather than a full Continuing Care Retirement Center.

Mr. Kennedy asked where the church would be located and about crosswalks to the facility.

Mr. Geddy stated there has been discussion about crosswalks.

Mr. Kennedy stated concern that the CVS/Food Lion part of the project was approved by the Planning Commission in the last week, and he commented on the danger of the intersection.

Mr. Geddy stated that the intersection was a proffered improvement.

Mr. Kennedy commented on the dangerous parts of Croaker Road that have not been improved. He stated additional problems would arise due to the Norge Crossing area. He stated he would feel more comfortable seeing this as part of the CVS/Food Lion project. He stated that he felt the parcel has been broken up over several master plans.

Mr. Geddy stated that he has worked with staff on the CVS/Food Lion addition and the traffic improvements.

Ms. Jones stated she agreed with Mr. Kennedy but she did not have that information.

2. Mr. Jim Stam, 104 Woodmont Place, commented on the preservation of open space and community character. He commented on increased pressure on infrastructure and services due to increased residential growth. He commented on the potential of negative fiscal impact of the project. He requested denial of the application.

3. Mr. John Speegle, 174 Ford's Colony Drive, adjacent property owner, stated he was in support of the proposed plan and requested approval.

4. Mr. Marshall Warner, 5215 Center Street, commented he had served on the Greater Williamsburg Area Chamber and Tourism Alliance Workforce Housing Committee. He stated workforce housing was key to attracting businesses and was a critical area of concern for citizens. He also noted that the local development team would increase local economic vitality. He stated his support for the project and requested approval.

5. Mr. Jack Barnett, 4300 Poplar Creek Lane, stated he has owned this property since 1964 and he requested approval of this project. He stated he will ultimately drive by this project every day. He commented the process has been long and he requested approval of the project.

6. Mr. Tim O'Connor, 3617 Toano Woods Road, stated his support of the project and requested approval of the project.

7. Mr. Vaughn Poller, 5511 Rolling Woods Drive, stated his support for this project. He stated he had served on the Comprehensive Plan Community Participation Team and Greater Williamsburg Area Chamber and Tourism Alliance Workforce Housing Committee. He stated that there would be a significant need for caring for the elderly in the future and there were significant environmental mitigations and workforce housing implications. He stated the developer was trying to work within the constraints proposed to help manage growth. He requested approval of the application.

8. Mr. Michael Hipple, 112 Jolly Pond Road, stated his business was near the development. He stated he felt this project was one of the better proposals to come forward due to the sustainable building and mixed-use features. He stated he believed that the trees were being conserved very well during the construction process. He noted that many trees left during development would be a hazard later to homeowners. He commented on traffic concerns and stated that the traffic improvements would increase by one car for the traffic impacts. He stated that the by-right use would cause increased traffic impacts. He noted that a local builder would be developing the project. He spoke on behalf of Crosswalk Community Church and stated its support. He requested approval of the application.

Mr. Kennedy noted that Planning Commissioner Mike Maddocks was in attendance.

9. Ms. Priscilla Stam, 104 Woodmont Place, stated concern about the traffic in the area. She commented on accidents on I-64 that are diverted onto Route 60, causing serious traffic problems.

As no one else wished to speak to this matter, Mr. Kennedy closed the public hearing.

Mr. Icenhour asked Mr. Ribeiro what was considered workforce housing according to County staff.

Mr. Ribeiro stated that there was not an established value, but staff was able to calculate the value based on median income from the Office of Housing and Community Development.

Mr. Icenhour asked if this had changed between the 2003 and 2009 Comprehensive Plans.

Mr. Ribeiro stated that was the methodology used for the 2009 Comprehensive Plan that determined that 80 percent to 120 percent would be low to median income, which could be calculated as affordable housing.

