

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 23RD 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

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.

C. PLEDGE OF ALLEGIANCE - Clarence Johnson, a sixth-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Mr. Dale Merriss, 104 Inverness, commented on the addition of land area to an existing residential planned community and the potential ordinance change, and stated his opposition to the change in ordinance language.

2. Mr. William Gibe, 104 Allwardly, commented on the potential changes for the R-4 residential planned community ordinances and stated his opposition to the proposed changes.

3. Ms. Debbie Cradder, 113 Long Point, commented on the potential changes to the R-4 residential planned community ordinance language and stated opposition to the proposed changes.

4. Mr. Ed Oyer, 139 Indian Circle, commented on the Hampton Roads Transportation Authority; traffic on Route 60; Matoaka Elementary School dedication; cable use franchise fees; green exit signs and flag pole location at Matoaka Elementary School; and the number of candidates for election.

5. Ms. Kensett Teller, 126 Lake Drive, on behalf of the James City County Citizens Coalition requested denial of ZO-0011-2007. R-4 (Residential Planned Community) Ordinance Amendment Initiating Resolution until after the Comprehensive Plan update.

E. PRESENTATIONS

1. James City County Citizens Coalition

Mr. David Jarman, on behalf of the James City County Citizens Coalition, gave a presentation on the Cumulative Impact Analysis developed by the Coalition which highlighted the impact of growth on the County due to water constraints, environmental and traffic impacts, and financial constraints. He requested that the Board incorporate the cumulative impact study into the 2008 Comprehensive Plan update, and also requested that the Board adopt as principle that no rezoning or special use permit (SUP) should be considered until the cumulative impact of such development is considered.

Mr. McGlennon asked how copies of the report could be obtained.

Mr. Jarman stated that copies were available at the Board meeting or he could be contacted for a copy.

Mr. Goodson requested the presentation be provided to the public on the County website.

Mr. Bradshaw asked in what election district Colonial Heritage would be considered.

Mr. Jarman stated the GIS database indicated it was in the Powhatan district, but this may have not been updated.

Mr. McGlennon stated that the numbers of approvals do not particularly correspond with the number of units that are built. He stated this needs to be taken into account. He stated he saw importance in providing full information, being able to respond to requests for different presentations of the information, and working with citizen groups to ensure consistent information, in order to understand the cumulative impact of individual approvals.

Mr. Jarman stated that some data has been requested beyond what was originally presented, but the information that was used was readily available through the Real Estate office. He recommended getting the information out to the public.

Mr. Icenhour thanked Mr. Jarman for working with staff to get the most accurate data to develop this tool and stated he felt there was an issue of uncertainty in when the approved units would be built.

2. HRACRE First Honor Award – Legacy Hall – Tom Tingle

Mr. Tom Tingle, on behalf of Hampton Roads Association for Commercial Real Estate, presented Mr. McGlennon with the HRACRE First Honor award for the Legacy Hall as the Best Institutional Public Building for 2007.

Mr. McGlennon stated that the Board is proud of the building and it is a popular venue for many different events due to its attractiveness and flexibility. He thanked businesses and staff involved in the development of Legacy Hall.

F. HIGHWAY MATTERS

Mr. Jim Brewer, Virginia Department of Transportation (VDOT), Williamsburg Residency Administrator, stated there were no updates from his office.

Mr. Icenhour asked for a traffic study on News Road to lower the speed limit and the need for turn lanes near Powhatan Secondary. He also asked for an update on the safety issue on Mooretown Road near the hospital where a house was damaged by a car.

Mr. Brewer stated that the study was done but the speed was maintained. He stated that a sign was placed near the site indicating there was a curve ahead.

Mr. Harrison asked Mr. Brewer to evaluate the intersections submitted to him by email.

Mr. Bradshaw asked about a Fenton Mill Road school bus stop on a curve where sight distance was not very good and asked about putting up a "school bus stop ahead" sign.

G. CONSENT CALENDAR

Mr. Harrison made a motion to adopt the items on the consent calendar with the corrections to the minutes of October 9, 2007.

