

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 9TH DAY OF OCTOBER 2007, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

John J. McGlennon, Chairman, Jamestown District
James O. Icenhour, Jr., Vice Chairman, Powhatan District
Jay T. Harrison, Sr., Berkeley District
Bruce C. Goodson, Roberts District
M. Anderson Bradshaw, Stonehouse District, arrived at 7:05 p.m.

William C. Porter, Jr., Assistant County Administrator
Leo P. Rogers, County Attorney

B. MOMENT OF SILENCE

Mr. McGlennon requested the Board and citizens observe a moment of silence. Mr. McGlennon asked for the Board and citizens to keep the recently deceased U.S. Representative Jo Ann Davis and York County Supervisor James S. Burgett in their thoughts.

C. PLEDGE OF ALLEGIANCE - Marissa Canady, an eighth-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

Mr. Ed Oyer, 139 Indian Circle, commented on the recent passing of U.S. Representative Jo Ann Davis; transportation taxes and traffic.

At 7:10 p.m., Mr. McGlennon recessed the Board for a meeting of the Williamsburg Area Transport Company.

At 7:11 p.m., Mr. McGlennon reconvened the Board.

E. CONSENT CALENDAR

Mr. Harrison made a motion to adopt the items on the Consent Calendar with the amendments to the minutes.

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

1. Minutes – September 25, 2007, Regular Meeting
2. Dedication of Streets in Wexford Hills, Phases IH, II, and IIA

RESOLUTION

DEDICATION OF STREETS IN WEXFORD HILLS, PHASES IH, II, AND IIA

WHEREAS, the streets described on the attached Additions Form AM-4.3, fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills, and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

3. Dedication of Streets in Wexford Hills, Phases IIIA and IIIB

RESOLUTION

DEDICATION OF A STREET IN WEXFORD HILLS, PHASES III A AND III B

WHEREAS, the street described on the attached Additions Form AM-4.3, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the street meets the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the street described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills, and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

F. PUBLIC HEARINGS

1. Ordinance to amend JCC Code Chapter 20, Taxation, to Change Assessment and Appeal Dates and Changes to the Criteria for the Elderly and Disabled Tax Exemption

Mr. John E. McDonald, Manager of Financial and Management Services, stated a Work Session was held to amend the ordinance to change the assessment date from July 1 of each year to January 1 of each year, and also to change the criteria for tax exemption for elderly and disabled citizens. He outlined the current assessment process, with two billing dates which occur on June 5 and December 5. Mr. McDonald stated if the assessment date occurred on January 1, 2008, there would be no general reassessment for the second half of the fiscal year as bills would be due on December 5, 2008, and June 5, 2009. He stated the Board could change the tax rate to change the assessment bill but valuation of the property would remain the same for FY 2009. He explained the next general reassessment would be January 1, 2009, and bills would be due for that assessment on December 5, 2009, and June 5, 2010. Mr. McDonald stated the advantage of the system was that the citizens can see the specific impacts of budget and tax rate changes. He stated the second proposed amendment was a change in the tax exemption program for the elderly and permanently disabled, which increased the qualifying income from \$35,000 to \$40,000 and increased the annual exemption from \$100,000 to \$110,000 of the value of property.

Mr. Bradshaw asked if, with the assessment cycle change, there would be greater assurance of income that the County would have in preparing the budget, as the current process is to estimate what real estate valuations would be as well as other revenue sources that would continue to be estimated. He asked what major elements of the budget would be estimated.

Mr. McDonald stated the second personal property tax bill, due in June, would be based on the landbook from January 1 and stated during the budget process there would be estimation for tax revenues from room tax, meal tax, and sales tax. He stated there would also be estimation for the tax relief program but with the change, staff could more firmly identify 50 percent to 60 percent of revenue. Mr. McDonald stated certain funding, such as funding from the State with HB599, can change. He stated projected revenues over the last five years have been very accurate and the change in the assessment cycle should improve this projection.

