

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 12TH DAY OF AUGUST 2008, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. CALL TO ORDER**

**B. ROLL CALL**

Bruce C. Goodson, Chairman, Roberts District  
James G. Kennedy, Vice Chairman, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District  
Mary Jones, Berkeley District

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

**C. PLEDGE OF ALLEGIANCE** – Leslie “Scooby” Peterson, a rising eleventh-grade student at Lafayette High School, led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATION** – Peninsula Alcohol Safety Action Program (ASAP)

Ms. Kathryn Hall, Executive Director of Peninsula Alcohol Safety Action Program (ASAP), gave an overview of the mission and activities of Peninsula ASAP. She introduced Mr. Dwight Dansby, Chairman, and James City County’s Policy Board representative on the Peninsula ASAP. Mr. Dansby gave a brief overview of Peninsula ASAP statistical information.

Mr. Icenhour commented that the program was outstanding and asked that the Board consider a recommendation on the Legislative Agenda to review the fees.

Mr. Wanner stated that was already part of the legislative package.

**E. PUBLIC COMMENT**

1. Ms. Janet Weaver, Director of the Merrimac Center, introduced herself and thanked the County for serving as the Center’s fiscal agent. She recognized the service of Mr. John McDonald.

2. Mr. Robert Richardson, 2786 Lake Powell Road, commented on the Code of Ethics Policy work session and the ethics of the Planning Commission and Board of Supervisors members.

3. Mr. Bill Spaller, 1556 Harbor Road, Chairman of James City County Concerned Citizens (J4C), commented on concern about rapid growth in the County and recommendations by the Business Climate Task Force (BCTF) dealing with reducing requirements for specially permitted uses.

4. Mr. Bob Warren, 104 Gullane, commented on illegal immigration in the State and County in relation to crime and imprisonment.

5. Mr. Ray Basley, 4060 South Riverside Drive, commented on a County policy in regard to flat roofs on public buildings.

6. Ms. Debra Siebers, 3504 Quail Hollow, on behalf of Fieldcrest Neighborhood Association, commented on the water quality of the Best Management Practice (BMP) project in the subdivision. She suggested avenues and grants to evaluate and improve water quality.

7. Mr. Kelly Place, 213 Waller Mill Road, commented on water conservation rebates; King William Reservoir water projections; and litigation dealing with the King William Reservoir.

8. Mr. Ed Oyer, 139 Indian Circle, commented on traffic on Route 60 E; opposition to rezoning for M-1 property; trailer parks and apartment complexes in Grove; and the stormwater inspectors' impact on the budget.

9. Mr. Joe Swanenburg, 3026 The Point Drive, commented on stormwater management and environmental issues in the County, and refurbishing the Norge Elementary School parking lot.

Mr. Goodson recognized Boy Scout Troop 155 and Delegate Pogge in the audience.

## **F. CONSENT CALENDAR**

Mr. McGlennon made a motion to adopt the Consent Calendar with the amendment to the minutes of the work session.

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

1. Minutes –
  - a. July 22, 2008, Work Session
  - b. July 22, 2008, Regular Meeting
2. Grant Award – Radiological Emergency Preparedness – \$25,000

## **RESOLUTION**

### **GRANT AWARD - RADIOLOGICAL EMERGENCY PREPAREDNESS FUNDS - \$25,000**

WHEREAS, the Virginia Department of Emergency Management (VDEM) has awarded the James City County Fire Department funds for Radiological Emergency Management and Planning in the amount of \$25,000; and

WHEREAS, the funds will be used for planning and response for public protective actions related to the Surry Nuclear Power Plant – Radiological Emergency Preparedness.

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:

Radiological Emergency Preparedness Funds \$25,000

Expenditure:

VDEM 2008 Radiological/Nuclear Pass Down \$25,000

3. Grant Award – Williamsburg Community Health Foundation – \$1,000

**RESOLUTION**

**GRANT AWARD – WILLIAMSBURG COMMUNITY HEALTH FOUNDATION – \$1,000**

WHEREAS, the Williamsburg Community Health Foundation (WCHF) has awarded the James City County Police Department a grant in the amount of \$1,000; and

WHEREAS, the funds are to be used toward the purchase of CPR mannequins and student/instructor manuals.

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

Revenue:

WCHF – CPR Supplies \$1,000

Expenditure:

WCHF – CPR Supplies \$1,000

4. Installation of “Watch for Children” Signs – Indigo Park Subdivision

**RESOLUTION**

**INSTALLATION OF “WATCH FOR CHILDREN” SIGNS – INDIGO PARK SUBDIVISION**

WHEREAS, Section 33.1-210.2 of the Code of Virginia provides for the installation and maintenance of signs by the Virginia Department of Transportation (VDOT), alerting motorists that children may be at play nearby upon request by a local governing body; and

WHEREAS, Section 33.1-210.2 further requires that the funding for such signs be taken from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of the Indigo Park community have requested that “Watch for Children” signs be installed on Stanley Drive and Duer Road as illustrated on the attached map titled “Indigo Park Subdivision ‘Watch for Children Signs’.”

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request that VDOT install and maintain two “Watch for Children” signs as requested with funds from the County’s secondary road system maintenance allocation.

5. Affirmation of Authorization to Pick-Up the Employees’ Contribution to the Virginia Retirement System (VRS) for James City County, 5514, under §414(h) of the Internal Revenue Code – James City County

**RESOLUTION**

**AFFIRMATION OF AUTHORIZATION TO PICK-UP THE EMPLOYEE’S CONTRIBUTION**

**TO VRS FOR JAMES CITY COUNTY, 5514 UNDER § 414(h) OF THE**

**INTERNAL REVENUE CODE**

WHEREAS, James City County (the County) provides its employees with tax deferral pursuant to § 414(h) of the Internal Revenue Code with respect to their member contributions to the Virginia Retirement System (VRS) by picking up member contributions to VRS; and

WHEREAS, VRS keeps track of such picked up member contributions, and treats such contributions as employee contributions for all purposes of VRS; and

WHEREAS, the Internal Revenue Service in Notice 2006-43 has provided transition relief for existing pick-up arrangements provided that an authorized person takes formal action to evidence the establishment of the pick-up arrangement no later than January 1, 2009; and

WHEREAS, in order to avail itself of the protection given under Notice 2006-43, the County desires to affirm its intention to establish and maintain a pick-up arrangement through formal action by its governing body.

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

the existing member contribution pick-up arrangement is hereby affirmed as it relates to salary reduction elections in effect prior to the date of this resolution.

BE IT FURTHER RESOLVED that effective the first pay day on or after August 12, 2008, the County shall pick up member contributions of its employees to VRS, and such contributions shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code of the United States.

BE IT FURTHER RESOLVED that such contributions, although designated as member contributions, are to be made by the County in lieu of member contributions.

BE IT FURTHER RESOLVED that pick-up member contributions shall be paid from the same source of funds as used in paying the wages to affected employees.

BE IT FURTHER RESOLVED that member contributions made by the County under the pick-up arrangement shall be treated for all purposes other than income taxation, including but not limited to VRS benefits, in the same manner and to the same extent as the County directly instead of having them paid to VRS.

BE IT FURTHER RESOLVED that nothing herein shall be construed so as to permit or extend an option to VRS members to receive the pick up contributions made by the County directly instead of having them paid to VRS.

BE IT FURTHER RESOLVED that notwithstanding any contractual or other provisions, the contributions of each member of VRS who is an employee of the County shall be picked up either through a reduction in the current salary of such employee or as an offset against future salary increases of such employee or as a combination of both at the option of the employer by the County on behalf of such employee pursuant to the foregoing resolutions.

6. Appropriation Resolution – Stormwater Service Fee Fund Balance

**RESOLUTION**

**APPROPRIATION RESOLUTION - STORMWATER SERVICE FEE FUND BALANCE**

WHEREAS, the Stormwater Management Fund contains an estimated FY 2008 year-end fund balance of \$1,344,106; and

WHEREAS, Section 18A-3 of the James City County Code identifies specific uses for the Stormwater Management Fund, including costs associated with administering the County's Stormwater Program and maintaining the stormwater infrastructure; and

WHEREAS, \$600,000 of the Stormwater fund balance needs to be transferred to the Capital Projects fund for the FY 2009 water quality projects; and

WHEREAS, it is now necessary to transfer and appropriate the remaining Stormwater Management Fund balances to carry out the activities identified in the James City County Code.