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

- 1. Minutes –
 - a. September 25, 2007, Work Session
 - b. October 9, 2007, Regular Meeting
- 2. Williamsburg Community Health Foundation Grant Award - \$33,625

RESOLUTION

WILLIAMSBURG COMMUNITY HEALTH FOUNDATION GRANT AWARD - \$33,625

WHEREAS, the Williamsburg Community Health Foundation has awarded the James City County Police Department a grant in the amount of \$33,625; and

WHEREAS, the funds will be used to for the purchase of 25 Automatic External Defibrillators (AEDs) with temperature control cases, fast response kits, and pads; and

WHEREAS, there are no matching funds required of this grant.

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

Revenue:

WCHF - AEDs	<u>\$33,625</u>
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Expenditure:

WCHF - AED	<u>\$33,625</u>
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- 3. Department of Criminal Justice Services (DCJS) Justice Assistance Grant Award - \$2,104

RESOLUTION

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (DCJS)

BYRNE JUSTICE ASSISTANCE GRANT - \$2,104

WHEREAS, James City County has been awarded a Byrne Justice Assistance Grant in the amount of \$2,104 (\$1,894 Federal funds; \$210 local match) through the Virginia Department of Criminal Justice Services (DCJS); and

WHEREAS, the grant funds will be used to purchase and install a security camera in one of the hearing rooms of the courthouse; and

WHEREAS, the grant expires on December 31, 2007; and

WHEREAS, the grant requires matching funds of \$210, and these funds are available in the County’s Grant Match Account.

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

Revenues:

Byrne JAG Grant	\$1,894
James City County Grant Match Account	<u>210</u>
Total	<u>\$2,104</u>

Expenditure:

Byrne JAG Grant	<u>\$2,104</u>
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- 4. Contract Award – Mobile Field Reporting and Computing Software for Public Safety Mobile Data Terminals - \$336,855

RESOLUTION

CONTRACT AWARD – MOBILE FIELD REPORTING AND COMPUTING SOFTWARE

FOR PUBLIC SAFETY MOBILE DATA TERMINALS - \$336,855

WHEREAS, it has been determined by the Purchasing Office that SunGard HTE, Inc. is the only source practicably available to provide mobile field reporting and mobile computing software for 118 public safety mobile data terminals with guaranteed compatibility with the existing SunGard HTE, Inc. Police Records Management System and Computer Aided Dispatch System; and

WHEREAS, the proposed rates have been determined to be fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,

hereby authorizes the County Administrator to execute the contract in the amount of \$336,855 for mobile field reporting and mobile computing software for 118 public safety mobile data terminals to SunGard HTE, Inc.

5. Virginia Public Assistance Fund – Division of Social Services, Renovation of Restrooms

RESOLUTION

VIRGINIA PUBLIC ASSISTANCE FUND – DIVISION OF SOCIAL SERVICES

RENOVATIONS OF RESTROOMS

WHEREAS, James City County Division of Social Services has designated \$57,700 in the Virginia Public Assistance Fund for rest room renovation; and

WHEREAS, the funds will allow for improvements/renovations to four Human Services Center rest rooms; and

WHEREAS, design specifications have been prepared and contractor proposals have been obtained and appropriately reviewed; and

WHEREAS, adequately constructed and safe rest rooms are critical to the fulfillment of our mission to serve citizens.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation and expenditures:

Revenues:

Virginia Public Assistance Fund	<u>\$57,700</u>
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Expenditures:

Contractual Line Item 007-081-3000	<u>\$57,700</u>
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H. PUBLIC HEARINGS

1. Case No. SUP-0025-2007. Colonial Penniman, LLC Waterline and Force Main Extensions

Mr. Matt Smolnik, Planner, stated Mr. James Bennett, on behalf of Williamsburg Developments, Inc., the Economic Development Authority (EDA) of James City County, BASF Corporation, and Colonial Penniman, LLC, has applied for a Special Use Permit (SUP) to allow for the construction of a 16-inch waterline, a four-inch force main, and a two-inch force main between the James River Commerce Center and the Colonial Penniman, LLC property, which is located at the BASF site in Grove. SUP-03-2002 was approved by the Board of Supervisors on April 9, 2007, for a waterline extension to the former Trusswood, LLC property which is now the Colonial Penniman, LLC property. A condition of this SUP required the property owner to obtain a land-disturbing permit within 24 months of the issuance, which was not obtained by the former owner. Therefore, the previous SUP is void and the landowners are applying for a new SUP for the waterline and force main extensions.