Mr. Bradshaw asked staff what the time period would be from the valuation date to the tax levy is made

Mr. McDonald stated if the assessment date is changed, the first valuation date would be January 1, 2009, with the first bill based on that assessment due on December 5, 2009. He stated the second bill would be due on June 5, 2010. Mr. McDonald stated the first tax bill would have nothing to do with the most recent reassessment but would correlate with the second billing of the prior year.

Mr. Bradshaw asked if property owners receive a valuation notice that taxes would be based on the previous year's valuation and would it be higher in the event of a real estate market decline. Mr. McDonald stated it is possible for specific individual properties. He stated if the property value dropped, the owner would not realize the tax benefit for a six-month period, but this was not the norm.

Mr. Harrison asked what effect biennial assessments would have.

Mr. McDonald stated that valuation and tax rates were needed to balance a budget and if the valuation of property does not change, the Board can adjust the tax rate. He stated this can be seen as an advantage or disadvantage. He stated that cumulative changes in value would be less frequent but more dramatic and would create a further delay between the tax due date and the property valuation.

Mr. Bradshaw thanked Mr. McDonald for clarifying the terminology of an assessment and using the term "valuation" for the actual value of the property and "tax bill" or "tax levy" for the bill received by a property owner. He stated that the term "assessment" could be used interchangeably for both so this terminology reduced confusion.

Mr. McGlennon noted the other portion of this amendment was elderly and disabled tax exemptions, with income limits to be raised from \$35,000 to \$40,000 and primary residence value to be raised from \$100,000 to \$110,000 to reflect inflation.

Mr. McGlennon opened the Public Hearing.

1. Ms. Mary Jones, 2301 London Company Way, requested approval of the ordinance amendment to change the assessment schedule to synchronize assessments with the budget process.

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

Mr. Goodson made a motion to adopt the ordinance amendments.

Mr. Goodson stated he supported the ordinance amendment and agreed with knowing revenues during the budget process.

Mr. Icenhour stated the assessment schedule change makes sense to taxpayers noting that there would be consequences, including tight budgets over the next few years. He stated his support for the ordinance amendments.

Mr. Harrison stated his support for the ordinance amendments. He stated the future Board would need to be fiscally responsible to keep the tax rate consistent with lower revenues.

Mr. Bradshaw stated this would not make the County more like businesses, as they also project revenues. He stated this would not assure what tax receipts will be, and does not eliminate the need to project other sources of revenue such as sales tax, recording fees, business license, and State revenue. Mr. Bradshaw explained that this action sets a date for valuation but does not address the tax rate, which now will receive even greater pressure. He stated there was no guarantee that taxes will be lower, and the change does not assure that valuations will be lower, but that they would be slower to react to market. He stated the tax bills would be lagging 18 months behind the market. Mr. Bradshaw stated in spite of that, he felt it does create a better dynamic for budget decisions, as the Board had challenged at the same time to balance services and taxes people are required to pay. Mr. Bradshaw stated this will make it clearer what costs will be and tradeoffs will be if the tax rate is not raised. He stated his support for the item based on this stance.

Mr. McGlennon stated there was not likely to be a large change in the happiness of tax bills or simplicity of the tax system, and noted that citizens will receive bills for a previous year's valuation in the middle of the year of a new assessment. He stated he felt this was a more fair and transparent way to handle real estate taxes and he felt the change would cause a minimum amount of disruption at this time. He stated he appreciated the idea of having the tax rate and budget public hearings at the same time. Mr. McGlennon stated he did not want people to expect this will result in a dramatic change in taxes because he did not think it would.

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

Mr. McGlennon recognized Mr. George Billups in attendance on behalf of the Planning Commission.