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

\$600,000 is hereby transferred, and the remaining Stormwater funds are hereby transferred and appropriated in the General and Special Projects/Grants Fund for the activities in the amounts shown below:

**General Fund**

Revenue:

Fund Balance from Stormwater Utility \$244,106

Expenditure:

Stormwater Division Outstanding Encumbrances \$244,106

**Special Projects Fund**

Revenue:

Fund Balance from Stormwater Utility \$500,000

Expenditures:

FY 2008 Credit Payments \$15,000

Drainage Improvements Program 485,000

Total Expenditures \$500,000

7. Refinancing – Virginia Public School Authority (VPSA) – \$516,817

**RESOLUTION**

AUTHORIZATION OF THE EXECUTION AND DELIVERY OF A CONTINUING  
DISCLOSURE AGREEMENT IN CONNECTION WITH THE ISSUANCE BY THE VIRGINIA  
PUBLIC SCHOOL AUTHORITY OF ITS SCHOOL FINANCING BONDS (1997  
RESOLUTION) REFUNDING SERIES 2003D, A PORTION OF THE PROCEEDS OF WHICH  
REFUNDED THE JAMES CITY COUNTY GENERAL OBLIGATION SCHOOL BONDS,  
REFUNDING SERIES 1994A; AND AUTHORIZING ANY OTHER ACTIONS NECESSARY TO  
ACHIEVE THE OBJECTIVES CONTEMPLATED HEREBY

WHEREAS, the Virginia Public School Authority (the “Authority”) pursuant to (i) a bond resolution adopted on May 21, 1963, as amended (the “1963 Resolution”); (ii) a bond resolution adopted on August 13, 1987, as amended and supplemented (the “1987 Resolution”); and (iii) a bond resolution adopted on October 23, 1997, as amended, restated and supplemented (the “1997 Resolution”) issued bonds (respectively, the “1963 Resolution Bonds”, the “1987 Resolution Bonds” and the “1997 Resolution Bonds”) for the purpose of purchasing general obligation school bonds of certain cities and counties within the Commonwealth of Virginia; and

WHEREAS, the Authority used a portion of the proceeds of certain 1963 Resolution Bonds and certain 1987 Resolution Bonds to purchase certain duly authorized and issued general obligation school bonds of the James City County, Virginia (the "County") designated the James City County School Bonds, Series of 1987A, Series of 1988, Series 1990A, Series 1990B, and 1991 Series B and the James City County General Obligation School Bond, Series 1992 Series A ("Prior Local School Bonds"); and

WHEREAS, the Authority has issued under the 1987 Resolution two series of 1987 Resolution Bonds designated as "School Financing Bonds (1987 Resolution) 1991 Refunding Series C (the "Series 1991 C Bonds") and "School Financing Bonds (1987 Resolution) 1993 Refunding Series B" (the "Series 1993B Bonds"); and

WHEREAS, the Authority refunded certain 1963 Resolution Bonds and certain 1987 Resolution Bonds with a portion of the proceeds of its Series 1991C Bonds and Series 1993B Bonds and, in connection therewith, the County exchanged its Prior Local School Bonds with a duly authorized and issued general obligation school bond designated the James City County General Obligation School Bond, Refunding Series 1994A (the "Local School Bonds"); and

WHEREAS, the Authority refunded its Series 1991C Bonds and Series 1993B Bonds ("Refunded Bonds") with a portion of the proceeds of its Virginia Public School Authority School Financing Bonds (1997 Resolution) Refunding Series 2003D (the "Refunding Bonds") issued pursuant to the 1997 Resolution; and

WHEREAS, the Authority in refunding the Refunded Bonds has pledged the Local School Bonds for the benefit of the holders of bonds issued under its 1997 Resolution; and

WHEREAS, the Authority is required to assist the underwriters (the "Underwriters") of the Refunding Bonds with their duty to comply with Securities and Exchange Commission ("SEC") Rule 15c2-12 (the "Rule"); and

WHEREAS, the Authority has requested the County to execute a Continuing Disclosure Agreement in order for the Authority to assist the Underwriters in complying with the Rule; and

WHEREAS, the Board of Supervisors of the County of James City County, Virginia considers it to be advisable for the County to fulfill the request of the Authority to execute a Continuing Disclosure Agreement.

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

1. Continuing Disclosure Agreement

The Chairman of the Board of Supervisors, the County Administrator and such officer or officers as they may designate are hereby authorized to enter into a Continuing Disclosure Agreement substantially in the form attached as Appendix A hereto, containing such covenants as may be necessary in order for compliance with the provisions of the Rule, and any other documents the Authority deems necessary to comply with the SEC rules and any Internal Revenue Service rules and regulations regarding maintaining the tax-exempt status of the bonds.

2. Use of Proceeds Certificate

The Chairman of the Board of Supervisors, the County Administrator and such officer or officers as they may designate are hereby authorized to enter into a Use of Proceeds Certificate substantially in the form attached as Appendix B hereto, containing such covenants as may be necessary in order for compliance with any Internal Revenue Service rules and regulations regarding maintaining the tax-exempt status of the bonds.

3. Further Actions

The members of the Board and all officers, employees and agents of the County are hereby authorized to take such action as they or any one of them may consider necessary or desirable in connection with the execution and delivery of the Continuing Disclosure Agreement and the Use of Proceeds Certificate and maintaining the tax-exempt status of the bonds, and any such action previously taken is hereby ratified and confirmed.

4. Effective Date

This resolution shall take effect immediately.

**G. PUBLIC HEARINGS**

Mr. Goodson recognized Mr. George Billups of the Planning Commission in attendance.

1. Readoption of Emergency Ordinance No. 170A-15 to Confirm AFD-0-86-03-2007 Gordon Creek "Warburton Tract" Withdrawal

Mr. David German, Planner, stated that in July 2007 Realtec, Inc. applied for a rezoning of the property located at 3889 News Road, further identified as James City County Real Estate Tax Map No. 3730100004, to support its plans to develop this property as a Continuing Care Retirement Community (CCRC). The CCRC would be added to the Ford's Colony Master Plan as Section 37 of the overall R-4, Residential Planned Community development. This rezoning application and associated Ford's Colony Master Plan amendment were identified as Case No. Z-0008-2007/MP-0006-2007. The Village at Ford's Colony.

In conjunction with its rezoning application, Realtec, Inc. also applied to withdraw the subject property from the Gordon Creek Agricultural and Forestal District (AFD), in accordance with the Withdrawal of Lands from Agricultural and Forestal Districts within the Primary Service Area policy adopted by the Board of Supervisors on September 24, 1996 (see attached). This request for withdrawal was identified as Case No. AFD-9-86-03-2007. Gordon Creek ("Warburton Tract") Withdrawal.

The AFD Advisory Committee met on May 5, 2008, to consider the request for withdrawal that had been received from Realtec Inc. After deliberation on the case, the AFD Advisory Committee voted 4-2 to recommend to the Planning Commission and Board of Supervisors that the subject property be removed from the Gordon Creek AFD.

On June 4, 2008, the Planning Commission voted 4-3 to recommend to the Board of Supervisors that the rezoning application and master plan amendment for the CCRC property be approved. On July 8, 2008, the Board of Supervisors voted 3-2 to approve the rezoning application and the master plan amendment, along with the requested withdrawal from the Gordon Creek AFD.

Prior to the Board meeting on July 8, a procedural error related to the handling of the AFD withdrawal portion of the case was discovered. Specifically, the AFD component of the applications being considered had not been properly included in the advertisements that were published prior to the Planning Commission and Board of Supervisors meetings. While the actions of the AFD Advisory Committee were discussed in the staff reports and staff presentations for both the Planning Commission and Board of Supervisors meetings, it was found that this inadvertent omission constituted a lack of proper notification to the public.

To remedy this situation, the Board of Supervisors enacted Emergency Ordinance No. 170A-15 to allow the rezoning application to be brought forth and acted upon by the Board on July 8, 2008. The State Code requires that a public hearing be held on the emergency ordinance within 60 days of adoption (no later than September 6, 2008) to remain valid. To meet this requirement, the Planning Commission heard the emergency ordinance at its meeting August 6, 2008. The Planning Commission considered whether to recommend withdrawal of the CCRC to the Board of Supervisors at the conclusion of its public hearing. Additionally, the Board will hear public comment on the withdrawal of the CCRC property from the AFD at its public hearing on August 12, 2008, after which the Board will consider the readoption.

