

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 14TH DAY OF OCTOBER 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** – Prince Williams, a sixth-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATIONS**

1. Resolution of Recognition – James City-Bruton Volunteer Fire Department

Mr. Bruce Goodson and Chief Tal Luton presented a resolution of recognition to Volunteer President Mike Hipple and Chief David Nice of the James City-Bruton Volunteer Fire Department in observation of National Fire Prevention Month in October.

Chief Nice expressed his thanks for the recognition and the support of the County.

2. 2008 VACo Achievement Award – Succession Management

Mr. Gage Hartner, Virginia Association of Counties (VACo) Director of Communications, presented a 2008 VACo Achievement Award to Mr. Goodson on behalf of the County, for the Succession Management program. The award will also be presented at the 2008 VACo Annual Conference.

**E. PUBLIC COMMENT**

1. Mr. Jack Haldeman, on behalf of the James City County Citizens Coalition (J4C), commented on the use of the Eastern State Hospital surplus property. Mr. Haldeman expressed the concerns of the J4C about the potential development of this property.

2. Mr. John Rhein, 3505 Hunter's Ridge, commented on his request for an auditory programming guide on Channel 48. He commented on sign language accessibility for the hearing impaired.

3. Mr. Ed Oyer, 139 Indian Circle, commented on an unkempt property at 101 Indian Circle; York County school space; financial shortfalls; real estate assessments; and housing sale price decreases.

**F. CONSENT CALENDAR**

Mr. Goodson asked to pull Item 6 for separate consideration in order to explain the resolution.

Mr. McGlennon asked to change the second page of the work session minutes to read "[...] without the offset of recycling costs...".

Mr. McGlennon made a motion to adopt the remaining items of the Consent Calendar with the correction to the minutes.

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

1. Minutes –
  - a. September 23, 2008, Work Session
  - b. September 23, 2008, Regular Meeting
2. Resolution of Recognition – James City-Bruton Volunteer Fire Department

**RESOLUTION**

**JAMES CITY-BRUTON VOLUNTEER FIRE DEPARTMENT**

WHEREAS, James City County is committed to an enduring partnership supporting Fire Protection and Prevention among its citizens, James City County Fire Department, and the James City-Bruton Volunteer Fire Department; and

WHEREAS, James City-Bruton Volunteer Fire Department has served the citizens of James City County for 60 years; and

WHEREAS, three-fourths of all firefighters in the United States are volunteers; and

WHEREAS, the month of October is recognized as National Fire Prevention Month; and

WHEREAS, the men and women of the James City-Bruton Volunteer Fire Department have demonstrated their dedication and commitment to the welfare and safety of the citizens of James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby recognize James City-Bruton Volunteer Fire Department as a vital public safety component of the community.

3. Installation of “Watch for Children” Signs – Lake Powell Forest Subdivision

**RESOLUTION**

**INSTALLATION OF “WATCH FOR CHILDREN” SIGNS –**

**LAKE POWELL FOREST 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 from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of the Lake Powell Forest community have requested that “Watch for Children” signs be installed on Hillside Way and Durfey’s Mill Road as illustrated on the attached map titled “Lake Powell Forest 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.

4. Grant Award – Alcoholic Beverage Control (ABC) – \$5,000

**RESOLUTION**

**GRANT AWARD - DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC) -**

**\$5,000**

WHEREAS, as part of its continued efforts towards enforcing underage drinking laws, the Virginia Department Alcoholic Beverage Control (ABC) has awarded the James City County Police Department a grant in the amount of \$5,000; and

WHEREAS, the grant requires no match; and

WHEREAS, the funds will be used to augment the Department’s alcohol education programs.

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 appropriation amendment to the Special Projects/Grants Fund:

Revenue:

ABC Grant – FY 09 \$5,000

Expenditure:

ABC Grant – FY 09 \$5,000

5. Grant Appropriation – Clerk of the Circuit Court – \$283,993

**RESOLUTION**

GRANT APPROPRIATION - CLERK OF THE CIRCUIT COURT - \$283,993

WHEREAS, the State Compensation Board has awarded the Clerk of the Circuit Court a technology grant totaling \$283,993; and

WHEREAS, there is no local match required.

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

Revenue:

State Compensation Board Technology Grant \$283,993

Expenditure:

Circuit Court Clerk Technology Upgrades \$283,993

6. Resolution Approving Issuance of a Revenue Bond for D&D Properties, LLC – \$1.78 million

Mr. Keith Taylor, Economic Development Director, stated that at the September 23, 2008, regular meeting, the Economic Development Authority approved a Resolution of Inducement for the Funding of D & D Properties, LLC for up to \$1.78 million worth of revenue bonds to finance the costs of expanding the existing manufacturing facility of Nicewood Enterprises, Inc. that produces high-end custom case goods and retail display fixtures for prominent national retailers. This expansion will help retain a longstanding County company, bring additional revenue to the County, and will potentially create five new jobs.