2. Case No. SUP-0012-2007. Verizon Tower Co-location – Brick Bat Road

Ms. Leanne Reidenbach, Planner, stated Ms. Jessica Wright, Verizon Wireless, has applied for a special use permit (SUP) to add a 14-foot extension to an existing 185-foot tower-mounted wireless communication facility (WCF). The height of the existing tower structure has been certified (see Attachment No. 4). The extension will result in a total height of 199 feet. The property is located at 3470 Brick Bat Road. The purpose of the extension is to allow co-location of one additional antenna array on the existing American Tower. Communications towers over 35 feet require an SUP in the A-1, General Agricultural, District. On January 27, 1998, the Board of Supervisors approved James City County Case No. SUP-11-96, which permitted two towers on this site with maximum heights of 185 feet each. The extension of any existing tower on this site also requires an SUP. There is currently James City County equipment located on the tower at 183 feet, which is no longer in use by the County. If this were to be removed, Verizon would be able to locate at this height without extending the tower. Furthermore, there is additional space for one more co-location on the existing tower at a lower height without the removal of County equipment.

At its meeting on September 12, 2007, the Planning Commission recommended approval of the application by a vote of 7-0.

Staff found the proposal to be generally consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation.

Staff recommended approval of the resolution.

Mr. Icenhour asked if staff was moving forward to refine the definition of tower height to include all antennas and other parts of the tower structure.

Ms. Reidenbach stated that the ordinance defines the tower height as all attachments and substructure and that staff has been clarified of that during the application process.

Mr. Icenhour asked if the extension of the tower to 199 feet would include the height of the entire structure.

Ms. Reidenbach stated this was correct.

Mr. Icenhour asked if Condition No. 6 of the SUP would require a certification that the final tower height including all antennas and other structures would be 199 feet.

Ms. Reidenbach stated that was the intention of the Condition.

Mr. Icenhour asked if the additional 14-foot extension was necessary because the service would not be available on the existing tower without additional height.

Ms. Reidenbach deferred to the applicant.

Mr. McGlennon asked if the removal of the County antennas would allow for an additional carrier on the tower.

Ms. Reidenbach stated this was correct.

Mr. McGlennon asked how conducive this would be for additional carriers and cellular coverage.

Ms. Reidenbach stated space would be available for an additional carrier to locate on the tower.

Mr. McGlennon asked how many carriers could locate on the tower.

Ms. Reidenbach stated there was one carrier presently and one additional carrier could be added.

Mr. Goodson stated that this item was not effectively changing the height but just bringing the tower with the County's WIPS into compliance.

Ms. Reidenbach stated this was correct.

Mr. McGlennon stated the important point was that the maximum tower height was 199 feet including antennas.

Ms. Reidenbach stated this was correct, noting that the requested 14-foot extension included the antennas.

Mr. McGlennon opened the Public Hearing.

Mr. Steve Romine, 999 Waterside Drive, Norfolk, on behalf of the applicant, gave an overview of wireless communications and the proposed co-location of the tower.

Mr. McGlennon asked about the possibility of adding screening to address concerns of a neighbor.

1. Mr. Romine stated the neighbor's concern was about the ability to build without a setback. He stated there is natural buffer but there was no additional buffering included in the proposal.

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

Mr. Goodson made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-0012-2007. VERIZON TOWER CO-LOCATION - BRICK BAT ROAD

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, Ms. Jessica Wright of Verizon Wireless has applied for an SUP to allow for a 14-foot extension to a 185-foot wireless communications facility; and

WHEREAS, the proposed extension is shown on a preliminary site plan, entitled "Brick Bat Co-Location Overall Site Layout," prepared by Kimley-Horn and Associates, Inc., and dated July 26, 2007; and

WHEREAS, the property is located at 3470 Brick Bat Road on land zoned A-1, General Agricultural, and can be further identified as James City County Real Estate Tax Map/Parcel No. 4420100018; and

WHEREAS, the Planning Commission of James City County, following its public hearing on September 12, 2007, 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 2003 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. 0012-2007 as described herein with the following conditions:

1. Verizon Wireless shall remove and dispose of all remaining James City County (the "County") communications equipment from the tower prior to issuance of a final Certificate of Occupancy. This equipment includes the two transmission lines going from the base of the tower to each of the antennas on top and the two antennas on top of the tower.
2. A maximum of two towers shall be permitted at this site. The towers and supporting equipment shall be located as generally shown on the overall site layout plan, prepared by Kimley-Horn and Associates, Inc., titled "Brick Bat Co-Location Overall Site Layout," and dated July 26, 2007 ("Master Plan").
3. All towers shall have a finish that is gray in color as approved by the Planning Director. Lighting, beacons, and other similar devices shall be prohibited unless required by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA). When required by the FCC or FAA, a red beacon light or lights of low-medium intensity shall be used rather than a white strobe light. Should the regulations and requirements of this subsection conflict with any regulation or requirement by the FCC or FAA, then the regulations of the FCC and FAA shall govern. At the time of site plan review, a copy of the FAA and/or FCC findings shall be provided to the County.
4. Maximum height of the tower labeled as "existing 185' self-support tower (to be extended to 199')" ("Tower") on the Master Plan shall not exceed 199 feet from existing grade. Tower height shall include, but not be limited to, all antennas, lightning rods, or other accessories attached to the primary structure of the tower.
5. Maximum height of the tower, labeled "existing tower" ("Existing Tower") and which is located furthest from Brick Bat Road on the Master Plan, shall not exceed 185 feet from existing grade.
6. Prior to the issuance of a final Certificate of Occupancy by the County Codes Compliance Division, certification by the manufacturer, or an engineering report by a structural engineer licensed to practice in the Commonwealth of Virginia, shall be filed with the Planning Division by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the tower, including the total number and type of antennas which may be accommodated on the tower, demonstrating to the satisfaction of the County Building Official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
7. Prior to preliminary site plan approval for the improvements shown on the Master Plan, a letter from the current owner of the Tower indicating permission to use the Tower for co-location and to extend the height of the Tower shall be submitted to the Planning Division.

8. Prior to preliminary site plan approval for the improvements shown on the Master Plan, a copy of the report submitted to the Virginia Department of Historic Resources (“VDHR”) in fulfillment of Section 106 of the Historic Preservation Act shall be submitted to the Planning Division. Evidence that the James City County Historical Commission has reviewed and approved the package must also be submitted prior to preliminary site plan approval. The Planning Director may require the implementation of any recommendations of VDHR and the Historical Commission prior to final site plan approval.
9. Prior to the issuance of any Certificate of Occupancy for the Tower, all plantings in the existing landscape buffer along Brick Bat Road shall be pruned (including, but not limited to the removal of all dead wood and vines) to the satisfaction and approval of the Planning Director or his designee.
10. A buffer along the Property’s entire border with the adjacent parcel located at 3542 Brick Bat Road and further identified as James City County Real Estate Tax Map No. 3540100014B shall be provided and an approximately one acre area between the Existing Tower and the Property’s entire border with the parcel located at 2900 Monticello Avenue and further identified as James City County Real Estate Tax Map No. 4420100005 as shown on attached Exhibit A shall remain undisturbed and in its natural state with respect to natural leaf litter or other ground-covering vegetation, understory vegetation or shrub layer, and tree canopy, except as approved by the Development Review Committee.
11. All towers shall be designed and constructed for at least three users and shall be certified to that effect by an engineering report prior to the site plan approval.
12. A statement from a registered engineer that NIER (Nonionizing Electromagnetic Radiation) emitted from any equipment on or serving the facility does not result in a ground-level exposure at any point outside such facility which exceeds the lowest applicable exposure standards established by any regulatory agency of the U.S. Government or the American National Standards Institute shall be submitted prior to preliminary site plan approval.
13. Towers shall be located at 3470 Brick Bat Road, further identified as James City County Real Estate Tax Map No. 4420100018 (“Property”) in a manner that maximizes the buffering effects of trees. Tree clearing shall be limited to the minimum necessary to accommodate the tower and related facilities. Access drives shall be designed in a manner that provides no view of the tower’s base or related facilities. A minimum buffer of 100 feet in width shall be maintained around the tower. Where existing vegetation on the site is not of sufficient depth to provide this buffer, enhanced landscaping shall be provided within the 100-foot buffer area. A screening and landscaping plan for the enhanced buffer shall be provided for approval by the Planning Director or his designee prior to final site plan approval.
14. A final Certificate of Occupancy shall be obtained from the James City County Codes Compliance Division within one year of approval of this SUP, or the permit shall become void.
15. The towers shall be freestanding and shall not use guy wires for support.
16. Any supporting structures, such as equipment sheds and huts, shall be of a similar design and material to those generally used on a single-family residence, including the use of a gable or shed roof, and shall be approved by the Planning Director prior to final site plan approval.
17. The fencing used to enclose the lease area shall be vinyl-coated and shall be dark green or black in color. Any fencing shall be reviewed and approved by the Planning Director prior to final site plan approval.
18. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. Toano Revitalization Initiative – Virginia Department of Transportation (VDOT) SAFETEA-LU Grant