Mr. Icenhour commented that he was unaware if the County had defined workforce housing. He stated concern with the value of \$225,000 or lower not being a part of the County's policies. He stated that when the proffers for affordable housing were changed, the number of affordable units was decreased and workforce units were increased. He asked if this was considered a significant change to the plan and why staff did not recommend sending the plan back to the Planning Commission.

Mr. Wanner stated that he met with staff to discuss all the proffer changes. He stated that it was determined that the aggregate changes did not warrant sending the plan back to the Planning Commission.

Ms. Jones asked how this project compared to other similar projects in the private sector in relation to workforce housing. She commented that this project was second in comparison to other projects for a percentage of workforce and affordable housing.

Mr. Ribeiro stated that the number of affordable and workforce housing units is 58, but the different numbers have changed. He stated that the change has resulted in a favor of the higher end of the range.

Ms. Jones commented that the traffic impacts could result in a service level of D, and since the CVS/Food Lion project has been approved, she asked for a confirmation of the traffic impacts.

Mr. Ribeiro stated that that was correct.

Mr. Kennedy commented on the percentage of workforce and affordable housing in comparison to other developments.

Mr. McGlennon stated that the applicant is proffering to build townhomes at close to market price. He stated that the market for townhomes has been in that range. He stated that it has achieved more significance as a proffer, but the market would bear that value anyway. He commented that there were ten units below market price. He said he did not feel this development fully addresses needs for workforce and affordable housing. He commented that the people who may be employed at the assisted living facilities and retail facilities would not be able to afford to live in the development. He stated he felt this segment of the population was not being addressed.

Mr. Goodson asked what drove the change for the number of affordable housings.

Mr. Ribeiro stated he believed it was the cost of cash proffers for schools, but he could defer the question to the applicant.

Mr. McGlennon stated that the cash proffer policy exempts affordable housing from the proffers.

Mr. Ribeiro stated that was correct.

Mr. Goodson stated the cash proffer policy drives up the overhead costs of housing.

Mr. Geddy stated the applicant attempted to balance the proposal and improve the fiscal impact on the County.

Mr. Goodson stated that it would not be viable to meet the cash proffer policy and build the affordable housing units.

Mr. Geddy stated that was correct.

Mr. McGlennon stated the workforce housing should actually be considered market-rate housing.

Mr. Goodson stated that it would decrease the number of units at the lower cost.

Mr. McGlennon stated those units did not incur the cash proffer policy.

Mr. Goodson stated that the cost of the lower-cost housing was being shifted to the higher-cost housing in addition to cash proffers.

Mr. McGlennon stated that the Board determined that affordable housing was a desirable public good and did not require cash proffers. He stated the applicant's desire to call those houses at near-market cost is what is enhancing those units. He stated he did not believe those should be considered a proffer.

Mr. Goodson stated that residential developments were not being approved in the County that had significant enough number of units to effectively shift the cost of affordable housing.

Mr. Icenhour stated the cash proffer policy actually reflects the true cost of infrastructure for the houses. He stated that in the long run, taxes should be increased or services reduced in order to pay for the infrastructure.

Mr. Goodson stated the cash proffer policy deters affordable housing.

Mr. Icenhour stated that the affordable units did not incur the cash proffer policy.

Mr. Goodson stated the policy keeps the developer from being able to shift the cost of affordable housing onto market-rate houses.

Mr. Icenhour stated the applicant would not need to pay as much in proffers if there was more affordable housing.

Mr. Goodson stated that if the Board believed affordable housing was beneficial, it should be addressed. He stated this proposal reflected that.

Mr. McGlennon commented the cash proffer policy for townhomes required only \$4,800 rather than \$17,000 for a single-family detached home.

Mr. Goodson stated he felt the issue for Mr. McGlennon was that the affordable units were no longer present. He stated that those were no longer in the plan was because the applicant was applying the school proffer policy.

Mr. McGlennon stated that was not true.

Mr. Goodson stated the development would not be viable otherwise.

