

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 26TH DAY OF OCTOBER, 2004, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
Michael J. Brown, Vice Chairman, Powhatan District
John J. McGlennon, Jamestown District
M. Anderson Bradshaw, Stonehouse District
Jay T. Harrison, Sr., Berkeley District

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

B. MOMENT OF SILENCE

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

C. PLEDGE OF ALLEGIANCE

Brandon Christian, a sixth-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

D. HIGHWAY MATTERS

Mr. Todd Halacy, Assistant Residential Engineer, stated that Route 199 Public/Private Initiative, Jamestown Corridor Improvements project is on schedule, and stated that the drainage watch list is being finalized in the next few weeks.

Mr. Bradshaw requested the CSX railroad crossing at the Diascund Station be reviewed as it is becoming a safety hazard.

Mr. McGlennon requested an update on the evaluation of Route 617, Treasure Island Road, for overlay.

Mr. Halacy stated that Route 617 has been added to the paving schedule and will be completed when the weather permits.

E. PRESENTATIONS

1. Employee and Volunteer Outstanding Service Awards

Mr. Goodson and the other Board members presented Outstanding Service Awards to the following **Outstanding Teams**: *Five Forks Area Study Committee*: Henry Branscome, II, Jay T. Harrison, Sr., Jerre Johnson, Jon Nystrom, Tom Tingle, David Fuss, Hampton Jesse, Joe McCleary, and Kay Thorington; *Celtic Film Series*: Maureen Cummings, Jack Willis, and Dr. Robert Maccubbin; *Wellspring STRIVES to Care Day*: Reverend Tim Tate, Nancy Scott, Jenny Hindman, Gail Scullion, Nora Cho, Janis Locke, Gina Thorne, Joyce Huffman, Allison Barrett, and Cindi Eicher; *Disaster Awareness Planning Team*: Jason Baldwin, Arlana Fauntleroy, Talita Swann, Melissa Mankowski Burke, Angie Sims, and Megan White; *Ironbound Square Redevelopment Plan*: Keith Denny, Marion, Paine, and Amy Driscoll; **Outstanding Individuals**: *Traffic Unit Database*: Ray Ferrara and Bill Lent; *National Night Out-Stonehouse Apartments*: Brian and Jennifer Gillette, Holly Leonard, Brittany Reames, Amy Scherdin, Tiffany Cutts, Melissa Potts, and Kathy Shield; *Day of Caring*: Blu Worman, Scott Easterling, and Jeff and Mona Deeds; *Abraham Lincoln's Traveling Exhibit*: Patrick Golden; *Partnership with Purpose*: Janet Crowther and Barry Trott; and *The James City Service Authority Employee of the Year*: Dion Walsh.

2. Wellington Neighborhood Water Use Issue

Larry Foster, General Manager, made a presentation to the Board on water use/rate issues raised by citizens of the Wellington subdivision at the meeting of the James City County Board of Supervisors on October 12, 2004. Mr. Foster stated that eight years ago the James City Service Authority (JCSA) Board of Directors set an increasing rate system to encourage water conservation and reduce peak demands on the water system. A study by the EPA revealed that the water use rate system has accomplished what the Directors desired.

Mr. Foster provided an overview of the JCSA water use rates for residential and commercial customers, stated that the residential first-tier rate was set to assist lower-income households that typically consume less water, the second tier was set as the range for the average household, and the third tier was set to encourage conservation and reduce peaks in the water demands; the commercial rates are set at a flat rate of \$2.70 per 1,000 gallons, the residential customers are assessed fees according to the three-tier rate system, and provided an overview of the typical water usage of residential customers and the associated costs for that use.

Mr. Foster stated that four water meters from the Wellington subdivision were calibrated, all four were within American Water Works Standards, and all four registered accurately during the calibration; and six Wellington subdivision water meters were validated by the sub-meter readings. Mr. Foster also stated that the water meters can handle 16 to 20 gallons per minute.

Mr. Foster provided a location overview of the approximately 13 percent of JCSA residential customers that exceeded 30,000 gallons in July, August, and September of 2004. Mr. Foster commented that of the 75 Wellington subdivision homes, 37 customers exceeded 30,000 gallons during the same period, and provided an overview of water consumption of other similar subdivisions in various stages of overall development.