Staff found the plan to be consistent with the Comprehensive Plan and of negligible impact to the surrounding properties.

At its meeting on October 3, 2007, the Planning Commission recommended approval with the removal of one special use condition by a vote of 6-0 with one member absent.

Staff recommended approval of the application.

Mr. Icenhour asked if under previous rules before the most recent changes, some were RPA and some were not RPA, and what mitigation might be underway to help reestablish RPA buffer.

Mr. Smolnik stated that OED and Environmental has discussed conservation easements in the future, and the discussion is ongoing.

Mr. Icenhour asked if the area was already in need of conservation.

Mr. Smolnik stated it was.

Mr. McGlennon opened the public hearing.

1. Mr. James Bennett, 108 Colonial, on behalf of Colonial Penniman, LLC, stated the subject property consisted of 19.5 acres, and the property had utilities run from the adjacent BASF property. He stated that as BASF was marketing its property, the company does not want to provide water and sewer to the subject property in the future. He stated in 2002, the prior owner designed the proposed waterline and received SUP approval in 2002, with the design approved in 2003. He stated the previous owner did not start construction on the waterline, so the SUP lapsed after two years. Mr. Bennett stated his company bought the property in 2007 and is attempting to get an SUP approval to extend the waterline to serve the subject property and also 70 acres of EDA property and the BASF property upon development. He commented on the existing clearing in the RPA buffer and noted that two existing utility lines parallel a large part of the line that would be installed. He stated the clearing for the utility lines predated the RPA. buffer establishment and requested approval for the application.

2. Mr. Ed Oyer, 139 Indian Circle, stated he felt it would have an impact on traffic, so Route 60 needed to be fixed before the project is completed.

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

Mr. Goodson stated this was an important project for economic development in the County and made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-0025-2007. COLONIAL PENNIMAN, LLC WATERLINE &

FORCE MAIN EXTENSIONS

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, the applicant has requested an SUP to allow for the construction of up to a 16-inch water

transmission main and two force mains to serve adjacent parcels within the James River Commerce Center and the property and facilities owned by Colonial Penniman, LLC at the BASF complex in the M-1, Limited Business/Industrial, and M-2, General Industry, zoning districts, located at 8925, 8961, 8963, and 8965 Pocahontas Trail, further identified as Parcel Nos. (1-3), (1-4), (1-5A), and (1-45) on James City County Real Estate Tax Map No. (59-2); and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing held on SUP No. 0025-2007; and

WHEREAS, the Board of Supervisors, following a public hearing is of the opinion that the SUP allowing for the above-mentioned waterline and two force mains should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0025-2007 as described herein with the following conditions:

1. For all portions of any temporary construction easements that have been cleared, but that do not need to remain clear after construction, as determined by the Director of Planning, seedlings shall be planted and shall be shown on a reforestation or re-vegetation plan to be approved by the Director of Planning. This plan shall be submitted within one year of the initial clearing of the easement. The reforestation or re-vegetation of any temporary construction easements shall be completed, as determined by the Director of Planning, within two years of the initial clearing of the easement. It shall be the responsibility of the developer to provide surety prior to final site plan approval guaranteeing implementation of the reforestation or re-vegetation plan, and to secure the necessary means to plant any temporary construction easements after the easements revert back to the property owner.
2. A Phase I Archaeological Study for the disturbed area shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' "Guidelines for Preparing Archaeological Resource Management Reports" and the Secretary of the Interior's "Standards and Guidelines for Archaeological Documentation," as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's "Professional Qualification Standards." All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading, or construction activities thereon.
3. Any crossing of the BASF complex sanitary sewer line and/or pump station shall be reviewed and approved by the James City Service Authority (JCSA).
4. Prior to the issuance of preliminary site plan approval, an agreement and plan between the developer and the JCSA, including implementation time lines, must be reviewed and approved by the JCSA on how the two Colonial Penniman, LLC properties and James

City County Real Estate Tax Map Nos. (59-4)(1-4) and (59-4)(1-5A) will be served with public sewer.

