

M E M O R A N D U M

DATE: December 16, 2003

TO: The Board of Supervisors

FROM: Leo P. Rogers, County Attorney

SUBJECT: Resolution Approving Voluntary Agreement to Change or Establish Common Boundary Line between the County of York, Virginia, and the County of James City, Virginia

Attached for consideration is a resolution authorizing the County Administrator to execute an agreement and such other documents as may be necessary to prospectively establish the common boundary line between York County and James City County near Newman Road and Skimino Creek. The Agreement confirms that the jurisdictional boundary line between the localities is the existing centerline for Skimino Creek. If approved, the Agreement would not change the boundary line currently used by the localities. The Agreement becomes effective when it is approved by each of the localities and is confirmed by the Circuit Court for one of the localities. York County will be considering the Agreement at its Board of Supervisors meeting on December 16, 2003.

The common boundary line between York County and James City County was questioned in a dispute over the ownership of real property between the Laurel Lakes Waterfront Property Owners Association (“Laurel Lakes POA”) and Gary and Donna Fouts and Scimmino Recreation, Inc., trading as Williamsburg KOA (“KOA”). One lawsuit between the parties was recently dismissed in York County Circuit Court and another lawsuit is currently pending in the Williamsburg/James City County Circuit Court. The historical boundary line between the counties is in dispute because the Laurel Lakes POA claims to own a small area of lakefront property if it is located in York County, and the KOA claims to own the same property if it is located in James City County.

The focus of this dispute is the centerline for Skimino Creek. York County and James City County have historically used the existing centerline of Skimino Creek as their common jurisdictional boundary. The KOA alleges that the centerline for Skimino Creek has changed since it was identified as common boundary line in the 1600s. If the KOA’s allegations are correct, approximately 2.14± acres of land would be in James City County that both York County and James City County currently designate as being in York County. The 2.14± acres in question are generally low lying swamp land of little value to either jurisdiction. Attached is a drawing which depicts the land that could be in James City County if the KOA’s allegation of the historical boundary line is correct.

Confirming the current boundary line between the localities should not affect the litigation between parties. York and James City County are merely confirming their common jurisdictional boundary line and such action does not affect the ownership of property. The confirmed boundary line would only operate prospectively. The KOA and Laurel Lakes POA would still need to convince a court that they owned such property based on the legal description in their deeds and the historical boundary line between York County and James City County.

This matter is being considered by York County and James City County for two reasons. First, the York County Circuit Court Judge agreed to dismiss the lawsuit in York County Circuit Court, in part, to give the localities an opportunity to reestablish or confirm their common boundary line. The Judge’s decision was made despite the fact both York County and James City County represented to the Court that there was no dispute between the localities as to where the common boundary line was believed to be. The second reason for addressing this issue is that, due to the perceived uncertainty about the location of the common boundary line, public safety and regulatory agencies for each locality have been called to resolve disputes. Examples of such disputes include the erection of barriers, calls to law enforcement, and identification of environmental problems. Although the

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proposed action does not change the current common boundary line, it should resolve any dispute as to which county has jurisdiction over the contested area.

I recommend adoption of the attached resolution.

Leo P. Rogers

CONCUR:

Frank M. Morton, III

LPR/adw
boundary.mem

Attachments