Mr. Foster provided an overview of the recommended irrigation guidelines of the Virginia Cooperative Extension Office and how that recommendation could negatively impact the water system should all or even 25 percent of the customers follow those guidelines.

Mr. Brown commented that in 2002, a very dry year, 25 percent of the residential customers exceeded the third-tier benchmark level and that resulted in a lot of stress on the JCSA water system.

Mr. Foster stated that the original covenants recorded for the Wellington subdivision prohibits the installation of automatic irrigation systems. Mr. Foster stated that the developer came back with a new proposal for the covenants for the installation of drip irrigation systems covering no more than 30 percent of the parcel, except within the Virginia Department of Transportation Right-of-Ways where pop-up heads would be permitted. Mr. Foster stated that staff agreed to only 30 percent irrigation of the lot size in the hopes of encouraging use of drought-resistant plants and mulch to reduce the irrigation demands in support of water conservation efforts.

Mr. Foster stated that approximately 50 percent of the currently developed Wellington subdivision lots have irrigation systems, they are all pop-up heads, and the systems appears to cover more than 30 percent of the parcel.

Mr. Foster stated that staff discovered today that the second covenant amendment permitting drip irrigation in the Wellington subdivision had not been recorded.

Mr. Harrison inquired if the original covenant is binding on Wellington because the amendment has not been recorded.

Mr. Foster stated that is correct.

Mr. Harrison stated that the original covenant does not permit irrigation and recalls that in 2000 the Board wanted to prevent outdoor watering in the Wellington and Colonial Heritage by irrigation systems using JCSA water and encouraged the subdivisions to use water retention ponds as an irrigation water supply.

Mr. Rogers stated that the County was a party to the initial covenants, the JCSA Water Conservation Coordinator brought forward an amendment to the Wellington subdivision covenants to allow permit drip irrigation and it was approved by the Board. As staff reviewed JCSA records, it was determined that the covenant amendment had not been recorded in the Clerk's Office.

Mr. Rogers stated that the Board has committed to support drip irrigation in the Wellington subdivision and needs to get the amendment to the covenants recorded so it will be effective between all the property owners.

Mr. Goodson inquired that when the citizens purchased their homes, what covenants did they know of.

Mr. Rogers stated that the recorded covenants indicate that irrigation is not allowed.

Mr. Harrison inquired how to proceed.

Mr. Foster stated that the Homeowners Association (HOA) is responsible for enforcing the covenants, and that the HOA is still in control of the developer.

Mr. Harrison requested verification that the County is a partner in that.

Mr. Rogers affirmed that the County is a party to the initial Declaration.

Mr. Foster stated that the Board referred the issue to the Water Conservation Committee. The first meeting of that Committee will be on October 27 and Wellington subdivision representatives have been invited to that meeting. The Water Conservation Committee will come back to the Board with any recommendations.

Mr. McGlennon inquired how the covenants could be disclosed to the homeowners yet disregarded and also encouraged by the developer to install sod and therefore need to water the sod.

Mr. Foster stated that residents of Wellington will be speaking to the Board and may be able to provide insight into the developer's role.

C. PUBLIC COMMENT

1. Mr. Tom Haywood, 3936 Penzance Place, made a presentation to the Board, stated concern about the low benchmark for the third tier, stated that he did research and spoke with the Water Conservation Coordinator and presented his findings on the water consumption rates for residential customers per quarter, stated concern that the numbers indicate that an average family of three will consistently broach into the third-tier rate, and commented on the disadvantages of wells for irrigation.

2. Mr. Vincent Clifton, 8404 Attleborough Way, requested information regarding the Outdoor Water Use Ordinance exemption policy.

Mr. Foster stated that an exemption from the Outdoor Water Use restrictions is applicable to the use of water, not an exemption of water fees; it is available for the initial 60-day establishment of new lawns, and is in effect between May 1 through September 30.

3. Mr. Edmond Brown, 8400 Down Patrick Way, stated that he is a new resident and JCSA customer, that he was not made aware of rules and regulations governing service, suggested that the County use Newport News water if there is such a water shortage in James City County, and stated that the water utility rate unreasonable.

4. Mr. George Safka, 3905 Leicester South, stated concern that the covenant is limited to drip irrigation and not pop-up irrigation systems.