The Planning Commission voted 3-3 on this ordinance.

Planning staff recommends that the Board of Supervisors approve the withdrawal of the subject parcel from the Gordon Creek AFD.

Mr. Goodson opened the Public Hearing.

1. **Mr. Sheldon Franck**, on behalf of the applicant, stated that he was available to answer any questions.
2. Mr. Robert Richardson, 2786 Lake Powell Road, stated that he had no objection to the land use, but he felt that there was no emergency to have adopted this ordinance. He stated there were other issues, including zoning, traffic, employee housing, and affordability, to be considered. He requested denial of the application.

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

Ms. Jones made a motion to adopt the ordinance to withdraw the AFD.

Mr. Icenhour stated that when this was discovered, there was an issue of notification. He stated there were two options: to refer the application back to the Planning Commission and start over, or to adopt an emergency ordinance. He expressed concern with the message that was sent to the public. He stated there was no standard on when to apply an emergency ordinance to ensure a significant public benefit and that this was not the case in this instance. He stated his opposition to the ordinance amendment.

Mr. Kennedy asked Mr. Adam Kinsman to come forward and stated that he had done some research on emergency ordinances.

Mr. Kennedy stated that historically the emergency ordinance provision had been used for various reasons that may not be classified as emergencies.

Mr. Kinsman stated that was the list that had been compiled by the County Attorney's office, although it may not be a complete list.

Mr. Kennedy stated that he did not feel that this was a situation to be taken lightly, but it was a situation where the County made a mistake and he did not want to hold someone else accountable.

Mr. Goodson stated his concern about the Planning Commission vote of 3-3. He stated that the case before the Planning Commission was to remove property from an AFD, so he was dissatisfied with some of the Planning Commission comments that did not deal with land use issues, but rather the emergency ordinance. He stated his support for the AFD removal and that the unusual circumstance in this case was the improper advertisement by County staff. He stated that he felt the Board's actions were appropriate and he would support the ordinance.

Ms. Jones stated that there was a tied non-recommendation from the Planning Commission and that the votes were the same as they had been during the original recommendation from the Planning Commission. She stated that there was significant citizen input and notification, and gave her support for the AFD withdrawal.

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

2. Case No. SUP-0011-2008. Williamsburg Dog (deferred from July 8, 2008)

Mr. Goodson stated that this application has been withdrawn by the applicant and there would be no Board action.

Mr. Goodson opened the Public Hearing.

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

3. Case No. SUP-0009-2008. Greenwood Christian Academy at the King's Way Church

Mr. Jason Purse, Planner, stated that Mr. Chris Basic of AES Consulting Engineers has amended the previous application and is now requesting a Special Use Permit (SUP) to allow for the operation of an elementary school on-site (grades pre-K-5). The existing SUP allows 200 children to be enrolled for preschool. Staff has prepared an amended resolution that will not increase the number of students past 200 and will not seek to construct a new building. The amended request will allow the grade school to operate where the preschool is only permitted currently.

The conditions presented for consideration are the same ones that were attached to the SUP-30-01 case. Since no additional infrastructure and no additional students are being added to the use, none of the previously presented conditions for expansion (new turn lane striping or enhanced landscaping) are being conditioned as a part of this request. The applicant no longer wishes to have the Board vote on the expansion plan under this application. The preschool and elementary school will continue to operate in the existing church building on-site.

Since the number of children is not changing and since no new infrastructure is being built as a part of this application, staff does not believe there will be any additional impacts on the surrounding area than what is currently approved by the Board of Supervisors under SUP-30-01.

After speaking with the County Attorney and Planning staff, it has been decided that this case can be acted upon this evening. Legally, this proposal is less intensive and only represents a portion of what was originally advertised under this application. However, the Board does not have a recommendation from the Planning Commission on this proposal, but did have a denial recommendation on the larger expansion proposal. Should the Board wish to remand this case to the Planning Commission, staff would have no problem with that, but it will not need to be re-advertised before this evening's meeting should the Board wish to vote on it tonight.

Staff has prepared a resolution that includes all of the conditions from that previous case, with the addition of an elementary school operation until June 30, 2009. This means that should the applicant wish to have the elementary school portion of this operation after that date, they would need to reapply to the Board of Supervisors under a new application. Staff also included a condition requiring Greenwood Christian Academy to provide enrollment numbers at the start of each school year. Staff will be able to monitor not only the total enrollment, but also the number of students in each grade.

Staff recommends that the Board of Supervisors approve the SUP application.

Mr. McGlennon clarified that there is no change in the utilization of land with current SUP conditions, but it is currently operating with an elementary school in violation of the SUP.

Mr. Purse stated that was correct.

Mr. McGlennon stated that the application changed the SUP to permit the operation of an elementary school that was already on the site.

Mr. Purse stated that was correct.

Mr. McGlennon stated that he would like to defer action and refer it to the Planning Commission to allow the proper application to be advertised for the Planning Commission and Board through the normal process. He stated that the Board was aware of the circumstances of parents who have children enrolled for the coming year and would like to allow for them to continue for the coming school year before the issues are resolved.

Mr. Goodson opened the Public Hearing.

1. Mr. Chris Johnson, Kaufman and Canoles, on behalf of the applicant, stated that in light of recent events, the application has been changed, and stated that he understood and supported the judgment of the Board. He asked that the application be brought through the SUP process as expeditiously as possible to move forward to provide opportunity for the children in the school.

2. Ms. Kristen King, 112 Stanley Drive, stated her concern regarding any change or expansion at the Greenwood Christian Academy due to impact of the school on traffic, noise, and growth on the property.

3. Mr. Ed Oyer, 139 Indian Circle, commented on tradeoffs, and stated that the decreased pressure on public schools should be considered. He asked what the public benefit of the project was. He stated that this is a worthy project and he wished to have a similar structure in his neighborhood.

4. Mr. Mack Mestayer, 105 Gilley Drive, stated that the Planning Commission recommended denial by a vote of 5-2 on the original project. He stated that it did not maintain the residential nature of the neighborhood, it was a large structure, does not maintain the character of Route 5, and it adds traffic to the area. He commented on the size of the building and information provided by staff. He stated his opposition to the project.

5. Ms. Julie Leverenz, 3313 Running Cedar Way, requested that the Board give this case the full due process.

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

Mr. McGlennon stated that the school was discovered to be out of conformance with the original SUP. He stated that staff has stated that it would be legally acceptable to consider this case as it was a less-intensive use of the property. He stated that he would like to recommend that the case be remanded to the Planning Commission for a recommendation. He stated that the application would allow for 200 students to be taught within the current confines for pre-school and elementary school for this coming year while the school decides what actions to take. He stated that this application should go back to the Planning Commission with the understanding that the SUP would not be enforced for the coming year to allow for the school year to provide for those parents who have their children enrolled in the school for the upcoming school year.

Mr. Kennedy stated that there had just been a case where the County had not followed through appropriately, but this case is different. He stated he would like to see a checks and balance system or a policy related to SUPs, and if an SUP comes forward there should be a consideration of conformance to any previous SUPs by the applicant. He stated that there was an issue of monitoring this, but he hoped that staff could move forward.

Mr. Porter stated that this was discussed and for each application for an amendment to an SUP, staff would go through the conditions in relation to what was on-site.

Mr. McGlennon asked about the schedule for this item.

Mr. Rogers stated that there was time to make the first Planning Commission meeting in September, and it could be pre-advertised for the second meeting of the Board in September.

This case was referred back to the Planning Commission.

4. Case No. SUP-0012-2008. Liberty Ridge Clubhouse and Swimming Pool

Mr. Jose Ribeiro, Planner, stated that Mr. Dean G. Vincent of James City County, LLC has applied to build a clubhouse and a swimming pool facility to be located within the proposed Liberty Ridge Subdivision located at 5365 Centerville Road, further identified as James City County Real Estate Tax Map No. 3030100002 consisting of 3.03 acres. He stated that the property was zoned A-1, General Agricultural, and that the property was designated by the Comprehensive Plan as Rural Lands.

At its meeting on July 2, 2008, the Planning Commission voted 7-0 to recommend approval of this application.

Staff found the proposed addition consistent with the surrounding zoning and development and consistent with the Comprehensive Plan.