Mr. Geddy stated the case was filed before the 2007 cash proffer policy. He stated it would not apply to the case and would incur the 2005 policy, which was significantly lower. He stated that the applicant chose to comply with the 2007 cash proffer policy.

Mr. Goodson asked if it was likely that the applicant would not have changed the ration of affordable and workforce housing if not for the proffers.

Mr. Geddy stated that was correct.

Ms. Jones stated the applicant is limiting flexibility in the future with this proffer as the housing market improves.

Mr. Rogers' stated the 2007 cash proffer policy does apply to this case.

Mr. McGlennon stated the purpose of the policy was to provide a reasonable estimate of the potential cost of adding the development to the community.

Mr. Rogers sated that the cost had to be justified in order to adopt the policy. He stated that there were specific factors about when and how the policy applied to units.

Mr. Kennedy asked if there was any desire to see the CVS/Food Lion project along with this project.

Mr. McGlennon asked for consideration if there were significant enough changes in the project to send it back to the Planning Commission.

Mr. Goodson stated he could consider the project as is.

Mr. McGlennon asked how this compared to policy. He asked if this was a modest enough change not to be sent back to the Planning Commission. He stated he felt there was a fairly large amount of change.

Mr. Goodson stated he would concur with the discretion of staff.

Mr. Kennedy asked Mr. Rogers if there was any similar case that was sent back to the Planning Commission.

Mr. Rogers stated that when there was an affirmative vote on a land use case by the Planning Commission, the changes were made to the proffers. He said staff considered the changes to the land use portion to determine if the case should go back to the Planning Commission and it was ultimately decided that those changes were not significant enough to remand the case. He stated the Board could make a decision to send it back to the Planning Commission on a case-by-case basis.

Mr. Wanner stated that this case has been in the approval process for more than a year and a half and has been approved by the Planning Commission. He stated that staff had discussed the proffers in the aggregate and the assortment of mixed-cost housing. He stated that staff felt that the increased cash proffers and traffic improvements determined that it did not need to be returned to the Planning Commission. He stated that the Board had discretion about whether or not it would send the case back to the Planning Commission. He stated it had been quite some time since a similar case was remanded back to the Planning Commission.

Mr. McGlennon made a motion to remand the case back to the Planning Commission.

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

The motion failed.

Mr. Kennedy requested a deferral in order to discuss the case at the same time as the CVS/Food Lion project.

The case was deferred to May 11, 2010.

2. Case No. SUP-0026-2009. Constance Avenue Wireless Communications Facility

Mr. Chris Johnson, Principal Planner, stated the applicant has requested a deferral for this case.

Mr. Kennedy opened the public hearing.

As no one wished to speak to this matter, Mr. Kennedy let the public hearing remain open.

3. Case No. SUP-0003-2010. Gilley Properties Two Family Dwelling

Mr. Jason Purse, Senior Planner, stated Mr. Gregory Davis of Kaufman and Canoles PC, on behalf of Gilley Properties, LLC, has applied to allow for the construction of a duplex on the subject property and two-family dwellings are specially permitted uses in the R-2, General Residential, zoning district. Mr. Purse stated the property was located at 248 Neck-O-Land Road, further identified as Tax Map Parcel No. 4740100040C, consisting of 4.74 acres. Mr. Purse stated the property was currently zoned R-2, General Residential, and was designated by the Comprehensive Plan as Low Density Residential, with a small area of Conservation Area.

Staff found the proposal consistent with the Comprehensive Plan Land Use Map designation for the subject parcel. Staff believed that with the proposed SUP conditions, the project would result in increased public benefit and will complement the existing SUP that allowed for four other duplex units.

At its meeting on March 3, 2010, the Planning Commission recommended approval of this application by a vote of 7-0.

Staff recommended approval of the resolution.

Mr. Icenhour asked if the buildings from the previous approval had been cleared.

Mr. Purse stated that was correct.