Mr. Goodson stated that the covenants on record do not permit any irrigation systems.

Mr. Safka inquired if the amendment to the covenants that staff is going to record limits irrigation systems to drip only and what is to be done about all the pop-ups installed.

Mr. Goodson stated that the covenants are a part of the deed and recommended citizens check with their realtors and closing attorneys.

Mr. Safka inquired if he will have to remove the \$3,500 pop up irrigation system.

Mr. Goodon recommended he check with his realtor.

Mr. Brown requested clarification on his belief that it is not the practice of the County to enforce neighborhood covenants, that responsibility resides with the Homeowners Association and citizens can approach the HOA to seek relieve in civil court matters.

Mr. Rogers stated that is the general rule, however, in Wellington the County is a property owner and also a party to the Declaration of Covenants. When the developer began to develop the property there were questions raised about the proffers and as part of its settlement the Board entered into a Declaration of Covenants with Wellington where Wellington identified how it would construct the development. The Public Use Site was conveyed to the County. As a property owner, the County has a right to enforce the covenants just like the HOA does.

Mr. McGlennon inquired in this particular case where covenants reflect preference of developer and it translates into the homeowners. The County has a significant public policy interest in this particular instance of water conservation and the Board does not want to have the HOA disregard the covenants in this instance.

Mr. McGlennon stated concern that the HOA is being operated by the developer and not by the people living there. He also stated concern that a homeowner purchases from the developer and does not have a clear understanding of the covenants that drip-irrigation is the only acceptable irrigation and it may only cover 30 percent of the lot.

Mr. Harrison stated that he shares the same concerns.

Mr. McGlennon requested that staff ensure the developer discloses and enforces the covenants, and find out if the developer is going to mitigate this situation.

Mr. Rogers stated that generally the County relies on the HOA to enforce covenants. This particular case is unique and if the HOA is not going to enforce the covenants, the County for the reasons stated in the Declaration, could step forward and have the ability to enforce the covenants.

5. Mr. Bobby Brady, 3977 Penzance Place, concurred with citizens' comments that the tiered water system needs to be addressed, stated concern that staff is not responsive to his voiced concerns and recommendations, provided an overview of his recent water bill to previous water bills, suggested that the original meter is not reading accurately as a temporary meter registered water flow at two-thirds the rate of the other meter, and requested staff reply to his letters.

Mr. Goodson inquired if Mr. Brady has a sub-meter.

Mr. Brady stated that he has the original water meter put in by the developer.

Mr. Foster stated that after calibration, if it is determined that a meter is reading accurately, it is put back into place.

Mr. Foster clarified the figures provided by the Water Conservation Coordinator to Mr. Haywood.

Mr. Foster apologized to Mr. Brady and stated that he would contact him and follow up on his subsequent inquiries.

6. Mr. Joseph Beck, 3929 Penzance Place, stated that he was informed that irrigation was not initially permitted, however, the Wellington subdivision model home had an irrigation system in it and the rest of the subdivision soon followed, commented that his water bill is higher than his electric bill, stated that he understands the Board's desire to conserve water, however, extreme conservation efforts such as the benchmark for the third tier is unreasonable.

7. Ms. Derryn Webster, 8436 Ashington Way, commented that when she purchased her home she was informed that irrigation systems were not permitted and she tried unsuccessfully to seed a lawn, the model unit on the corner got an irrigation system and she was told that the HOA had gotten the covenants amended and irrigation systems were permitted, however, they were not told only drip irrigation systems are acceptable; stated that she presumed approval of the type of irrigation system when a permit was obtained to install the system. Ms. Webster stated concern that her water usage jumped approximately 55 thousand gallons with the installation of the irrigation system.

8. Mr. David Smith, 103 Burgundy Road, Director of Marketing and Sales for Oleta Coach Lines, stated that he believes his organization is being discriminated against by the County; stated that a

recent charter engagement was cancelled by a long-standing client because Williamsburg Area Transport (WAT) was able to give a substantially lower price for the same service.