Staff recommended approval of the SUP.

Mr. Goodson opened the Public Hearing.

1. Mr. Dean G. Vincent, James City County, LLC, gave a presentation on the application and its benefits to the surrounding community.

Mr. Icenhour asked the applicant when the first occupants would move into the subdivision.

Mr. Vincent stated that he expected the first home construction around the first part of 2009, with occupancy by the end of the year. He stated that he expected the opening of the pool Memorial Day 2010.

Mr. Icenhour stated that the parking requirements were based on use of the swimming pool. He asked the anticipated uses of the clubhouse and how it relates to other facilities.

Mr. Vincent stated that the clubhouse is for the use of residents and stated that there would rarely be parking conflicts. He stated that this building would be deeded to the homeowners association and would be used for its meetings. He stated that there would be a club manager that would rent out the buildings and that there were usually smaller events.

Mr. Icenhour stated that it was clear it was not expected to support some of the larger meetings in a community and the requisite parking.

Mr. Vincent stated that the clubhouse's use was fully explained to the residents.

Mr. Icenhour asked about the request for removing the binding language to the conceptual plan. He asked if the applicant was receptive to a size range with flexibility to make changes, and that he was concerned with the lack of commitment.

Mr. Vincent stated that discussion was held because he felt the binding language seemed inconsistent with a concept plan. He stated that the planning director recommended the language change, and that his concern was that a final site plan would likely be different.

Mr. Goodson asked if the applicant had full flexibility with this.

Mr. Ribeiro stated that there was a section that states the master plan will be reviewed and approved and will become binding on approval by the Board of Supervisors. He stated that the Development Review Committee (DRC) would also review this.

Mr. Icenhour asked Mr. Rogers about approving an SUP that was not bound to the master plan. He stated that if the Board approves the SUP today, the developer and DRC could decide on the constraints.

Mr. Rogers deferred to Mr. Murphy on the constraint on where the project should be built. He stated that the SUP goes along with the property for this developer or any future developer, and that he was unsure if there was a way to change the lot of a conceptual plan.

Mr. Murphy stated that the SUP has a conceptual plan that is considered a master plan, which must be considered by the DRC. He stated that an added condition would be redundant and would cause problems if the Board wished to revisit it at a later time, and that the DRC has been very diligent in working with applicants. He stated that he felt the SUP had a binding plan that had some flexibility.

Mr. Icenhour stated that he would have been more satisfied if flexibility was defined by a range. He stated there was an issue of having conditions in writing, and that this SUP was advocating responsibility for the ultimate product to the DRC. He stated that he did not have a problem with the project, but relayed his concern with the process.

Mr. Porter stated that there was a conceptual plan that illustrates the location and is outlined in the first condition. He stated there was language indicating minor changes recommended by the DRC that does not change the concept.

Mr. Icenhour stated that this was similar to the Villages at White Hall case.

Mr. Porter stated that those problems were since corrected.

Mr. McGlennon stated that this was an amenity internal to a subdivision and that he felt the Board was being held accountable for these kinds of projects by residents. He stated that this was a good project, but that he was concerned about the square footage of the clubhouse as different numbers were presented in the staff report and master plan.

Mr. Ribeiro stated his apologies for any confusion and that the basement square footage was not included.

Mr. McGlennon stated that there was confusion because of the inconsistency. He stated that there should be something in the official record that would be referenced to avoid confusion and that if the applicant and DRC have conflicting ideas of the square footage, there was an issue. He stated that he did not understand how the conceptual plan could be used in this situation.

Mr. Porter stated that the conceptual plan was a beginning plan and that details could be considered later.

Mr. McGlennon stated that the issues were defining the square footage to be used.

Mr. Murphy stated that it would have been preferable to show the basement square footage on the conceptual plan.

Mr. McGlennon asked if there was anything else that was similarly ambiguous.

Mr. Murphy stated that the project would be dictated by the conceptual plan and mediated by the DRC.

Mr. McGlennon stated that he did not wish to rely entirely on the DRC as the members may change.

Mr. Murphy stated that he understood this concern and that in his history with various Planning Commissions and DRCs, there was a very good track record of consistency.

Mr. Porter stated that the Board may wish to consider the range of the DRC and also that the Board could set parameters for the applicant and the DRC.

Mr. McGlennon stated that he did not wish to approve site plans, but wanted to make sure the parameters were clear.

Mr. Murphy stated that the Board would define parameters to be imposed by the DRC in cooperation with the applicant.

Mr. Icenhour stated that he wished to ensure that when the Board approves a case, that it would be built according to the approved SUP.

Mr. Porter stated that there was a matter of how much detail the Board wanted to handle.

Mr. Goodson stated that the Board should be a policy board and rely on staff for specific matters on a case. He stated that this was a nice proposal and the Board was not trusting of the staff and the appointees on the DRC to implement the policy.

Ms. Jones stated that this was a unique situation as it was a by-right subdivision and the zoning ordinance requires A-1 property to come forward for an SUP for amenities. She stated that there should be a maximum impervious cover footprint on a master plan, and that Mr. Vincent was responsive to every concern of the Planning Commission. She stated there were other measures being added to the site, and that the oversight between staff and the Planning Commission there is an improvement to conditions on applications.

Mr. McGlennon stated that the level of concern is the process rather than the application.

Ms. Jones stated that staff and the Planning Commission are more aware of these issues.

Mr. McGlennon stated that this is a by-right development but it is also the best way to market the property.

Mr. Kennedy stated that there was an application on the Noland property in relation to the size of the pool on a development. He stated that there were some issues that were later corrected, and that during the White Hall case the DRC notified the Board of these issues. He stated this was a matter of enforcement.

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

Mr. Kennedy made a motion to approve the SUP.

Mr. McGlennon stated that there should be an amendment to define the square footage of the clubhouse.

Mr. Murphy stated that Condition 1 should be amended to include the approximate square footage of the first and second floors.

Mr. Kennedy amended his motion to add the approximate square footage to the resolution.

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

**RESOLUTION**

**CASE NO. SUP-0012-2008. LIBERTY RIDGE CLUBHOUSE AND SWIMMING POOL**

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

WHEREAS, Mr. Dean G. Vincent has applied on behalf of James City County, LLC for an SUP to allow the construction of a clubhouse and a swimming pool on the site; and

WHEREAS, the proposed development is shown on a plan prepared by Basham & Lucas Design Group, Inc. (the "Master Plan") and entitled "Liberty Lodge Conceptual Site Plan"; and

WHEREAS, the property is located within the proposed Liberty Ridge subdivision at 5365 Centerville Road on land zoned A-1, General Agricultural District, and can be further identified as Parcel No. (1-2), on James City County Real Estate Tax Map No. (30-3); and

WHEREAS, the Planning Commission, following its public hearing on July 2, 2008, voted 7-0 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2003 Comprehensive Plan Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0012-2008 as described herein with the following conditions:

1. Master Plan: This SUP shall be valid for the construction of a clubhouse of approximately 2,110 square feet (approximately 1,450 square feet on the ground floor and approximately 660 square feet in the basement) and a swimming pool facility of approximately 2,400 square feet (together with the clubhouse, the "Facilities") on the property located at 5365 Centerville Road and also identified as James City County Tax Parcel No. 3030100002 (the "Property"). Development and use of the Property shall be generally in accordance with the Conceptual Plan entitled "Liberty Lodge Conceptual Plan" prepared by Basham & Lucas Design Group, Inc. with such minor changes as the Development Review Committee determines does not change the basic concept or character of the development.
2. Water Conservation: The facilities shall conform to the existing water conservation standards approved by the James City County Service Authority for this development on February 27, 2008.
3. Exterior Lighting: All new exterior light fixtures, including building lighting, for the Facilities shall have recessed fixtures with no lens, bulb, or globe extending below the casing, except for ornamental or decorative lighting. In addition, a lighting plan shall be submitted to and approved by the Planning Director or his designee, which indicates no glare outside the property lines. All light poles shall not exceed 20 feet in height unless otherwise approved by the Planning Director prior to final site plan approval. "Glare" shall be defined as more than 0.1 foot-candle at the property line adjoining residential lots.

4. Low Impact Development (LID) Measures: Where practical, as determined by the Environmental Director, LID measures and/or techniques will be incorporated into the site plan for this project.
5. Dumpsters: All dumpsters and heating and cooling units visible from any public street or adjoining property shall be screened with landscaping or fencing approved by the Planning Director or his designee prior to final site plan approval for the Facilities.
6. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
7. Commencement of Construction: If construction has not commenced on the Facilities within 36 months from the issuance of this SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction.