Mr. Bradshaw disclosed that he is a property owner of one of the parcels that front on Richmond Road where the improvements would be located. He stated he felt that this would not disqualify him from voting on this item.

Mr. Jason Purse, Planner, stated the Toano Revitalization Initiative, a recently formed citizens group from the Toano area, is applying for a Transportation Enhancement Program grant through the Transportation Equity Act (SAFETEA-LU) to continue the ongoing implementation of the Toano Community Character Area Study and Design Guideline recommendations. This project will replace the sidewalk between Toano Drive and Depot Street in Toano. In addition to the sidewalk replacement, the grant will seek funding for urban street furniture and landscaping in key places along this historic section of the Toano Community Character Area. The Toano Revitalization Initiative is seeking funding through SAFETEA-LU, which would cover up to 80 percent of the cost. The total project cost is estimated to be \$67,000. For legal purposes, VDOT requires that a local governmental authority apply for the grant on behalf of the group requesting the work. Because of this, VDOT requires that James City County be the body that is ultimately responsible for the 20 percent or \$13,400 match for the project cost and this language is represented in the resolution attached for Board consideration. However, the Toano Revitalization Initiative understands that it is responsible for raising the 20 percent match required by VDOT and currently is seeking funds and in-kind contributions to cover the 20 percent. The group does not expect any additional funds from James City County to cover the 20 percent match.

Staff recommended approval of the resolution.

Mr. McGlennon opened the Public Hearing.

1. Ms. Linda Rice, 2390 Forge Road, stated there was community support for this initiative and requested approval.

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

Mr. Bradshaw made a motion to adopt the resolution.

Mr. Bradshaw expressed gratitude to the civic groups and businesses that have made this effort without the support of tax dollars.

Mr. McGlennon stated his appreciation for the efforts of citizens to initiate progression identified in the study.

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

RESOLUTION

TOANO REVITALIZATION INITIATIVE -

VIRGINIA DEPARTMENT OF TRANSPORTATION SAFETEA-LU GRANT

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the local government or State agency in order for the Virginia Department of Transportation (VDOT) to program an enhancement project in James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request the Commonwealth Transportation Board to establish a project in 2007 for the Toano Revitalization Initiative sidewalk enhancements for the hiring of an engineer and construction firm to complete improvements between Depot Street and Toano Drive.

BE IT FURTHER RESOLVED that James City County hereby agrees to pay a minimum 20 percent of the total cost of \$67,000 for this project, and that if James City County subsequently elects to cancel this project, James City County hereby agrees to reimburse VDOT for the total amount of costs expended by the Department through the date the Department is notified of such cancellation.

4. Ordinance to amend James City County Code Section 24-16, Proffer of Conditions

Mr. Adam Kinsman, Deputy County Attorney, stated the ordinance amendment would allow developers greater flexibility in that the proffers would not be required to have direct correlation for a special use that is being requested or direct correlation to the Comprehensive Plan.

Staff recommended approval of the resolution.

Mr. Bradshaw asked how the County is now able to offer the more flexible proffers.

Mr. Kinsman stated the County was formerly tied to accept proffers that were directly related to Capital Improvements Project (CIP) programs or had a direct relation to the zoning, but the General Assembly has allowed other localities to adopt the "Northern Virginia" style of zoning, which did not have these regulations. He stated that this zoning technique was available upon ordinance adoption.

Mr. Icenhour asked if there was an initiative of in General Assembly to allow this change.