Mr. Wanner read a letter dated October 15, 2004, addressed to Mr. Smith in response to his comments made on October 12, 2004, before the Board. Mr. Wanner responded that the trips in questions were provided to the College of William & Mary ("College") in accordance to the contractual obligation with the College; responded that Williamsburg Area Transport (WAT) will not provide charter services beyond its legal responsibility; stated that contract with the College is still in place and as the organizations go through the reworking of the agreement, WAT will be sensitive to be sure WAT will not compete unfairly with a private company.

Mr. Goodson inquired if the College was using its own buses for transportation service prior to the contractual agreement with WAT.

Mr. Wanner stated that the College did use its own bus fleet and when not available they turned to the private sector to provide the service.

9. Mr. Ed Oyer, 139 Indian Circle, commented on the upcoming Bond Referendum and the decisions of other Hampton Roads jurisdictions regarding school facilities based upon the feedback of its citizens; commented on a recommendation that the school administrators work in the temporary trailers while students utilize the school facilities; and commented on a media articles regarding the quality of school education being related the involvement of the parents.

10. Mr. Ty Elliott, 8401 Tynemouth Way, requested clarification on Board actions to resolve the concerns of the JCSA residential customers in the Wellington subdivision, commented that Mr. Foster's presentation is a good start and there needs to be clarification on the background on the setting of the tier levels and rates, commented on the advantages and disadvantages of private wells for irrigation, and stated that both sides of the Wellington water issue can take steps to mitigate the situation, and requested information on what steps the Board and staff will do to mitigate the situation and what can citizens expect.

Mr. Goodson inquired what rationale the Board used in setting the tier water-usage rates.

Mr. Foster stated that the adjustments to the rates were made while maintaining a revenue-neutral adjustment focusing on the encouragement of water conservation and reducing peak demands.

Mr. Goodson inquired if an adjustment to one tier would have an impact on the rates or levels of the other tiers.

Mr. Foster stated that a certain level of revenue has to be met and adjustments to a tier would impact the other tiers.

Mr. Goodson inquired if the tiered water-usage rate system, as a part of the water conservation program for the County, was used in the application and subsequent approval for a ground water desalinization plant permit.

Mr. Foster stated the permit for the groundwater desalinization plant includes a Water Conservation Plan to encourage water conservation.

The Board and staff briefly discussed the permit for the groundwater desalinization plant and the philosophical intent for water conservation. The Board also discussed the need for a Public Hearing should the Board wish to make an adjustment of the three-tier water system, inability to adjust rates retroactively, what would be required to adjust rates mid-year, inability to adjust rates for specific customers or group of customers.

Mr. Rogers stated that the rate structure must have a reasonable relationship to a legitimate governmental objective, which the Board has with the three-tier rate structure and cannot apply that tier-rate structure in a manner that is not uniform across the board for all property owners; a waiver of the tier structure for those that get a waiver for outdoor watering is not valid because one would invalidate the other.

Mr. Goodson inquired if a credit can be provided.

Mr. Rogers stated that the rate structure must be applied in a manner that is uniform across the board for all owners, unless the JCSA can find fault such as a mistake made or the water was not used.

Mr. Goodson inquired if JCSA has found any fault with any excessive bills.

Mr. Foster stated that an unknown leak has not been found and therefore adjustment to fees cannot be made.

Mr. Goodson inquired if there are any restrictions in the installation and use of private wells.

Staff stated that there are no restrictions on the installation and use of private wells for irrigation, however, there are restrictions on the installation and use of private wells when public water is available.

Mr. McGlennon stated that he strongly supports the County's water conservation efforts, commented that most of the County can function within the confines of those efforts. He also stated concern about the anomaly within the Wellington subdivision, and there may be an issue with the responsibility of the developer in its failure to communicate those requirements and enforcement of those covenants. He further stated that the Board is expecting response and recommendations of the Water Conservation Committee, and inquired when the Board may expect a reaction to the situation.

Mr. Foster stated that he anticipates bringing something back by the second meeting in November.

Mr. McGlennon requested staff take steps to ensure that the HOA informs new residents of the Wellington subdivision of the policies of the County and JCSA.

Mr. Harrison inquired what steps the County can take as a participant in the enforcement of covenants against the developer for the improper installation of irrigation systems beyond 30 percent of the lot.

Mr. Rogers stated that his comments on this matter are restricted to what the County can do. The County has enforcement powers under the covenant that runs with the land the County owns in the Wellington subdivision and can enforce the covenants against the HOA or anyone who installs the system. Mr. Rogers commented that any action against the developer would have to come from one or more of the Wellington subdivision owners.