5. Case No. SUP-0007-2008/MP-0002-2008. David Nice's Contractor's Office and Shed

Mr. David German, Planner, stated that Mr. Arch Marston of AES Consulting Engineers has applied on behalf of his client, Mr. David A. Nice, for an SUP to allow for the construction and operation of a contractor's office, storage shed, and associated storage and maintenance yard to be located at 4700 Fenton Mill Road. The subject property is zoned A-1 (Rural Residential), and is designated Rural Lands on the James City County 2003 Comprehensive Plan Map. There is a small area of the parcel, which is 79.68 acres in size, that is zoned M-1, Limited Business, and designated Mixed-Use on the Comprehensive Plan map, in the extreme northern tip of the parcel, but the proposed use will not be located in this area. The applicant proposes a subdivision of this property to create a ten-acre lot from the larger whole. If granted, the SUP and the conditions attached thereto would govern the proposed use on the ten-acre lot and not affect the remaining 69.68-acre parcel. The entire operation proposed for this SUP would be located on and contained within the ten-acre lot.

At its meeting on July 2, 2008, the Planning Commission voted 7-0 to recommend approval of this application.

Staff found that the proposal is not consistent with the Comprehensive Plan Land Use Map designation for the subject parcel. However, staff believes that the proposed conditions will sufficiently mitigate the impacts created by the proposed development.

Staff recommended approval of the application.

Mr. Goodson opened the Public Hearing.

Ms. Jones asked staff if the required landscape plan for SUPs according to the zoning ordinance was in excess of 100 percent.

Mr. German stated that a range is prescribed, but more recently there was a trend geared toward the size of landscaping rather than the quantity of trees and shrubs to improve the landscaping plan. He stated that in this application, the SUP requested both size and quantity, but the applicant has requested that size only be considered.

1. Mr. Tim Trant of Kaufman and Canoles, on behalf of the applicant, gave a brief overview of the application and the potential uses for the site.

Mr. McGlennon asked about trips generated due to employees entering and leaving the property to and from job sites.

Mr. Nice stated approximately ten per-day.

Mr. Icenhour asked about access and future use of property to the rear of the site.

Mr. Marston stated that the remaining 70 acres would be to the east of this property and had access off Fenton Mill Road, and that he was unaware if Mr. Nice had plans for that property at this point.

Mr. Icenhour stated that this property had many topographical features such as steep slopes that would not allow this property to be ideal for residential lots.

Mr. Nice stated that there were some parts that could be residentially used.

Mr. Icenhour stated that he was interested in what kind of buffering would be used to separate this use from the remainder of the property.

Mr. Nice stated that the property that is being developed is naturally buffered, but that at this point there was no intention of developing the rest of the property. He said that of the ten acres, only two would be utilized and the rest would remain naturally forested.

Mr. Icenhour asked if most of the buffering would be geared toward the interstate.

Mr. Nice stated that there would be a berm on Fenton Mill Road which would parallel the interstate to buffer the viewshed, and that there were natural berm to the neighbor to the left.

2. Mr. Bill Apperson, 4900 Fenton Mill Road, stated his support for the application and applauded Mr. Nice for his stewardship of the surrounding area.

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

Mr. Kennedy made a motion to adopt the alternate resolution which eliminated the requirement for the size of landscaping to total 125 percent of the zoning ordinance requirement.

Mr. Icenhour stated that he believed that this property was well suited for this use.

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

**RESOLUTION**

**CASE NO. SUP-0007-2008/MP-0002-2008. DAVID NICE'S**

**CONTRACTOR'S OFFICE AND SHED**

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

WHEREAS, Mr. Archer Marston of AES Consulting Engineers, on behalf of David A. Nice, has applied for a Special Use Permit (SUP) to allow for a contractor's office and shed, with associated storage and maintenance yard, on approximately 10.00 acres of land subdivided from a 79.68-acre parcel zoned A-1, General Agricultural; and

WHEREAS, the proposed site is shown on a binding Master Plan, entitled "Master Plan for Special Use Permit for David A. Nice Builders, Inc. Site Division Contractor's Office," identified as MP-0002-2008, and dated March 26, 2008, with revisions on June 23, 2008; and

WHEREAS, the subject property may be identified as a ten-acre portion of James City County Real Estate Tax Map Parcel No. 1430100042; and

WHEREAS, the Planning Commission of James City County, following its public hearing on July 2, 2008, recommended approval of this application by a vote of 7-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit SUP-0007-2008, and associated binding Master Plan MP-0002-2008, as described herein with the following conditions:

1. **Master Plan and Use:** This SUP shall be valid for the operation of a contractors' offices/shop, storage shed, and gravel work yard and storage area ("the Project") to be located at 4700 Fenton Mill Road, further identified as James City County Real Estate Tax Map No. 1430100042 (the "Property"). Development of the site shall be generally in accordance with, and as depicted on, the binding Master Plan drawing, entitled "Master Plan for Special Use Permit for David A. Nice Builders, Inc. Site Division Contractor's Office at 4700 Fenton Mill Road," prepared by AES Consulting Engineers, and dated March 26, 2008, (further identified by the County as Master Plan MP-0002-2008 and hereafter referred to as "the Master Plan") as determined by the Planning Director of James City County ("Planning Director"). Minor changes may be permitted by the Planning Director, as long as they do not change the basic concept or character of the development.
2. **Lighting:** Any exterior lighting installed on the Property shall be composed of recessed fixtures with no bulb, lens, or globe extending below the fixture housing. The housing shall be opaque and shall completely enclose the light source in such a manner that all light is directed downward and that the light source is not visible from the side of the fixture. Pole-mounted fixtures shall not be mounted in excess of 15 feet in height above the finished grade beneath them. Light spillage, defined as light intensity measured at 0.1-foot-candle or higher extending beyond any property line, shall be prohibited.

3. **Site Plan Approval:** Final site plan approval for the Project shall be obtained within 18 months of issuance of this SUP, or the SUP shall become void.
4. **Subdivision of Land:** The ten-acre parcel of land intended to support this Project, as depicted on the Master Plan, shall be legally subdivided from the parent parcel within 18 months of issuance of this SUP, or the SUP shall become void. Once the subdivision is completed, the SUP conditions attached to this Project shall run with the ten-acre parcel of land, rather than with the parent parcel.
5. **Certificate of Occupancy:** A Permanent Certificate of Occupancy for the Project shall be obtained 36 months of issuance of this SUP, or the SUP shall become void.
6. **Junk Removal:** The applicant shall remove all junk from the Property prior to final site plan approval. "Junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, wood, lumber, concrete or construction debris, pallets, tires, waste, junked, dismantled, or wrecked automobiles, inoperable equipment, construction vehicles or tractors, or parts thereof, iron, steel, and other old scrap ferrous or nonferrous material. This junk shall be properly disposed of in a State-approved facility. Junk shall not include construction materials which are new or otherwise suitable for future use being stored on the property, or vehicles/equipment which are actively under repair. The James City County Zoning Administrator ("Zoning Administrator") shall verify, in writing, that all junk has been properly removed from the property. No new junk, (as defined by this condition), may be brought to or stored on the site.
7. **Landscape Plan:** A landscape plan, subject to the review and approval of the Planning Director or his/her designee, shall be submitted for the Property (in accordance with "Article II. Special Regulations Division 4. Landscaping" of the Zoning Ordinance), except that the owner shall provide enhanced landscaping such that the required size of shrubs and trees located in the 75-foot buffers and berms along Fenton Mill Road equals, at a minimum, 125 percent of the requirements and such that at least 60 percent of the shrubs and trees are evergreens.
8. **Natural Heritage Review:** The natural heritage resources (flora) of the Property are currently under review by the Commonwealth of Virginia Department of Conservation and Recreation (VDCR). The applicant shall comply with all recommendations from, and findings of, the VDCR, as might be applicable to the Property.
9. **Hours of Operation:** The hours of operation for the Project, including the loading or unloading of, or maintenance of, vehicles or equipment, shall be limited to 6:00 a.m. to 8:00 p.m., Monday through Friday, and 7:00 a.m. to 5:00 p.m. on Saturday.
10. **Parking of Vehicles:** No more than 40 vehicles (including construction vehicles such as a backhoe or bulldozer) may be parked on the Property at any given time. For purposes of this condition, a vehicle loaded on a trailer shall count as one vehicle. For purposes of this condition, a vehicle loaded on a trailer and *actively* being towed to or from the Property by a second vehicle shall count as one vehicle. Interpretations of the counting of vehicles on the Property shall be at the sole discretion of the Zoning Administrator. Requests to amend this parking restriction shall be submitted to the Development Review Committee of the Planning Commission ("DRC") in writing for consideration to approve or deny the request.