5. All required permits and easements, including the necessary approvals from the Newport News Water Works, shall be obtained prior to the start of construction, as defined in the James City County Zoning Ordinance.
6. Construction, operation, and maintenance shall comply with all local, State, and Federal requirements, including all Newport News Water Works requirements.
7. A Land-Disturbing Permit shall be obtained by the developer within 24 months from the date of the issuance of this SUP, or this SUP shall be void.
8. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Ordinance to Permit Use of Golf Carts on Public Highways of the County

Chief Emmett Harmon, Police Chief, stated that several months ago he approached the Board to gain approval for the legal use of golf carts in certain neighborhoods. He stated the ordinance amendment made provisions to County Code to allow the use of golf carts on County streets. He said the standards developed incorporate safety measures, and the proposed ordinance adopted State Code restrictions as well as an additional restriction which requires insurance for recreational vehicles. He stated that future requests would require an application procedure, and he recommended adoption of the ordinance amendment and subsequently the ordinance to allow the use of golf carts in Chickahominy Haven, if approved.

Mr. Bradshaw asked about the speed study that was conducted in Chickahominy Haven.

Chief Harmon stated that two locations in Chickahominy Haven were evaluated in a speed study and stated that compliance was very good during the study. He noted that only 12 of 800 vehicles were ten or more miles-per-hour over the speed limit.

Mr. Bradshaw stated the newspaper reported the cost of the insurance for the proposal was \$60 per month.

Chief Harmon stated that the correct figure based on a local insurance company was \$60-\$70 per year for this particular coverage.

Mr. McGlennon opened the public hearing.

1. Mr. Donnie Martin, 617 Canal Street, stated he owns a golf cart, that the vehicles were pleasurable to drive, and some residents use them due to physical restraints. He stated the insurance was a drawback and stated that bicycle riders should be required to have the insurance also.

2. Mr. Gene Farley, 4049 South Riverside, thanked those involved in the process to allow golf carts in Chickahominy Haven. He stated those in opposition were more opposed to the misuse of golf carts and the proposed ordinance would regulate this. He stated there are other neighborhoods that would like to incorporate golf carts in their communities. He requested approval of the ordinances.

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

Mr. Bradshaw asked to consider both ordinances simultaneously.

Mr. Bradshaw made a motion to adopt the ordinance amendment to allow for the use of golf carts on public roads and also to adopt the ordinance to allow golf carts on public roads in Chickahominy Haven. He stated he was pleased with how the community and staff worked together on this matter.

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

3. Ordinance to Amend James City County Code Chapter 22, Wetlands

Ms. Jennifer Lyttle, Assistant County Attorney, stated the ordinance change proposed to the Wetlands Ordinance would require all ordinance permits to be routed through the Environmental Division rather than Code Compliance, as the Environmental office was not yet established when the ordinance was written. Ms. Lyttle stated the local information available to citizens was located in the Environmental Division before the permit would be issued and after it has gone before the Wetlands Board.

Mr. McGlennon asked if the Wetlands permit was approved through the Marine Resource Commission (MRC).

Ms. Lyttle stated the permit goes through the MRC and then goes to Environmental Division and then to the Wetlands Board.

Mr. McGlennon asked if the applications are posted on the website.

Ms. Lyttle stated when the information is available for the Wetlands Board meeting, the permit information is posted on the website.

Mr. McGlennon stated the County Wetlands Board must approve the permits filed through the MRC, which are sent to the County Environmental Division, and later brought before the Wetlands Board, who considers the case. He stated that prior to the Wetlands Board's consideration the meeting is advertised and information is available to the public.

Ms. Lyttle stated this is correct.

Mr. McGlennon asked if this was the procedure that we have been following.

Ms. Lyttle stated this has been the process for some time and that staff recently brought it to the attention of the County Attorney's office that the ordinance says the permit information should be routed to Code Compliance.

Mr. McGlennon opened the public hearing.