The Board inquired if a permit is required for the installation of an irrigation system on private property and if the JCSA is made aware of installations of irrigation systems.

Staff stated that a permit is not required for the installation of an irrigation system on private property and the JCSA is not always made aware of irrigation system installations; nor is it general practice for the JCSA field staff to be aware of the specifics contained in the covenants of subdivisions.

The Board inquired if the Geographic Information System (GIS) system could be utilized by the JCSA to identify lots that have covenants with the County as a party.

Mr. Foster stated that is something that could be incorporated into the JCSA computer system.

Mr. McGlennon inquired if the future developments will have HOAs that will enforce covenants concerning water conservation and is that a good mechanism to enforce water conservation through.

Mr. Foster stated that it will be a while before such developments get to the point where staff can make that determination.

Mr. Bradshaw inquired if the Wellington subdivision covenants prohibit the installation of irrigation wells.

Mr. Rogers stated that the Wellington subdivision covenants do not restrict the installation of irrigation wells.

Mr. Foster stated that staff researched the news media notifications of the water-use rate system and noted that the last run was in mid-June, stated that citizens have provided good suggestions for notification to new residents of the JCSA rules and regulations, and from those suggestions, staff has developed a new account information packet that has basic information regarding the rules and regulations that will be left on the doors or mailboxes of new accounts.

Mr. McGlennon requested a reply to the citizen's comment that Newport News has an unlimited water supply, and commented that such a statement does not account for the efforts of Newport News to develop a reservoir to meet its water needs.

Mr. Foster stated that Newport News does not have an unlimited supply of potable water and they are facing an anticipated water supply shortage in 2011 or 2012.

11. Mr. Richard Costello, Water Conservation Committee Chairman, stated that a special meeting has been called for October 27 and the regular meeting of the Committee will be held on November 18. The Committee anticipates some recommendations may be presented, and stated that the question of permits for the installation of irrigation systems will be researched.

G. CONSENT CALENDAR

Mr. Brown made a motion to adopt the minutes on the Consent Calendar.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

1. Minutes - October 12, 2004, Regular Meeting

H. PUBLIC HEARINGS

1. Case No. SO-002-04. Subdivision Ordinance Amendment: Utility Inspection Fees

Mr. Larry M. Foster, General Manger of the James City Service Authority, presented a change to the Subdivision Ordinance to change when utility inspection fees are collected from developers in the County to coincide with an amendment to the James City Service Authority Regulations Governing Utility Service.

Mr. Foster stated the proposed amendment allows the JCSA to issue the Certificate to Construct at a different phase of the development process rather than at the time of land-disturbing permit, as many of the development's land disturbance can commence weeks or months before the need for utility plans arise.

Mr. Foster requested the Board adopt the ordinance following a Public Hearing on the proposal.

Mr. Brown inquired if any other action is being recommended with this proposal other than to make the process easier for applicants by separating the two approval processes and changing when the Certificate to Construct is issued.

Mr. Foster stated that there are no changes to the amount of the inspection fees.

Mr. Goodson opened the Public Hearing.

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

Mr. Brown made a motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

2. Conveyance of Easement - Jolly Pond Road

Mr. Rogers stated that Mr. and Mrs. Dwight Smith would like electric service to their property located near the school bus garage on Jolly Pond Road. In order to get service, a utility easement would be required across the Freedom Park property from the school bus garage along Jolly Pond Road. The Smiths have delivered a check to the County to cover the cost associated with conveying the property to be used as a utility easement to the Dominion Virginia Power.

Staff recommends the Board approve the resolution authorizing the County Administrator to execute the Deed of Easement on behalf of the County.

Mr. Goodson opened the Public Hearing.