11. **Vehicle Trips per Day:** No more than 80 vehicle trips per day shall be permitted at the Property, regardless of purpose, point of origin, or destination except governmental or emergency vehicles. For purposes of this condition, a trip is defined as any vehicle coming to or leaving the Property. For purposes of this condition, a vehicle loaded on a trailer and *actively* being towed to or from the Property by a second vehicle shall count as one vehicle trip. Interpretations of the counting of vehicle trips to and from the Property shall be at the sole discretion of the Zoning Administrator. Requests to amend this vehicle trips-per-day restriction shall be submitted to the DRC for consideration to approve or deny the request.
12. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

6. Case No. Z0-0002-2008 Zoning Ordinance Amendment-SUP Use List Amendments

Mr. Jason Purse, Planner, stated that staff has investigated possible ordinance amendments to certain specially permitted uses in various zoning districts. Looking at the uses that are currently allowed by-right, staff has compiled a list of SUPs that have similar impacts in those zoning districts. Staff feels that moving those uses from SUPs to permitted uses will not have additional adverse effects on similarly zoned properties across the County. In accordance with the BCTF report, staff looked at the LB, B-1, M-1, M-2, RT, PUD, and MU sections of the ordinance at this time.

Mr. Purse said that as a part of this review, the Office of Economic Development reviewed the ordinance and provided recommendations, and staff took that information into consideration as well. Staff also consulted the York County Zoning Ordinance and incorporated some “new” uses into this amendment. **Staff has provided multiple documents below for your review.** He stated that there was a list of SUPs since 2002 included with the Board’s package, and a majority of SUPs have been for specially permitted uses in the A-1 and R-8 zoning districts. A good number have also been for “public land” projects, including a large percentage of “classroom trailers.” There are a few SUPs for the B-1 district, but most of those were triggered by the “commercial SUP” section (Section 24-11) of the ordinance.

Staff recommended the following uses be added as permitted uses in LB zoning districts: Catering and meal preparation 5,000 square feet or less, contractor’s offices with storage of materials and equipment limited to a fully enclosed building, lumber and building supply (with storage limited to a fully enclosed building), mailing and facsimile transmission reception, plumbing and electrical supply (with storage limited to a fully enclosed building), restaurants (excluding fast-food restaurants), tea rooms, and taverns with 100 seats or less, retail food stores 5,000 square feet or less, and tourist homes.

Staff recommended the following uses be added as permitted uses in B-1 zoning districts: farmer’s market, limousine services (with maintenance limited to a fully enclosed building), Micro-breweries, research, development and design facilities or laboratories, and security service office.

Staff recommended the following uses be added as permitted uses in M-1: commercial marinas, docks, piers, yacht clubs, boat basins and servicing areas for same; if fuel is sold, then in accordance with Section 24-38, manufacture of cans and other metal products from previously processed metals, and manufacture of glass and glass products.

Staff recommended the following uses be added as permitted uses in M2 zoning districts: electrical generation facilities (public or private), steam generation facilities, electrical substations with a capacity of 5,000-kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more.

Staff recommended the following use be changed to an SUP: Automobile service stations; if fuel is sold, then in accordance with Section 24-38.

Mr. Purse stated that at a later date, after staff receives input on this issue during the Comprehensive Plan update process, a more in-depth study may be undertaken to evaluate larger changes to the ordinance. This project will investigate possibly adding requirements to the ordinance (such as typical SUP conditions) that might make it feasible to allow even more flexibility to the legislative process, as well as investigating possible changes to the commercial SUP requirements in Section 24-11. This second phase will most likely require more involvement from the Policy Committee, Planning Commission, and the Board of Supervisors throughout the process. However, staff wishes to keep these two processes separate in order to expedite these initial changes and be able to enact them more quickly.

At its May 22, 2008, meeting, the Planning Commission's Policy Committee voted 5-0 to recommend approval of the proposed amendments.

At its July 2, 2008, meeting, the Planning Commission made recommendations on each of the specific districts, rather than vote on all of the amendments at once.

The Planning Commission voted to recommend approval of the M-2, General Industrial District, amendments by a vote of 7-0. They also voted 6-1 to recommend approval of the M-1, Limited Business/Industrial District, amendments. The Commission voted to recommend approval of moving automobile service station to an SUP in the B-1, General Business District, by a vote of 7-0. However, the Commission voted to recommend denial of the changes to the LB, Limited Business, and B-1, General Business, changes and further recommended that no action be taken on those districts until after the Comprehensive Plan update process is completed, by a vote of 6-1.

Staff recommended approval of the ordinance amendments.

Mr. Kennedy expressed concern about the permitted use of restaurants of 100 seats and stated that was a very large number of seats for a permitted use. He also expressed concern about the level of noise that may be caused by taverns with live music. He asked about performance standards that may be applied.

Mr. Purse stated that the performance measure used under this ordinance would be the limit of 100 seats. He stated that staff looked at restaurants in the County, particularly Victoria's in the Williamsburg Crossing Shopping Center which has 100 seats, to make the determination of the standard for this item. He stated larger-scale chain restaurants require more than 100 seats.

Mr. Kennedy stated that smaller, in-fill neighborhood projects suggested that 100 seats were too large. He stated support for bringing this number down as it generated a great deal of traffic. He stated that taverns with live bands should be considered if it were near a residential neighborhood. He stated that dining establishments were different from taverns and expressed concern about high occupancy at these locations near residential neighborhoods. He commented on retail food stores and stated that in the Stonehouse District there were a number of small market-type stores, and that he would like to have a performance standard for this type of use due to traffic concerns.

Ms. Jones commented on the traffic threshold.

Mr. Purse stated that there is currently a commercial SUP established that addressed the SUP requirement for high-traffic projects.

Mr. Icenhour asked about the difference between a convenience store and a retail food store.

Mr. Purse stated that a convenience store is a specific use with a specific definition.

Mr. Icenhour commented on the definition and asked if this ordinance amendment passed would the convenience stores not be required to get an SUP for gas pumps as a secondary use.

Mr. Purse stated that convenience stores require an SUP for all zoning districts.

Mr. Icenhour asked how a definition of a retail food store differed from a convenience store.

Mr. Purse stated there was no specific definition in the ordinance, but examples would be specialty food stores, which did not contain everything at a convenience store.

Ms. Jones stated that there were specific examples for retail stores and shops, and stated that there should be a definition for retail food stores.

Mr. Goodson stated that this would be a designer food store.

Mr. Porter stated that this applied to smaller food stores typically in rural areas.

Mr. McGlennon asked if there had been any applications for retail food stores.

Mr. Purse stated that there was not.

Mr. Goodson stated that this was due to the length of the SUP process.

Mr. McGlennon asked if there had been any inquiries about an application for a retail food store.

Mr. Purse stated that there had not.

Ms. Jones stated that this was an effort to support small businesses.

Mr. Purse stated that fish markets and bakeries were currently permitted uses under the ordinance which parallel the retail food store in definition and impacts.

Mr. McGlennon asked if there was an application for research development, design facilities, or laboratories.

Mr. Purse stated that there had not been any yet as it was a relatively new zoning district.

Mr. McGlennon stated that this was an unknown type of business to him and asked about potential concerns for laboratories, and to what extent the laboratories would be restricted by other parts of the ordinance.

Mr. Purse stated that if there was production involved, it may be regulated by the industrial portion of the ordinance.

Mr. Goodson asked about medical laboratories for medical offices.

Mr. McGlennon asked if this would qualify as a medical facility.

Mr. Purse stated there was a specific reference for medical offices.

Mr. Kennedy stated that during the Economic Development Authority (EDA) discussions, the idea of a laboratory such as Incogen was suggested.

Mr. McGlennon asked if there was a reason to add this as a permitted use since these types of applications can be fast-tracked through the SUP process since there are public health or safety issues.