Mr. Taylor reminded the Board that neither the faith and credit nor the taxing power of the Commonwealth of Virginia, the County of James City, or the Authority are pledged toward these bonds. Nor are these entities in any way liable for any costs or financial obligations incident thereto.

Mr. Kennedy 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**

**APPROVING ISSUANCE OF A REVENUE BOND FOR D&D PROPERTIES LLC –**

**\$1.78 MILLION**

WHEREAS, there have been described to the Economic Development Authority of James City County, Virginia (the Authority), the plans of D & D Properties, LLC (the Company) to finance through the issuance of a revenue bond in the principal amount not to exceed \$1,780,000 (the Bond) the construction and equipping of manufacturing facilities for custom case goods and retail display fixtures (the Facility) to be located at 9001 Westmont Drive in James City County, Virginia (the County); and

WHEREAS, a public hearing with respect to the Bond as required by Section 15.2-4906 of the Code of Virginia of 1950, as amended (the Virginia Code), and the Internal Revenue Code of 1986, as amended (the Code), was held by the Authority on September 23, 2008; and

WHEREAS, the Code provides that the highest elected governmental officials of the governmental unit having jurisdiction over the issuer of private activity bonds shall approve the issuance of such bonds; and

WHEREAS, the Authority issues its bonds on behalf of the County and the members of the Board of Supervisors of James City County (the Board) constitute the highest elected governmental officials of the County; and

WHEREAS, Section 15.2-4906 of the Virginia Code provides that the Board shall, within 60 calendar days from the public hearing with respect to industrial development revenue bonds, either approve or disapprove the issuance of such bonds; and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bond, a reasonably detailed summary of the comments expressed at the public hearing with respect to the Bond and the Facility and a statement in the form prescribed by Section 15.2-4907 of the Virginia Code have been filed with the Board, together with the Authority's recommendation that the Board approve the issuance of the Bond.

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

1. The recitals made in the first preamble to this Resolution are hereby adopted as a part of this Resolution.
2. The Board approves the issuance of the Bond by the Authority to assist in the plan of finance described herein for the benefit of the Company to the extent required by the Code and Section 15.2-4906 of the Virginia Code.
3. The approval of the issuance of the Bond, as required by the Code and Section 15 2-4906 of the Virginia Code, does not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Company, and, as required by Section 15.2-4909 of the Virginia Code, the Bond shall provide that neither the County nor the Authority shall be obligated to pay the Bond or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefore and neither the faith or credit nor the taxing power of the Commonwealth of Virginia, the County nor the Authority shall be pledged thereto.

4. The County, including its elected representatives, officers, employees and agents, shall not be liable and hereby disclaim all liability for any damage to the Company or the Facility, direct or consequential, resulting from the Authority's failure to issue the Bond for any reason.
5. This resolution shall take effect immediately upon its adoption.

## **G. PUBLIC HEARINGS**

Mr. Goodson stated that Mr. Rich Krapf from the Planning Commission was in attendance.

### **1. Case No. SUP-0009-2008. Greenwood Christian Academy Expansion at King's Way Church**

Mr. Jason Purse, Planner, stated that Mr. Chris Basic, of AES Consulting Engineers, has amended the original Greenwood Christian Academy expansion request and is asking for a Special Use Permit (SUP) to allow for the operation of an elementary school on-site, including grades pre-K through 5. The existing SUP allows 200 children to be enrolled for preschool. The application will not increase the number of students over 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.

Staff found that this proposal is consistent with the Comprehensive Plan Land Use Map designation and Comprehensive Plan. Since no additional infrastructure is being proposed as a part of this application and since no additional students are going to be allowed, staff does not believe this application will have any negative impacts on the surrounding property by allowing the elementary school operation on-site.

Staff made two changes to the conditions based on the Planning Commission comments. Staff added language confining the operation of the school to the existing footprint of the church and made the change to the grade range of the condition as well. Since the Board of Supervisors requested the one-year sunset provision at its August 12, 2008, meeting, staff has left the condition with an expiration date of June 30, 2009. Should the Board concur with the Planning Commission recommendation, an alternate resolution has been provided for consideration that includes a 36-month sunset provision.

At its meeting on September 10, 2008, the James City County Planning Commission recommended approval of the case by a vote of 5-2 with the following recommended amendments to the staff report: added language to Condition No. 1 to confine the operation of the school to the existing footprint of the church, amending the grade range from grades 1 through 5, as was stated in the staff report, to grades K through 5, and amending the sunset condition to a 36-month period.

Staff recommended approval of the resolution.

Mr. McGlennon asked if there have been discussions about the extended sunset provision in relation to the neighboring citizens who objected to the original proposal.

Mr. Purse stated that there were no land use issues that would preclude an extended sunset provision.

Mr. McGlennon stated that he asked about discussion with the neighbors regarding the new plan.

Mr. Purse stated that there were no major issues that staff felt would be impacted with the current application.

Mr. McGlennon stated that he was interested in discussion at the Planning Commission meeting rather than staff's assessment of the project.

Mr. Purse stated that there was some discussion at the meeting regarding the sunset provision related to the length of time it would take to find another site for the school.