1. Ms. Liz Johnson, 210 Red Oak Landing Road, stated she has had trouble getting updated information from the MRC and it is difficult to find the information on the website. She stated she would prefer having local review of every application.

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

Mr. McGlennon asked staff if the current process required approval by the Wetlands Board.

Ms. Lyttle stated this was correct.

Mr. McGlennon asked if someone could sign up for a list to receive public hearing notices in advance.

Ms. Lyttle stated that if someone would like to be on a list to receive notification of public hearings through the Environmental division, he or should could contact that office for information.

Mr. McGlennon stated that the purpose of the ordinance amendment was to recognize the fact that the current agency reference is not the agency that holds the application information.

Ms. Lyttle stated this was correct.

Mr. Harrison stated the current process was not going to change.

Ms. Lyttle stated this was correct.

Mr. Harrison made a motion to adopt the ordinance amendment.

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

I. BOARD CONSIDERATION

1. ZO-0011-2007. R-4 (Residential Planned Community) Ordinance Amendment Initiating Resolution

Mr. David German, Planner, stated that staff has been made aware of a proposed addition to Ford's Colony and a literal reading of the ordinance would require the developer to own 400 acres or more, which would prevent normal and logical sale of lots to homeowners. He stated single ownership or control may be troublesome if not clearly defined in the ordinance. He stated that staff has submitted an initiating resolution for the Board to direct staff to work on amendments to be brought before the Planning Commission and Board of Supervisors for further consideration. He stated that the Board may not be ready to act on the resolution, but staff was seeking guidance on how to proceed with the proposed ordinance amendment.

Mr. Icenhour asked if staff's concern was in the event of an R-4 community that consisted of 500 acres without an addition would be in violation after 101 acres were sold.

Mr. German stated this was correct.

Mr. Icenhour asked if this was an actual interpretation.

Mr. German stated it has never been made before but it has been brought up in this potential case and that implication could be made.

Mr. Icenhour stated he did not understand the section dealing with additions to the property and asked if there was a clear connection back to the 400 acres.

Mr. German stated this section says amendments can be made to R-4 and all parameters which governed it before apply except the 400 acre requirement.

Mr. Bradshaw stated that the first condition was never intended to maintain 400 acres. He stated he was in support of clarifying this, but he felt there was not enough discussion about other issues dealing with additions. He asked if there was any harm in delaying the first portion of the resolution.

Mr. German stated he did not believe so.

Mr. Bradshaw stated if there was no harm in delaying the first clarification he was in favor of taking

time to consider the second issue.

Mr. Goodson stated the direction is to look into this issue.

Mr. Bradshaw stated an initiating resolution made a request to bring an ordinance amendment forward.

Mr. Icenhour made a motion to defer consideration to the next meeting to discuss the matter with staff but there should be some expression of the concerns and about what should be done. He stated he did not believe there was intent to sell the property beyond 400 acres. He stated the concerns were about the consideration of the addition to the property. He stated in Ford's Colony there have been many additions that do not fit into the perceived atmosphere of the development. He stated that some homeowners feel that the community they bought into was not maintained. He stated there should be protection for rights of homeowners.

He made a motion to defer.

Mr. Bradshaw stated he agreed with the motion to defer, but he stated that staff needed time to look at it from this prospective of a different and new policy. He stated he needed more analysis from staff. Mr. Bradshaw stated that staff should not craft this ordinance based on the impact of a proposal that may soon come before the Board. He stated that staff would need to develop a policy based on any R-4 community. He asked how a new policy would affect private contract rights.

Mr. Horne stated that this type of analysis would not be available in two weeks.

Mr. McGlennon stated that he would like to see a resolution that narrowly focuses on the confusing language and he felt uncomfortable rewriting this ordinance in the midst of a case that may incorporate it during the Comprehensive Plan process. He stated he would like to consider it in the broader sense. He stated the directive to staff would be to clarify the ordinance in the short term, bring it forward and bring forward the broader issue during the Comprehensive Plan process. He stated if the broader issue needed to be addressed immediately; it needed more analysis than can be available in two weeks.