Mr. Kinsman stated that a number of high-growth localities had requested the change.

Mr. McGlennon opened the Public Hearing.

Mr. Robert Duckett, Director of Public Affairs for Peninsula Housing and Building Association, stated this ordinance amendment would not support local and smaller builders and would help large-scale national builders. He stated it could allow larger builders to proffer developments in individual election districts to rally support for other projects and also stated that proffer costs increase costs to the homebuyer.

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

Mr. Bradshaw made a motion to approve the ordinance amendment.

Mr. Goodson stated his appreciation for Mr. Duckett's comments stating he supported the ordinance amendment due to the potential to increase creativity in proffers provided.

Mr. Bradshaw stated he agreed with Mr. Goodson and that the flexibility could work to the advantage or disadvantage of any builder. He stated he did not expect a builder to offer a pet project in one district to get approval of another project.

Mr. McGlennon clarified that it is up to the Board's discretion to accept any proffer, and stated he felt that this accomplishes what the County has been asking the General Assembly to do to give more flexibility.

Mr. Icenhour stated that costs ultimately get passed on to homebuyer with proffers and also in absence of proffers in taxes to support infrastructure. He stated his support for the item due to increased flexibility.

Mr. Harrison stated he felt the rigid proffer policy would hurt local smaller builders and this ordinance amendment allowed flexibility for proffers that the County would accept.

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

G. BOARD CONSIDERATION

1. FY 2009-2014 Six Year Improvement Program Priorities

Mr. Marvin Sowers, Planning Director, stated once a year VDOT holds a public hearing prior to the preparation of the Six-Year Improvement Plan which identifies projects slated for improvement. He stated that the VDOT public hearing was coming up later in the month so the County was submitting a list of what staff recommended as the highest County priorities. He stated that VDOT funding has lessened, so staff has attempted to keep the priority project list as short as possible but still address important needs. He stated that these projects required the County to compete with other localities for funding and gave an overview of the four projects identified to be recommended to VDOT. He noted the first project, the Route 60 Relocation project, which had been on the list for a number of years and was an effort to relocate Route 60 between GreenMount Industrial Park and the City of Newport News. Mr. Sowers stated that regional money has been received for this project from the regional Metropolitan Planning Organization (MPO) to support acquisition and engineering but not construction. He highlighted the Ironbound Road widening project from Strawberry Plains Road to Eastern State Hospital and noted a completion date of July 2010. He stated that the project is fully funded with additional money from the Secondary Roads Plan and the regional MPO. Next he discussed the Monticello Avenue geometric improvements which were initiated due to previous rezonings in New Town. Mr. Sowers stated that including funding from the MPO, the project was roughly 75 percent funded. He stated the project was added to the list to accelerate the project in engineering for FY 2009. He noted that these improvements would include additional capacity improvements on Monticello Avenue in the vicinity of the Target/Ukrop's shopping center, News Road, and Monticello Avenue and Ironbound Road. Mr. Sowers stated the last item on the list proposed additional turn-lane projects on Route 60, Pocahontas Trail. He stated this was an effort to avoid or delay widening Pocahontas Trail noting that the road has roughly 20 intersections, half with left-turn lanes. He stated this project seeks funds to construct turn lanes on the remaining intersections.

Mr. Goodson made a motion to approve the resolution.

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

RESOLUTION

FY 2009-2014 SIX-YEAR IMPROVEMENT PROGRAM PRIORITIES

WHEREAS, the James City County Board of Supervisors believes that a safe, efficient, and adequate transportation network is vital to the future of the County, the region, and the State; and

WHEREAS, the James City County Comprehensive Plan and/or regional and State transportation plans and studies conclude that the following highway projects are essential to permit the safe and

efficient movement of traffic in the Williamsburg-James City County area and promote economic development; and

WHEREAS, there exists a pressing need to implement the projects below to relieve traffic congestion, which impedes the actions of emergency vehicles and personnel, causes inconvenience and delays, and contributes to the major source of air pollution to the area; and

WHEREAS, James City County strives to maintain aesthetic enhancements along high visibility corridors in order to protect the historic and scenic values of the County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the following list comprises the highest-priority primary highway projects in James City County:

- Funding the construction of Route 60 relocation;
- On-schedule completion of the widening of Ironbound Road;
- Monticello Avenue Geometric Changes; and
- Funding the construction of left-turn lanes on Route 60.

H. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on the ability to bring suit against a neighbor in order to cut down a tree that may be damaging adjacent property.

I. REPORT OF THE COUNTY ADMINISTRATOR

Mr. William C. Porter, Jr., stated that when the Board completed its business, it should hold a Closed Session pursuant to 2.2-3711(A)(3) of the Code of Virginia for the acquisition of parcels of property for public use. He stated that after the Closed Session, the Board should adjourn until 4 p.m. on October 23, 2007.

J. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour asked about by-right developments in A-1 zoning districts including a development along Centerville Road called Liberty Ridge and another in Fords Colony. He stated both have had applications in for land-disturbance permits but the holdup has been the Virginia Department of Environmental Quality (DEQ) issuing water withdrawal permits from the central water facility. He stated the developer was meeting with County staff during the current week to try to get a land-disturbance permit but the DEQ permit requires a public comment period. He stated he felt the land should not be disturbed until the public has had an opportunity to comment if there are issues with conditions of permit and on what restrictions that may be against irrigation. He asked that staff provide notification to the Board when the permit is actually issued to the James City Service Authority (JCSA) and then the County becomes responsible for implementation and enforcement of conditions. He asked what the County would need to enforce and how to ensure that potential buyers know the restrictions, as well as any other additional information.

Mr. Foster, General Manager of JCSA, stated though it is a by-right development, the developer has proposed a proffer of a water conservation agreement between the developer and JCSA through covenants to

future owners. He stated this is a new standard for this type of development wherein conditions are administered by the homeowners association, as are all other water conservation conditions. He stated some conditions include a three-acre minimum lot, no more than 10,000 square feet of turf, following County guidelines to irrigate, use of landscaping that is native or drought resistant, and a requirement for a radio-controlled irrigation system which receives signals from satellites that monitor weather conditions and control irrigation systems based on local weather conditions. Mr. Foster stated this does not satisfy the concern for public comment or the direction to have the developer receive a land-disturbance permit issued by the County after the final permit issued by the DEQ. He stated he had never seen a groundwater withdrawal permit denied after the draft permit was issued.

Mr. Bradshaw asked if the permit referenced any irrigation restrictions.

Mr. Foster stated that it does not address it in the level of detail of the water regulation agreement.

Mr. Bradshaw asked if the proposed conservation plan prohibits individual wells.

Mr. Foster stated it does.

Mr. Goodson asked if the DEQ gave its final approval after the public comment period was over.

Mr. Foster stated this was correct. He outlined the approval process by noting that once an application is made, it is reviewed by DEQ who then incorporate the proposal into the water model. He stated if it does violate guidelines, it does not go forward, but if not, the DEQ proposes issuing the permit and then the draft permit is advertised for public comment. He stated that after a 30- to 60-day public comment period, and if there is no further discussion with applicant warranted, the permit is issued.

Mr. Goodson asked if an issue would be brought forward during the Public Comment period if it was overlooked.

Mr. Foster stated that he has never seen one that has been denied once it has made it to Public Comment. He stated that period gives the public an opportunity to make a comment if there was anything that the DEQ staff has missed but changes were very seldom. He stated there was a control model that shows environmental impacts, which was the deciding point.

Mr. Bradshaw asked if the permit has been revised or amended based on public comment.

Mr. Foster stated it had not to his knowledge.

Mr. Goodson asked in the event the DEQ permit was rescinded, if the County would rescind the disturbance permit.

Mr. Foster stated it was extremely likely that the permit would be issued and though there may be other environmental impacts, the impact on the aquifer has already been determined.

Mr. Goodson stated the permit was based on environmental studies, not based on water supply available.

Mr. Foster stated the permit evaluates the potential of not having adequate water supply after the impacts have occurred, which corresponds with the County's process.