Mr. Porter stated that health or safety risks would not be considered under this.

Mr. Goodson stated that the facilities with those types of issues would also be governed by the Health Department and other agencies.

Mr. Porter stated that he was unaware of what was in the ordinance, but that those types of things occur in M-1 or M-2 zoning where there are safety requirements.

Mr. McGlennon asked what would happen if they were permitted in B-1 districts.

Mr. Porter stated that it may be considered that there is a specific reference to harmful operations.

Mr. Goodson stated that facilities with these concerns are likely governed by other agencies.

Mr. McGlennon stated that if that is the case, it would reassure him.

Ms. Jones stated that it should be ensured that there is a standard written in the ordinance.

Mr. Wanner stated that the Fire Department, HAZMAT, and the Health Department would all have roles in certain processes or applications.

Ms. Jones confirmed that there was still input.

Mr. Porter stated that if specific exclusions were needed, that could be done. He noted that the zoning district is already in place and the landscaping and site plan requirements still needed to be met, so applicants still go through the site plan process.

Mr. Goodson stated that there was a provision for traffic impacts.

Mr. Purse stated that this applied for over 100 peak-hour trips.

Ms. Jones stated that this came out of the Policy Committee with a 5-0 vote recommending approval, the Planning Commission parceled out the votes according to zoning with a recommendation that any changes to LB and B-1 be put on hold for the Comprehensive Plan process. She asked if there was any additional comment.

Mr. Purse stated that staff recommended approval, but would be able to put a portion of the amendments on hold until after the Comprehensive Plan process.

Ms. Jones commented on the need for the proper balance of public input and support for County businesses.

Mr. Porter stated that this was a means to make things more convenient for the public.

Mr. Kennedy commented on New Town where restaurants were intermingled with New Town, but that there was a concern for taverns with loud music in residential areas.

Ms. Jones stated that catering and meal preparation would make sense in this location.

Mr. Goodson opened the Public Hearing.

1. Mr. Scott Coursen, 160 Nina Lane, commented on removal of B-1 and LB in the amendments. He stated that he was against a blanketed zoning amendment, and that citizens should have the opportunity to speak on a project before the Board.

2. Dr. Christine Clark, commented on potential traffic increases for projects on Route 5 and Greensprings Road.

3. Ms. Sarah Kadec, 3504 Hunters Ridge, commented on Mr. Spaller's comments earlier and stated that she wished to reinforce the J4C's concern on not allowing public input on some of the SUP projects. She asked that the Board require SUPS for the applications in LB and B-1 zoning districts until after the Comprehensive Plan.

4. Mr. George Billups, Planning Commission, stated that the LB and B-1 districts were voted to recommend deferring the LB and B-1 changes by a vote of 6-1, which were not clearly defined. He stated that some of the other items required public input due to the proximity to residential areas. He stated that the Planning Commission wanted clarity on what was being considered and that the public should have involvement in the input of this through the Comprehensive Plan process.

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

Mr. Icenhour stated his support for the M-1 and M-2 changes but asked to defer as recommended the B-1 and LB changes to the Comprehensive Plan Process. He stated that the SUP process needed to be further examined to balance the opportunity for input with the ease of the process for businesses.

Mr. Kennedy stated that he supported the M-1 and M-2 changes and stated that there was a misconception on the nature of some of these uses. He stated that he can be supportive of some of the limited uses with clarity and performance standards as discussed and asked how measures such as noise requirements can be addressed.

Mr. Purse stated that there were not specific noise requirements, but this could be handled through lighting and hours of operation requirements. He stated that this was not in the zoning ordinance at this time, but it was addressed in the noise ordinance.

Ms. Jones asked about reducing the traffic threshold.

Mr. Purse stated that this could be applied by taking taverns or other uses of the use list to limit what

could go in the B-1 district.

Mr. Kennedy asked if this was best to be done now and emended or to begin with clarity.

Mr. Purse stated that he would like to take the Board's direction back and come forward with more clarity.

Mr. Goodson stated that he was not comfortable with delaying this process through the entire Comprehensive Plan, but that he was comfortable with delaying for further evaluation.

Ms. Jones asked to move forward on the M-1 and M-2 changes and the move from permitted uses to specially permitted use for automobile service stations, then to go item-by-item to evaluate the B-1 and LB uses.

Mr. McGlennon stated his concern that the public would want to be involved in this process. He stated that he could see evaluating performance standards before the end of the Comprehensive Plan process, but it would take time and then the citizens should be able to approve it. He stated that it may not be deferred for the entire Comprehensive Plan process, but that citizens should have a chance to weigh in on these changes and performance standards.

Ms. Jones stated that some projects are significantly less intense than some of the already permitted uses. She asked if this could be tied into an upcoming Community Conversation.

Mr. Purse stated that the Community Conversation on August 19, 2008, had a list of topics for people to comment on and provide information about this topic. He stated that there could be a brief part of this in the presentation, but that there may not be time to discuss this specifically.

Mr. Kennedy asked to highlight some of this information on the County website.

Mr. McGlennon stated that in that event, some members of the public will discuss by-right uses that should require an SUP.

Ms. Jones stated that consideration should be given to property owners who own property zoned for business.

Mr. Goodson stated that he felt these amendments took the wrong approach by adding specific uses rather than setting standards that could apply to a broad spectrum of uses. He stated that the zoning ordinance should not react to market changes.

Mr. McGlennon stated that if that was the objective it should be stated rather than moving businesses from one category to another.

Mr. Goodson stated that if a business meets the performance that is prescribed, it should be allowed.

Mr. McGlennon stated that citizens should be engaged to allow input on what those conditions should be.

Mr. Porter stated that it should be part of the Comprehensive Plan process because input would be taken and performance standards should take the citizens' opinions in account. He stated that he felt it would be best to let these changes move with the Comprehensive Plan.

Mr. Kennedy stated that the BCTF was convened with a comprehensive group of citizens that made these recommendations. He stated that Comprehensive Plan participation meetings had a low number of attendance, which was a matter of concern. He stated this has been a public process up to this point.

Mr. Goodson stated that when the BCTF recommended making more uses by-right, the Task Force wished to move toward a more performance-based ordinance rather than listing business uses.

Mr. Porter stated that he understood that some businesses should move forward easily and should be done in advance of determining performance standards which would take a while.

Mr. Goodson stated that this was supposed to be an interim change to the zoning ordinance.

Mr. Goodson stated that with the recommended changes from the BCTF, staff should come forward annually to suggest by-right permitted business types.

Mr. McGlennon stated that some of these uses are not applicable.

Mr. Goodson reiterated that the market should not dictate what is included in the zoning ordinance.

Mr. McGlennon stated that was not available at this time.

Mr. Goodson stated these were uses that could easily be changed.

Mr. Porter stated that the discussion led him to believe this should move forward with the Comprehensive Plan process so performance standards could be put before the community.

Mr Goodson stated these were uses rather than performance standards.

Mr. Porter stated that these amendments were intended to be easily-permitted uses.

Mr. Kennedy asked if the BCTF had a work session with the Planning Commission.

Mr. Goodson stated that they did not.

Mr. Purse stated the EDA members met with the Planning Commission on these items and some members of the BCTF were there.

Mr. Wanner stated that the Policy Committee recommended all the changes prior to the case going to the Planning Commission.

Mr. Purse stated that the first time this was before the Planning Commission in June 2008, some of the Commissioners brought up some issues prior to the July meeting. He stated that was when some members of the BCTF met with the Planning Commission.

Mr. Kennedy stated his support for moving forward on the M-1 and M-2 changes at this time and deferring the other changes.

Mr. Goodson stated that this was good discussion.

Ms. Jones stated that she agreed with Mr. Kennedy and expressed that she felt it was important to keep in mind with LB and B-1 zoning that there are existing oversights if there is a permitted use. She stated that it should be kept in mind how expensive an SUP process can be for startup businesses.

Mr. Kennedy noted that there were a number of permitted uses in a typical neighborhood that had intrusive impacts on the community through home-based businesses.

Mr. Kennedy made a motion to adopt the zoning ordinance amendments related to M-1 and M-2 zoning and the addition of automobile service stations as a specially permitted use on B-1, General Business District property.