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

Mr. McGlennon made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

RESOLUTION

CONVEYANCE OF EASEMENT - JOLLY POND ROAD

WHEREAS, James City County owns 675.64 acres commonly known as 5537 Centerville Road and designated as Parcel No. (1-9) on James City County Real Estate Tax Map No. (30-1); and

WHEREAS, Dominion Virginia Power requires a 30-foot utility easement in order to provide domestic electrical service to a single-family home to be constructed on Jolly Pond Road by Dwight E. Smith and Joan B. Smith (Mr. and Mrs. Smith); and

WHEREAS, based on estimate of current market value performed by the County's Real Estate Assessment Division, Mr. and Mrs. Smith delivered to the County a check in the amount of \$2,050 as the value of the easement to be conveyed by the County to Dominion Virginia Power; and

WHEREAS, the Board of Supervisors, following a Public Hearing, is of the opinion that it is in the public interest to convey a utility easement to Dominion Virginia Power in exchange for the \$2,050 paid by Mr. and Mrs. Smith.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Right-of-Way Agreement and such other documents necessary to convey a utility easement to Dominion Virginia Power in exchange for \$2,050 paid by Dwight E. Smith and Joan B. Smith.

3. Transportation Equity Program for the 21st Century (TEA-21), Fort Magruder Grant Application

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that John V. Quarstein of the Virginia War Museum has requested the Board's endorsement of a Transportation Enhancement Program Grant application for the rehabilitation and interpretation of Fort Magruder.

Mr. Sowers recommended approval of the resolution.

Mr. Goodson opened the Public Hearing.

1. Mr. John Quarstein, Virginia War Museum, stated that Fort Magruder is a remnant of Civil War history and plans are underway for the preservation and interpretation of the Civil War battle of Williamsburg and requested the Board's support of the application.

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

Mr. Harrison made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

RESOLUTION

FORT MAGRUDER GRANT APPLICATION

WHEREAS, the Virginia War Museum intends to file an application with the Virginia Department of Transportation (VDOT) for an Enhancement Grant for the rehabilitation and interpretation of Fort Magruder; and

WHEREAS, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the local government in order for VDOT to program an Enhancement Grant project in the County of James City; and

WHEREAS, the Virginia War Museum hereby agrees to pay 20 percent of the total cost for planning and design, right-of-way, and construction of this project contingent upon entering into an acceptable reimbursement agreement with VDOT, and that, if the Virginia War Museum subsequently elects to cancel this project, the Virginia War Museum hereby agrees to reimburse VDOT for the total amount of the costs expended by the Department through the date the Department is notified of such cancellation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, requests the Commonwealth Transportation Board establish a project for the rehabilitation and interpretation of Fort Magruder, as described in the application submitted by the Virginia War Museum.

I. BOARD CONSIDERATION

1. Case Nos. Z-5-04/MP-5-04. New Town Sections 3 and 6 Rezoning and Master Plan and Case No. MP-8-04. New Town Sections 2 and 4 Master Plan Amendment (deferred from October 12, 2004)

Ms. Karen Drake, Senior Planner, stated that on October 12, 2004, the Board deferred action on the application of Greg Davis and Tim Trant of Kaufman & Canoles on behalf of New Town Associates LLC, to rezone 69.2 acres in Sections 3 & 6 from R-8, Rural Residential with proffers, and MU, Mixed Use with proffers, to MU, Mixed Use with proffers, to construct a maximum of 470 dwelling units with an overall density cap of 4.5 dwelling units per acre and construct a maximum of 220,000 nonresidential square feet at a location adjacent to Ironbound Road and located west of the intersection of Ironbound Road and Monticello Avenue and further identified as Parcel Nos. (1-50), (1-57), (24-6), and (24-1A) on the James City County Real Estate Tax Map No. (38-4). Also, the New Town Sections 2 and 4 Master Plan will be amended by transferring 150 dwelling units and 70,000 nonresidential square feet to Sections 3 & 6.

Ms. Drake stated that staff has met with the applicant to review the voluntary cash school facility proffer and recommended the Board approve the applications and accept the revised voluntary proffers.

Mr. Bradshaw stated appreciation for the efforts of the staff and the applicant to address the issues raised on October 12 and recommended consideration of a cash proffer policy be reviewed for future applications.

Mr. McGlennon thanked the staff and the applicant for the indulgence of a deferral and echoed Mr. Bradshaw's comments concerning the consideration of a cash proffer policy, and stated concern that the application seems to have passed the adequate public facilities test yet a recent meeting of parents a focus of conversation was on the overcrowding issues at the schools.

Mr. Harrison stated concern that future cash proffers consider the facility and operating costs of doing business, stated appreciation for the vision of New Town; and stated reluctance at approving a development that is going to increase the impacts to public facilities such as the schools.