Mr. McGlennon stated if there is a Public Comment period it should be respected, and stated his support for waiting until the Public Comment period closes to issue a land-disturbance permit.

Mr. Harrison stated if the developer has already begun to disturb the land, what the purpose was of Public Comment.

Mr. Goodson asked what the purpose was of changing the policy this late for this application and suggested changing it for future projects.

Mr. Icenhour stated this was a valid concern but in discussing with developers in Fords Colony, the developers anticipated the DEQ would issue the permit last April or May and it has taken longer than expected. He stated he did not wish to lose an opportunity at a valuable Public Comment period that would not normally be afforded to the County with by-right development.

Mr. McGlennon asked if there were conditional permits of this kind.

Mr. Foster stated the process has not changed. He stated it could be changed to issuance of the permits after the final DEQ permit if that was what the Board requested but the typical process was 18 months.

Mr. McGlennon asked if this was the standard process for the DEQ,

Mr. Foster stated this was the standard process since the early 1990s.

Mr. Porter stated this was the process the Retreat went through.

Mr. Foster stated this was what all by-right developments with three-acre lots outside the Primary Service Area (PSA) go through. He stated the developer makes an application for the permit and the JCSA follows the process, as it will be transferred to the JCSA later.

Mr. McGlennon stated this application was through the first stage of the process.

Mr. Foster stated this was correct.

Mr. Porter stated the Retreat does not have the same covenants of restrictions.

Mr. Foster stated this was correct.

Mr. Bradshaw stated he was interested in seeing the covenants during the Public Comment period to ensure the covenants incorporated the goals.

Mr. Foster stated this was discussed with the DEQ but the organization was not comfortable with that and wished to continue to allow the locality to establish local covenants.

Mr. Bradshaw stated there was not a mechanism to assure it was done if the development was by-right and he would like to see whether or not it could be changed.

Mr. Icenhour stated he would like to have something in writing that ensures these conditions.

Mr. Foster stated the water conservation agreements goes through the JCSA and is implemented in the covenants. He stated the permit is issued with conditions to the JCSA, so it would be the JCSA's responsibility.

Mr. Porter stated the consensus of the Board is not to issue a land-disturbance permit until the end of the Public Comment period and the issuance of the final permit.

Mr. Foster stated he anticipated late November or early December for a final permit to come forward and stated no permits would be issued until that time.

Mr. Porter stated the County would not issue any land disturbance or building permits without a final DEQ permit.

Mr. Foster stated staff would handle this accordingly.

Mr. Goodson stated that the Heritage Humane Society moved into its new location on the afternoon of October 9, 2007. He noted that the Heritage Human Society and the County facility were non-compliant and now the Animal Control Officer works out of the new facility and there would be a grand opening next month.

Mr. McGlennon thanked the Pet Resort and PetSmart for helping to house the animals in transition.

Mr. Harrison commented on his draft resolution regarding the possible recess on rezonings as well as a staff version. He requested feedback before the next meeting.

Mr. McGlennon thanked Mr. Harrison for his draft resolution.

Mr. McGlennon stated on Saturday, October 13, 2007, there would be a dedication of Warhill High School and on October 20, 2007, the Matoaka Elementary School dedication would take place. He encouraged citizens to tour the schools. He stated on October 14-16, 2007, approximately 750 delegates would be coming to James City County for the Virginia Municipal League's annual conference. He reflected on the passing of Mr. Robert Moore of Brookhaven Homeowners Association.

Mr. Bradshaw made a motion to go into Closed Session.

At 8:51 p.m., Mr. McGlennon recessed the Board to Closed Session.

K. CLOSED SESSION

At 8:57 p.m., Mr. McGlennon reconvened the Board into Open Session.

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

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

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

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

L. ADJOURNMENT – until 4 p.m. on October 23, 2007.

Mr. Icenhour made a motion to adjourn.

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

At 8:58 p.m., Mr. McGlennon adjourned the Board until 4 p.m. on October 23, 2007.

William C. Porter, Jr.
Deputy Clerk to the Board