Mr. McGlennon asked if all the conditions of the previous SUP had been satisfied.

Mr. Purse stated they had.

Mr. Kennedy opened the public hearing.

Mr. Greg Davis, Kaufman and Canoles, on behalf of Gilley Properties, LLC, stated that this was a case of infill development of rental properties. He stated Mr. Gilley would be the owner and landlord of the affordable rental properties. He stated there were minimal impacts and this was a case of redevelopment. He requested approval of the SUP.

As no one else 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: McGlennon, Goodson, Icenhour, Jones, Kennedy (5). NAY: (0).

RESOLUTION

CASE NO. SUP-0003-2010. GILLEY PROPERTIES TWO-FAMILY DWELLING

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, Mr. Greg Davis, on behalf of Gilley Properties, LLC, has applied for an SUP to allow for the construction of a two-family dwelling; and

WHEREAS, the proposed two-family dwelling is shown on a preliminary site plan, titled "Master Plan for Gilley Duplex on Lot 3-E of Neck-O-Land Road Subdivision" dated December 14, 2009; and

WHEREAS, the property is located at 248 Neck-O-Land Road on land zoned R-2, General Residential, and can be further identified as James City County Real Estate Tax Map/Parcel No. 4740100040C; and

WHEREAS, the Planning Commission of James City County, following its public hearing on March 3, 2010, recommended approval of this application by a vote of 7-0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Land Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing does hereby approve the issuance of SUP No. 0003-2010 as described herein with the following conditions:

1. This SUP shall be valid for the construction of one duplex dwelling structure (the "Project") as shown on the Master Plan titled "Master Plan for Gilley Duplex on Lot 3-E of Neck-O-Land Road Subdivision" dated December 14, 2009 (the "Master Plan"). The duplex shall be located at 248 Neck-O-Land Road, further identified as James City County Real Estate Tax Map No. 4740100040C (the "Property"). Development of the Property shall be generally in accordance with the Master Plan as determined by the Director of Planning. Minor changes may be permitted by the Development Review Committee (the "DRC"), as long as they do not change the basic concept or character of the development. This includes the removal of existing structures and removal of nonessential gravel, as shown on the Master Plan.
2. Construction shall commence on the Project within 36 months from the date of approval of this SUP by the Board of Supervisors, or the SUP shall become void. For purposes of this SUP condition, "construction" shall be defined as the owner/developer having obtained building permits for, and passed inspection of, footings and/or foundation for the proposed duplex.
3. The owner/developer shall provide and install rain barrels for all residences on the Property prior to issuance of a certificate of occupancy for the duplex.
4. The owner/developer shall install a single shared driveway to be used to provide access to the five lots (Lots 3-A, 3-B, 3-C, 3-D, and 3-E), as well the existing duplex on Lot 4. This shared driveway shall be paved, constructed to a minimum standard of three inches of asphalt over six inches of compacted No. 21 A or B stone and no less than 12 feet in

width, to be verified and approved by the Director of the Environmental Division. The owner/developer shall prepare and record documents in a form approved by the County Attorney that set forth: 1) the provisions made for the permanent care and maintenance of the shared driveway and its associated easement, including bonds where required by the County, and 2) the method of assessing each individual property for its share of the cost of adequately administering, maintaining, and replacing such shared driveway in the event the lots of the subdivision ever come under separate ownership. The driveway shall be located as generally depicted on the Master Plan, as determined by the Director of Planning and subject to the approval of the Virginia Department of Transportation (VDOT).

5. The owner/developer shall be responsible for developing and enforcing water conservation standards, which shall be submitted to and approved by the James City Service Authority (JSCA) prior to the issuance of a building permit for the duplex. The standards shall include, but not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, and the use of approved landscaping materials, including the use of drought-resistant native and other adopted low-water-use landscaping materials and warm-season turf where appropriate and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
6. The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Conveyance of Conservation Easement to the Commonwealth of Virginia – Virginia Capital Trail

Mr. Rogers stated that James City County would be conveying its easement rights to VDOT for property along the Virginia Capital Trail. He stated the cost of the easement rights have been calculated according to policy and he recommended approval of the resolution.