Mr. Bradshaw made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Brown, McGlennon, Goodson (4). NAY: Harrison (1).

RESOLUTION

CASE NO. MP-8-04. NEW TOWN - SECTIONS 2 AND 4

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a Public Hearing was advertised, adjoining property owners were notified, and a hearing was scheduled on Case No. MP-8-04 for the rezoning of approximately 91 acres from MU, Mixed Use, with proffers, to MU, with proffers; and

WHEREAS, on September 13, 2004, the Planning Commission recommended approval of this application by a vote of 5-2; and

WHEREAS, the property to be rezoned is identified as a portion of Parcel Nos. (1-50), (24-6), and (24-1A) on James City County Real Estate Tax Map No. (38-4), more particularly shown on the plan entitled "New Town Sections 2 and 4 Master Plan," prepared by AES Consulting Engineers, and dated June 1, 2004, with a revision date of September 1, 2004.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. MP-08-04 and accepts the voluntary proffers.

RESOLUTION

CASE NOS. Z-5-04/MP-5-04. NEW TOWN - SECTIONS 3 AND 6

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a Public Hearing was advertised, adjoining property owners were notified, and a hearing was scheduled on Case No. Z-5-04 for the rezoning of approximately 70 acres from R-8, Rural Residential, with proffers, and MU, Mixed Use, with proffers, to MU, with proffers; and

WHEREAS, on September 13, 2004, the Planning Commission recommended approval of this application by a vote of 5-2; and

WHEREAS, the property to be rezoned is identified as a portion of Parcel No. (1-57) on James City County Real Estate Tax Map No. (38-4), more particularly shown on the plan entitled "New Town Sections 3 and 6 Master Plan," prepared by AES Consulting Engineers, and dated June 1, 2004, with a revision date of June 21, 2004.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-5-04/MP-5-04 and accepts the voluntary proffers.

J. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, stated that members of his neighborhood ensure that new residents are provided a copy of the covenants because often realtors and lawyers do not inform new homeowners of the covenants.

2. Mr. David Smith, 103 Burgundy Road, Director of Marketing and Sales for Oleta Coach Lines, inquired if the buses used by the County for charter service to the College of William & Mary are Federally funded, where the buses are fueled, where the buses are garaged, and through which insurance agency the buses are covered.

Mr. Wanner stated that no Federal funds are used to support the operation of buses used as charter services according to the contractual agreement with the College of William & Mary.

The Board and staff briefly discussed the contractual agreement with the College of William & Mary, the funding sources, and transfer of bus service from a private operation through the College of William & Mary to a public service through the contractual agreement.

Mr. Goodson requested Mr. Smith provide Mr. Wanner his questions for a response.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner recommended at the conclusion of the Board meeting, it adjourn until 7 p.m. on November 9, 2004.

Mr. Wanner recommended the Board recess briefly while the James City Service Authority Board of Directors concludes its meeting, then reconvene to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of appointments of individuals to County Boards and/or Commissions, and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of property for public use.

L. BOARD REQUESTS AND DIRECTIVES

Mr. Bradshaw stated that an informational meeting will be held at the Toano Middle School on October 27 at 7 p.m. regarding the upcoming Bond Referendum.

Mr. Bradshaw stated that the Norsemen celebrated its 25th anniversary in Norge this evening.

Recess 9:06 p.m.

Reconvene 9:16 p.m.

M. CLOSED SESSION

Mr. Harrison made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of appointments of individuals to County Boards and/or Commissions, and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of property for public use.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

Mr. Goodson adjourned the Board into Closed Session at 9:15 p.m.

Mr. Goodson reconvened the Board into Open Session at 10:13 p.m.

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

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

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

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

Mr. Harrison made a motion to reappoint Richard Miller to a three-year term on the Peninsula Emergency Medical Services Council, Inc., term to expire on October 31, 2007, and to appoint Page Warden to a four-year term on the Historical Commission, term to expire on August 31, 2008.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

N. ADJOURNMENT

Mr. Harrison made a motion to adjourn.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

At 10:14 p.m., Mr. Goodson adjourned the Board until 7 p.m. on November 9, 2004.

Sanford B. Wanner
Clerk to the Board

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