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

7. Sewer Easement Dedication – Joshua’s Glen - Lots 1, 2, and 6

Mr. Bob Smith, Assistant General Manager, James City Service Authority (JCSA), stated that a JCSA sewer easement encroached on three County-owned lots in Joshua’s Glen. He stated that the resolution recommended that the County dedicate the three properties on Lots 1, 2, and 6 to the JCSA. Staff recommended approval of the resolution.

Mr. Goodson opened the Public Hearing.

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

Mr. [REDACTED] made a motion to adopt the resolution.

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

**RESOLUTION**

**SEWER EASEMENT DEDICATION - JOSHUA’S GLEN - Lots 1, 2, AND 6**

WHEREAS, during construction a James City Service Authority (JCSA) sewer line was accidentally installed on three parcels in the Joshua’s Glen development owned by James City County and identified as follows:

- Lot 1 Joshua’s Glen - Tax Map (13-3) (2-1)
- Lot 2 Joshua’s Glen - Tax Map (13-3) (2-2)
- Lot 6 Joshua’s Glen - Tax Map (13-2) (2-1)

WHEREAS, the dedication of the easement for the sewer line will not impact the value or development potential of the parcels.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after conducting a public hearing on the easement dedication, authorizes the County Administrator to sign the appropriate documents dedicating the easement on the three parcels to the JCSA.

8. Ordinance to Amend Chapter 3, Animal Laws of the County Code, by amending Section 3-1, Definitions; Section 3-2, Enforcement of animal laws; Section 3-7 Disposal of dead animals; Section 3-45, Impoundment generally; by Adding Article II, Dogs, Division III, Commercial Dog Breeders; to adopt by reference the State Code provisions amended by the 2008 General Assembly

Mr. Adam Kinsman, Deputy County Attorney, introduced Ms. Naohm Stewart, the County Attorney office summer law clerk intern.

Ms. Naohm Stewart, Law Clerk, stated that the ordinance amendment would update the County Code according to actions by the General Assembly. She stated that some portions of the ordinance were optional and were subsequently removed. She stated that the amended ordinance that was recommended to the Board did not have a requirement for animal disposal as this was already performed as-needed by Animal Control. She stated that the portion that related to commercial dog breeders was not brought forward at this time.

Staff recommended approval of the ordinance amendment.

Mr. McGlennon asked if there were State standards for appropriate watering.

Ms. Stewart stated that there were not, and the previous Code prescribed regular intervals. She stated it was changed from every 12 hours to as appropriate according to weather and temperature. She stated this may require the water to be changed more often than every 12 hours, which would be safer for the animals.

Mr. McGlennon asked if this was up to the discretion of the Animal Control Officer.

Ms. Stewart stated that this was just a Code update and ultimately it would likely be up to the determination of the Animal Control Officer.

Mr. McGlennon asked if the County currently offered the service of disposing of dead animals.

Ms. Stewart stated that she discussed this with Ms. Shirley Anderson of Animal Control and reached the conclusion that this was not desirable to be placed into the Code since this was done in extenuating circumstances as needed and since there were minimal resources staff did not want funds to be diverted specifically for this function.

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 amended ordinance.

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

**H. BOARD CONSIDERATIONS**

1. Right-of-Way Agreement – Dominion Virginia Power – Freedom Park (deferred from July 22, 2008)

Mr. Wanner stated that this item was deferred from the July 22, 2008, Board of Supervisors meeting to allow for staff to enter into discussions with Dominion Virginia Power for alternatives to overhead power lines. He stated that staff recommended a deferral until September 9, 2008, to continue meeting with Dominion Virginia Power for these discussions.

This item was deferred until September 9, 2008.

2. Historic Triangle Comprehensive Plan Coordination

Mr. Bill Porter, Assistant County Administrator, stated that the purpose of this resolution was to adopt the regional Historic Triangle Comprehensive Plan timetable, which was being changed from 2010 to 2012. He stated that the other jurisdictions had already adopted a resolution, and noted that this item would accelerate the County's next Comprehensive Plan update cycle two years.

Staff recommended approval of the resolution.

Mr. [REDACTED] made a motion to adopt the resolution.

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

**RESOLUTION**

**HISTORIC TRIANGLE COMPREHENSIVE PLAN COORDINATION**

WHEREAS, the Code of Virginia requires that all jurisdictions prepare and adopt a Comprehensive Plan addressing physical development within its jurisdictional limits for the purpose of guiding and accomplishing coordinated, adjusted, and harmonious development that will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity, and general welfare of their inhabitants; and

WHEREAS, in the interest of promoting closer coordination and communication concerning Comprehensive Plan issues that cross jurisdictional boundaries, the Regional Issues Committee, and the Planning Commissions recommended, and the governing bodies endorsed by resolution in 2006, a process under which James City County, York County and the City of Williamsburg would adjust their five-year review cycles so that each begins its next review and update in 2010 and then every five years thereafter; and

WHEREAS, staffs of the three jurisdictions recommend revising the proposed update schedule to begin the next review and update in 2012, so as to allow incorporation of data from the 2010 U.S. Census and then beginning every five years thereafter.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the following proposed schedule for the coordinated update of the James City County, York County, and the City of Williamsburg Comprehensive Plans be supported, endorsed, and approved as the framework for the update:

- Summer 2010 – staffs of the three jurisdictions identify opportunities for jointly conducted baseline studies and analyses of such things as population, economy, housing and transportation, as well as for a consistent format for the three plans.
- Fall 2010 – staffs of the three jurisdictions identify budget requests for any proposed jointly conducted baseline studies and analyses for consideration in the FY 2012 budget deliberations.
- Fall 2011 – discussion forum with planning commissioners from all three jurisdictions to identify consensus regional issues to be addressed.
- Winter 2012 – two public forums to allow comments on the regional issues previously identified to be held in the Williamsburg/James City County area and in Yorktown.
- Spring 2012 – discussion forum with planning commissioners from all three jurisdictions to review items discussed at the two public forums and to identify areas for coordinated efforts during the update process.

**I. PUBLIC COMMENT - None**

**J. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that when the Board completed its Board Requests and Directives, it should recess for a meeting of the Transportation Improvement District Commission (TIDC) and the JCSEA. He said that the Board should then come back into open session following a break and convene a closed session pursuant to Section 2.2-3711(A)(7) of the Code of Virginia for consultation with legal counsel and staff members pertaining to actual or probable litigation. Mr. Wanner stated that following the closed session the Board should reconvene and then adjourn to 7 p.m. on September 9, 2008.

**K. BOARD REQUESTS AND DIRECTIVES**

Mr. Goodson stated that at a closed session prior to the regular meeting, the following individuals were reappointed to the Historical Commission for three-year terms, set to expire on August 31, 2011: Betty Cutts, Bernice Dorman, Donna Garrett, Edith Harris-Bernard, Lafayette Jones, John Labanish, and Alain Outlaw.

The members of the Board expressed their appreciation for the service of Assistant County Administrator Bill Porter as he was approaching his retirement date on September 1, 2008. The Board wished him well in the future and thanked him for his continuing public service.

Mr. Icenhour expressed the gratitude of the Forest Glen community to the Stormwater Division for its assistance with a drainage issue in the area.

Mr. McGlennon noted the comments of Mr. Swanenberg and stated that the County should set the correct example for development in the County.

Ms. Jones stated that she agreed and stated that pulling together design standards for County facilities was a good initiative.

Mr. Goodson stated that there would be three Community Conversations before the next Board meeting: August 13, 2008, August 19, 2008, and September 8, 2008, at 6:00 p.m.

## **L. CLOSED SESSION**

Mr. [REDACTED] made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(7) of the Code of Virginia for consultation with legal counsel and staff members pertaining to actual or probable litigation.

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

At [REDACTED] Mr. Goodson recessed the Board into Closed Session.

At [REDACTED] Mr. Goodson reconvened the Board into Open Session.

Mr. [REDACTED] made a motion to adopt the Closed Session resolution.

On a roll call vote, the vote was: AYE: Icenhour, McGlennon, Jones, Kennedy, 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 motion, Section 2.2-3711(A)(7), of the Code of Virginia to consult with legal counsel and staff members pertaining to actual or probable litigation.

**M. ADJOURNMENT** to 7 p.m. on September 9, 2008.

Mr. [REDACTED] made a motion to adjourn.

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

At [REDACTED] Mr. Goodson adjourned the Board to September 9, 2008, at 7 p.m.

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Sanford B. Wanner  
Clerk to the Board

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