Mr. Kennedy opened the public hearing.

As no one wished to speak to this matter, Mr. Kennedy closed the public hearing.

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

RESOLUTION

CONVEYANCE OF CONSERVATION EASEMENT TO THE

COMMONWEALTH OF VIRGINIA - VIRGINIA CAPITAL TRAIL

WHEREAS, James City County owns a 100-foot conservation easement along Route 5, John Tyler Highway; and

WHEREAS, the Virginia Department of Transportation (“VDOT”) has constructed a portion of the Virginia Capital Trail (the “Trail”) on the County’s conservation easement; and

WHEREAS, VDOT requires 0.381 acres or 16,586.3177 sq. ft. of right-of-way in the conservation area commonly known as 2201 and 2349 John Tyler Highway and designated as Parcel No. (1-1A) on Tax Map No. (44-1) and as Parcel No. (1-4) on Tax Map No. (44-1), respectively; and

WHEREAS, VDOT will pay the County the sum of \$1,761.47 for the 0.381 acres of easement in the Trail right-of-way; and

WHEREAS, VDOT agrees to assume all liability for the operation, use, and maintenance of the Trail pursuant to Va. Code § 29.1-509; and

WHEREAS, after holding a public hearing, the Board of Supervisors agrees to convey its property interests in the conservation easement that is needed for the Trail right-of-way.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the appropriate documents to convey to the State the necessary property rights over the County's easement for the Trail right-of-way.

5. Ordinance Amendment to Chapter 16, Public Parks and Recreation Facilities

Ms. Lindsey Craven, Law Clerk, stated the ordinance amendment was a basic update to allow the County to prosecute individuals who trespass on Parks and Recreation facilities after hours. She recommended adoption of the ordinance amendment.

Mr. McGlennon asked what the procedure would be for enforcing the ordinance if people enter the property at park entrances which may not be clearly marked.

Ms. Craven stated that the individuals may be prosecuted for trespassing.

Mr. John Carnifax, director of Parks and Recreation, stated that he believed that the public should be educated. He commented that he did not want to prosecute someone for walking in the park, but to issue a warning. He stated this would allow the enforcement of a Class 4 misdemeanor to show the seriousness of the matter.

Mr. McGlennon commented on a case such as Jamestown Beach.

Mr. Carnifax stated that a warning would be issued first, unless it was a repeat offender or damage was being done to the facilities.

Mr. McGlennon stated that the intention would be to create a consistent penalty in the ordinance.

Mr. Carnifax stated that was correct.

Mr. McGlennon asked what the sanction would be for an offense.

Mr. Carnifax stated a Class 4 misdemeanor carried a penalty of no more than \$250.

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: McGlennon, Goodson, Icenhour, Jones, Kennedy (5). NAY: (0).

I. PUBLIC COMMENT - None

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner complimented the citizens for a 75 percent response rate to the 2010 census. He stated the national average is at 66 percent. He urged citizens to send in their census forms and noted that if the forms are not received, a costly follow-up visit would be necessary. He commented that the recent General Assembly enacted a law to review regulations for Dam Safety and that Jolly Pond Road Dam would be monitored through the State Dam Safety offices. He stated when the Board completed its business, it should recess to 5 p.m. on April 22, 2010, for a second Closed Session meeting for Executive Search Services. He stated that the Board also should hold a Closed Session following this meeting in relation to the purchase of parcels of property for public use pursuant to Section 2.2-3711(A)(3) of the Code of Virginia.

K. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour noted he attended the League of Women Voters forum on the proposed coal plant in Surry. He stated the coal plant would require a surface water withdrawal permit for about 30-35 million gallons a day from the James River. He stated a 14-mile pipeline and desalination plant would be constructed. He stated there were extensive permitting requirements for water that the plant would need to undergo. He stated that the technology of desalination may present water opportunities in the future.

Mr. Goodson stated he attended the opening of the Virginia Capital Trail. He stated there was a touch-screen informational kiosk and encouraged citizens to visit the trail. He stated that bicyclists were still not being allowed to cross Jolly Pond Dam.

Ms. Jones commented there was a link on the County website to the upcoming budget. She asked for a quick link from the homepage to the current budget.

Mr. Kennedy noted that he had received information about a policy from Virginia Beach regarding Chinese drywall assessments.

Mr. Kennedy asked that Mr. Richard Sebastian, Real Estate Assessment Director, come forward and discuss the County's assessment on properties affected by Chinese drywall.

Mr. Sebastian commented on the methodology for the properties affected by Chinese drywall. He stated that the Chinese drywall would affect the value of the home and part of the assessment practices would be to look at market sales value. He stated this does not exist because the properties have not sold. He stated the next method would be to evaluate the actual repair data, but no properties have been repaired. He stated that the final methodology would be to look at the methodology to assess partial value of the property prior to electrical or drywall, fixtures, plumbing at 50 percent value. He stated that the assessment of 50 percent value would be placing the property at the same stage of the process of new construction. He stated that was the most logical and equitable method of assessment. He stated this was also based on an established value of the property. He commented that there were 37 properties that had come forward with certification that there was

Chinese drywall in the house in varying amounts. He stated the recommendation was that regardless of the amount of drywall, all fixtures, drywall, plumbing should be removed from the house. He stated the assessment has been reduced on all 37 properties and all property owners had received notices. He stated that to date the Board of Equalization (BOE) has one appeal which would be heard in June. The BOE has the authority to change the valuation, which every citizen has a right to appeal.

Mr. Goodson stated that the methodology would make more sense if the assessment was similar to that of a house that was burned and uninhabitable.

Mr. Sebastian stated those homes had not been determined to be uninhabitable. He stated that the methodology compared the stage of construction.

Mr. Goodson stated that he felt the methodology was backwards.

Mr. Sebastian stated that the properties were inhabitable, being used, and have an established value.

Mr. Goodson stated concern for the properties that were no longer being inhabited. He asked about the methodology for assessing a home that was burnt and uninhabitable.

Mr. Sebastian stated that the methodology would be similar. He stated that when the repairs are done within a year, the value did not change at all. He stated if the renovations took more than a year, the value would be reduced to a minimal amount.

Mr. Goodson stated that this was the case of the Chinese drywall.

Mr. Sebastian stated the Consumer Product Safety Division has not determined the homes to be uninhabitable.

Mr. Kennedy asked if there were properties with trailers located on the properties that have Chinese drywall.

Mr. Hicks stated there were no current permits that meet the criteria.

Mr. Kennedy asked how many foreclosures resulted from Chinese drywall.

Mr. Sebastian stated he did not believe there were any at this point. He stated there was one resident who brought a case forward and stated he was already close to foreclosure at that point.

Mr. Kennedy asked if there could be a comparison to other jurisdictions which had sold homes knowingly with Chinese drywall.

Mr. Sebastian stated there were other jurisdictions in other states.

Mr. Kennedy stated there has been no relief for people affected by Chinese drywall from State or Federal government. He asked that the Board consider a policy to assess the value of the property and a \$100 assessment on the dwelling with a sunset clause.

Mr. McGlennon stated he sympathized with this matter, but he wanted to take into account legal obligations to prevent others in differing situations to change the valuation of their homes. He stated that people who live in the homes now have a liability. He stated he would consider a tool to reasonably assess the

homes to provide relief. Mr. McGlennon recognized Mr. Sebastian's obligation to move forward with this in a way that is justifiable and without setting precedence.