Mr. Icenhour stated it may take more time to analyze this, but he felt it did not need to be put off through the entire Comprehensive Plan process. He asked that staff bring the issue back whenever they are able to give a broader perspective of the ordinance.

Mr. Harrison stated during the Comprehensive Plan update citizens and staff will be looking at the different zonings and this may be an appropriate time to look at this issue. He stated that a refinement of the ordinance language was something that could be done more immediately.

Mr. Bradshaw asked about changing the language of single ownership or control and noted that almost any way that it could be rewritten it may have implications to the broader issue as to the definition of control. He stated this may not simply be a clarification of language.

Mr. Horne stated that if the Board wants to clarify the first section, the second section could be evaluated more closely in relation to other localities and legal matters and staff would come forward with information rather than another ordinance. He stated staff would be able to produce this information within 30 to 45 days.

Mr. Rogers stated that the issue may concern defining ownership and control of property and asked if this is the policy that the Board wants to have. He stated it has been interpreted by the Zoning Administrator with a very broad definition in R-4.

Mr. Horne stated he felt that this existed in other jurisdictions and this could help evaluate how the definition was interpreted in accordance with other places.

Mr. Bradshaw stated he agreed with going forward with amending the first section and deferring the second portion.

Mr. Porter recommended deferral of the item to amend the initiating resolution.

J. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, stated all the candidates for the 96th seat are opposed to HRTA.
2. Mr. William Gibe, 104 Allwardly, asked Mr. Icenhour to ask VDOT to install a deceleration lane on Longhill Road before Ford's Colony going east from Centerville Road. He commented on over-clearing of wetlands, greed of site contractor for lumber and recommended fines assessed for value of lumber removed and the cost to restore it. He stated Chicago and New York homeowner's association's sign-off on changes or additions by developers to the community.
3. Mr. Howard Goldstein, 108 Shinnecock, stated when a planned community is established, the area and zoning are established and it should not expand. He stated if it does expand, it should expand according to what it is already planned.
4. Mr. Rich Costello, 10026 Sycamore Landing Road, stated Stonehouse was another development that may expand in a similar way as Ford's Colony. He stated the Board should think about other planned communities also.
5. Mr. Tony Obadal, 116 Mahogany Run, stated he did not feel there was any clarification required for "single ownership and control" separate liability is purpose of private entities. He stated this should be evaluated from a broad perspective, but it has come up in a case of context. He stated that ordinances should not be revised to accommodate a particular development and that the master plan is relevant because of the ordinance requirement that some things be placed in master plan, such as the required number of units. He stated that there are many instances where language interpretation does not match the ordinance as written.
6. Mr. Ronald Smith, 111 Western Gales, stated the Board should consider that homebuyers should be able to depend on the community they are presented without fearing changes in the development.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Porter stated that the Board should adjourn to November 13, 2007, at 7 p.m. and after adjournment, a meeting of the James City Service Authority Board of Directors should be held.

He stated that the Board must vote on the voting delegation for the Virginia Association of Counties (VACo) Annual Conference, and he recommended the Board appoint Mr. Icenhour as primary voting delegate and Mr. Goodson as alternate voting delegate.

Mr. Harrison made a motion to appoint the voting delegation to the VACo Annual Conference.

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

L. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon stated the action tonight would have been an adoption of an initiating resolution that would send the ordinance amendment to the Planning Commission to see if there was a necessity to amend the ordinance. He stated that if the Planning Commission felt that there was a need to revise the ordinance, then the matter would come back before the Board and both of these meetings would be appropriately advertised and open to public discussion.

Mr. McGlennon stated the Director of Economic Development, Keith Taylor, was awarded the Cardinal Award, the top award of the Virginia Economic Development Association. He recognized Mr. Taylor's outstanding service to the County.

Mr. Icenhour made a motion to appoint Mr. Thomas Hitchens to fill the vacancy on the AFD Advisory Committee.

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

Mr. Harrison stated that the presentation earlier was by J4Cs about the cumulative impact of development and one recommendation dealt with staying rezoning. He requested this matter come forward on the agenda.

Mr. McGlennon asked that Mr. Harrison discuss the exceptions to the deferral of rezonings.

Mr. Harrison stated that applications with public benefit such as affordable housing, exceptional proffers, or environmental improvements above the norms that were not continuing to strain the important areas should be considered. He stated that other applications had the same rights to come forward, but the Board would be weighing those applications with these higher provisions with more favor to send a message that there are significant studies that need to be completed in order to move forward with clarity.

Mr. Bradshaw asked the process for deciding if there were public benefits and exceptional proffers. He stated that he did not understand how it would be a moratorium if some cases would still be considered.

Mr. Harrison stated he felt there was no proposal at this point that was worth approval. He stated the proposal adopted earlier in the evening was insufficient due to traffic issues, which was why he voted no.

Mr. Bradshaw stated this case referenced was not residential.

Mr. Harrison stated this would be considered for residential also.

Mr. Bradshaw asked how this would be considered.

Mr. Harrison stated that the public facilities test was not used, but if a proposal came forward with public benefit, then it would be considered.

Mr. Bradshaw stated he felt that every case that has come forward has projected some public benefit, whether it was approved or not.

Mr. Harrison stated it was based on personal perspective of growth and whether or not to finalize studies before further rezoning's done.

Mr. Bradshaw stated that there was no real choice, but he does not understand the process to determine what comes forward to be considered and what does not.

Mr. Harrison stated necessary studies are not completed to make these decisions.

Mr. Bradshaw stated that a proposal would be considered if there were public benefits, but this is different from not moving forward at all until studies were completed. He stated he did not understand how the determination would be made.

Mr. Harrison stated there was an attempt for flexibility in order for political support, but he felt personally that studies should be completed before any further rezoning's done.

Mr. McGlennon stated that with the flexibility the opportunity is provided for most cases to come forward anyway, such as Ironbound Square. He asked if this was something that should not have been approved.

Mr. Harrison stated he voted in favor of this proposal only because the matters were already moving forward.

Mr. McGlennon stated that if there was a moratorium that project would not have been considered.

Mr. Harrison stated matters that are already being considered should be grandfathered into the process.

Mr. McGlennon stated there was a difficulty in consideration of mixed use cases where a judgment call was required. He stated that the Board can choose to turn down cases if there is not a compelling argument for development.

Mr. Goodson stated that the major rezoning cases that have come forward have been New Town, Chestnut Grove which created a significant amount of affordable housing, and Ironbound Square. He said the others were mostly smaller cases since most developers were waiting for the Comprehensive Plan process to move forward before making a submission. He stated the developers do not want to wait a year to bring a matter back and the Board was not going to get cases without any public benefit.

Mr. Harrison stated they did not all start off with public benefit, but were added later on in the process. He stated the Board needed to send a message to the community.

Mr. McGlennon stated his feeling about the best way to do this was for individual Board members to consider the case. He stated that the State requires the Board to make decisions on rezoning's within 12 months, and after the 12-month period the Board would have to consider all of them at once with rapid decisions.

Mr. Harrison stated that there is an ability to view the cases.

Mr. McGlennon stated that this allows for consideration of the case and there may as well be a decision.

Mr. Harrison stated public opinion was that the Board is not taking a strong enough approach toward growth.

Mr. McGlennon stated that the best way to demonstrate this was to seriously consider a case and say yes or no.

Mr. Harrison stated that without important information on impacts, these cases cannot be considered seriously.

Mr. McGlennon stated that the measures are very wide and are likely not going to happen.

Mr. Harrison stated he recommended approval of the motion to defer the matter.

Mr. Icenhour stated that there was a fairly good record on significant rezonings. He stated three were approved with considerable affordable housing elements; he would like to consider this measure, but did not want to limit himself; there was either a recess or not and he was comfortable leaving the rezonings to the decision of the Board; there may be more comfort, but the record has been aggressive; and there did not need to be an artificial delay implemented.

Mr. Bradshaw stated unintended consequences would be realized if the Board did not consider new rezonings as there would be development of by-right uses in rural lands or lots or developments that could be improved would be forced to be developed under an old plan which may be substandard.

Mr. McGlennon stated a moratorium will not stop development.

Mr. Harrison read the resolution he developed which proposed a residential development recess.