Mr. Wanner stated that this could be considered in conjunction with the Attorney's office and Federal and State laws. He stated that Senators Warner and Webb, and Congressman Rob Wittman are working toward a solution, but it is a significant national issue with difficult facets. He stated this has to be considered in a comprehensive way.

Mr. Goodson stated he felt that 50 percent assessment was an arbitrary valuation.

Mr. Sebastian stated it was based on an equitable methodology that could be applied to all properties. He noted that the BOE has the authority to change assessments and there was one case before the BOE. He stated if the BOE makes a change to that property, that change would be applied to all the properties because it would be equitable.

Mr. Goodson stated he did not believe it was good customer service to require the citizens to appeal to the BOE.

Mr. Wanner stated that the assessor is establishing the methodology. He stated it was not arbitrary. He stated that the issue could be reviewed comprehensively.

Mr. Goodson stated he wanted to see a comprehensive review of the methodology.

Mr. McGlennon stated that an immediate relief to the taxpayer would likely come from the BOE process, which would be faster than developing a methodology and policy. He stated that he felt that it was still important to move forward to develop that policy, but this was a way that the taxpayers could get relief in the short term. He stated it was important to encourage citizens to make use of the BOE as well as look at the best practices in considering these cases.

Mr. Kennedy stated that he understood Virginia Beach's policy was not done in a public setting, but he was interested in its valuation calculations. Mr. Kennedy stated he understood the use of the 50 percent valuation, but when a property is being built, it has value. He stated in these cases, however, no one wants the property and it is worthless. He stated in most cases, the people do not have the means to rehabilitate the homes. He suggested that the homeowners be contacted by letter to remind them of the option of appeal to the BOE.

Mr. Sebastian stated the BOE could hear many similar cases at once.

Mr. Kennedy stated he believed the Board and staff have been aggressive toward mitigating this problem, but he wanted to make it a priority for James City County residents.

Mr. Sebastian stated he had communicated with most of these residents and that he did not believe there was an established methodology at this point to value the homes. He stated he would work toward moving forward on this issue.

L. CLOSED SESSION

Mr. McGlennon made a motion to go in to Closed Session pursuant to Section 2.2-3711(A)(3) of the Code of Virginia for the consideration of the acquisition of parcels of property for public.

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

At 9:31 p.m. Mr. Kennedy recessed the Board into Closed Session.

At 9:55 p.m. Mr. Kennedy reconvened the Board.

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

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

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.

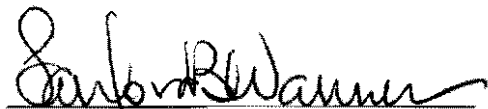
NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this 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)(3) of the Code of Virginia, to consider the acquisition of parcels of property for public use.

M. **RECESS** to 5 p.m. on April 22, 2010

Mr. Icenhour made a motion to recess to 5 p.m. on April 22, 2010.

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

At 9:56 p.m. Mr. Kennedy recessed the Board.



Sanford B. Wanner
Clerk to the Board

ADOPTED

APR 13 2010

ORDINANCE NO. 154A-4

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 16, PUBLIC PARKS AND RECREATION FACILITIES, OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 16-14, HOURS OF OPERATION.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 16, Public Parks and Recreation Facilities, is hereby amended and reordained by amending Section 16-14, Hours of operation.


Chapter 16. Public Parks and Recreation Facilities

Sec. 16-14. Hours of operation.

The director shall establish hours of operation for public parks and recreational facilities; the hours may prohibit use of certain facilities at certain times. *No person shall make use of public parks and recreation facilities during prohibited hours.*

James G. Kennedy Chairman, Board of Supervisors	
SUPERVISOR	VOTE
MCLENNON	AYE
GOODSON	AYE
ICENHOUR	AYE
JONES	AYE
KENNEDY	AYE

ATTEST:


Sanford B. Warner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2010.

AmendCh16_ord