Mr. Harrison made a motion to approve the resolution as read.

Mr. Goodson asked staff how the application process would be different if this was passed.

Mr. Horne stated he did not feel that the application process would be different as every applicant has the right by State Code to apply, but applicants would be informed of a Board-adopted policy to form reasonable expectations about approval and the timeline related to the application.

Mr. Goodson asked if these cases would not be brought forward on a Board agenda for twelve months.

Mr. Horne deferred to Mr. Rogers and stated he felt that staff could not refuse to place an item on the agenda.

Mr. Rogers asked for further clarification.

Mr. Goodson asked if the resolution was passed that required the Board not to vote on an application for a year, would the cases be placed on the Board's agenda.

Mr. Porter stated the Board could not refuse to consider an application. He said the Planning Commission has 90 days to consider a matter and if it is not acted on in 90 days, it then moves forward with a recommendation of approval. He stated once a case goes to the Board, the Board has a year to act on it, and if it is not acted on, the applicant can compel action by the Board. He stated an application could not be refused.

Mr. Rogers stated that it would not be acted on in a year and if this was adopted there would be a procedure from State Code. He stated that the resolution could allow a case to come before the Board but not put the case on the agenda for a year.

Mr. Icenhour asked if there was anything to preclude the Board from deferring any case for 12 months.

Mr. Rogers stated there was not.

Mr. Goodson asked who would determine which items would have public benefit. He noted that this would be binding a future Board to this policy of deferral.

Mr. Bradshaw stated that it was bad policy to bind a future Board with this kind of resolution.

Mr. Harrison stated it was good public perception.

Mr. McGlennon stated he did not agree with this to convince the people that there will be a tangible impact on development that will not be realized.

Mr. Harrison stated he understood this, but he felt that not acting on this matter was protecting development.

Mr. McGlennon stated there was an obligation to evaluate the cases and let the public know what the Board thinks. He stated the Board would still be required to do this.

Mr. Harrison stated the Board would be prohibited from evaluating the cases.

Mr. McGlennon stated the Board was committed to evaluate the cases and that if these matters needed to be considered to determine whether there would be significant public benefit, the case may as well be considered for action.

Mr. Bradshaw asked how by-right development would be effected.

Mr. Harrison stated that by-right development has not seen a windfall.

Mr. Goodson stated people could be moving into communities that are established, and may be pushing new development in places that are already established.

Mr. Harrison stated there have been more approvals of rezonings than by-right development that is impactful. He stated the motion was on the floor and the public has stated growth control needs to be considered he felt studies needed to be developed before any further development occurred.

Mr. Bradshaw asked about A-1 developments on the list.

Mr. Harrison stated by-right development was always a threat. He stated that the Board needs a strong message and should set benchmarks for public benefit.

Mr. Goodson suggested public input and has not been advertised, suggested advertising for next meeting.

Mr. Harrison stated there should be more public input on this matter.

Mr. Goodson stated the item was not published and no one has read the language of the resolution.

Mr. McGlennon stated the Board has read it and made a motion to table the issue indefinitely.

Mr. Harrison stated he felt this was a political issue as it was being deferred beyond the election date.

Mr. Rogers stated three motions were on the floor and the motion to defer took priority.

Mr. Goodson stated his motion was to defer to the next meeting and to publish the resolution on the website so the public can read it. He stated this was normal procedure for every resolution and stated this was especially due to the importance of this issue.

Mr. Harrison stated this issue has come forward before.

Mr. McGlennon stated this resolution came forward at the last meeting.

Mr. Harrison stated he has requested that it be put on the agenda.

Mr. Goodson stated he would like to defer to the next meeting for public input.

Mr. Harrison asked if the public would be allowed to comment.

Mr. Goodson stated the public would be allowed during the Public Comment segment of the meeting.

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

Mr. Porter stated that action on this item was deferred to the next meeting and will be placed on the agenda as a Board Consideration. He stated that comments from citizens would be taken during Public Comment period.

M. ADJOURNMENT – until 7 p.m. on November 13, 2007

Mr. Harrison made a motion to adjourn.

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

At 9:43 p.m., Mr. McGlennon adjourned the Board.

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