Mr. Krapf explained concern in the community and the reasoning behind the Planning Commission's recommendation to extend the sunset clause.

Mr. McGlennon asked if there was any concern about noise issues or other community nuisances.

Mr. Krapf stated that there was not.

Mr. Kennedy asked staff how the enrollment would be monitored.

Mr. Purse stated that has not been done in the past.

Mr. Kennedy asked why staff was going to monitor compliance with the SUP.

Mr. Purse stated that this condition was added due to this case.

Mr. Kennedy asked how many staff hours would be devoted to this.

Mr. Purse stated that the enrollment figures would be maintained by the school and submitted to staff.

Mr. Goodson opened the Public Hearing.

Mr. Chris Johnson, on behalf of the applicant, gave an overview and history of the operation of the school. He explained that the condition for additional oversight gave adequate monitoring capability of the school and stated that it was questionable on whether the sunset provision was necessary. He stated that enrollment began for the school in the winter prior to the school year of entry into the school. He noted that a sunset provision created problems with enrollment for current and future students. He requested the approval of the resolution with a three-year sunset provision at minimum.

Mr. McGlennon stated that the applicant suggested that the school would prefer to have no sunset provision and allow the elementary school to function in perpetuity.

Mr. Johnson stated that was correct under this SUP.

Ms. Jones asked how long the enrollment has been at 200 students.

Mr. Johnson stated that during the past academic school year there were 182 students and this school year there were 168.

Ms. Jones asked if he was approached by neighbors regarding the school.

Mr. Johnson stated that neither the church nor the school had received comment previously.

Mr. Icenhour noted the decreased enrollment this school year and expressed his concern about the impacts of an elementary school. He asked what would be the maximum ratio of preschool enrollment versus elementary school.

Mr. Johnson stated that ratio could be considered, but it would need to be considered by the administration of the church. He stated that the size limitations of the existing building would not allow for the 200 student capacity, and that it was not practically the case.

Mr. Kennedy stated that the previous case in 2002 was very specific to preschool. He asked how the implementation of the elementary school came about which violated the previous SUP. He stated that citizens have denied due process with this application as it was completely different from the previous item. He stated his concern for condoning these actions and that there were concerns with some of the individuals in the neighborhood. He asked about the decision to implement the elementary school without coming before the Board.

Mr. Johnson stated that there was a mistake and the school should have contacted staff to clarify the conditions of the permit. He stated in four years there was no question of a violation. He stated that the elementary school was likely implemented when the preschool moved to its new site and that the land use impacts are not affected based on the school grades. He further stated that neither the school nor the church was knowingly in violation of the existing permit.

Mr. Kennedy stated that the parameters and the hours of operation were not changing, but it is the applicant's responsibility to follow the SUP. He stated his concern that the operations staff members were unaware of the conditions of the SUP.

1. Ms. Kitty Beatty, 124 Kingspoint Drive, stated that she was the former owner of Greenwood preschool. She stated that she did not intentionally violate the SUP and that her staff understood from staff that the enrollment level was primary. She stated the economy was to blame for the low enrollment and that the organization will likely continue to be primarily preschool-oriented.

2. Mr. Tim Cleary, 102 Lands End Drive, requested approval of the resolution based on compliance with the Comprehensive Plan and due to the lack of additional impacts beyond the current use. He noted the private funding of the education, decreasing taxpayer responsibility for these students, and school expansion. He asked to remove the sunset provision and the administrative responsibility of reviewing enrollment figures.

3. Ms. Joann Spangler, 2329 Matthews Circle, principal of Greenwood Christian Academy, stated that after kindergarten there is natural attrition in enrollment. She stated that there are also transient, military families that may have relocated and moved students away from the area. She stated that she appreciated concerns of the neighbors, but she felt that the positive circumstances outweighed the negative impacts.

4. Mr. Ed Oyer, 139 Indian Circle, commented that he had examined enrollment of private schools and that most schools had waiting lists. He spoke regarding the high standards of the program.

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

Mr. McGlennon made a motion to adopt the resolution with the sunset provision set to expire on June 30, 2009.

Mr. McGlennon stated that having choices in education was a right of the public and that when this item came forward previously, the Board and staff discovered that there was a violation of an SUP. He stated that in order to avoid disruption of those enrolled in the preschool for the 2008-2009 school year. He stated that the Board explained that it would be glad to entertain a subsequent proposal after the school looked at its plans and took into account the intensive use of the additional facility on the property. He stated that changing this application through a new process allowed input and evaluation from adjacent property owners and others interested in the application. He noted that this would not be allowed if a sunset provision was not included. He stated that this process allowed an opportunity for those who were never afforded one to

provide input on the current operation of the elementary school. He stated that he would like to provide operation for the current year to allow more time to assess the future plans of the school.

Ms. Jones stated that she had notified staff on behalf of a citizen of the non-compliance of the applicant to the SUP. She stated that improvements have been made to provide for checks and balances on this matter in the future. She noted that there had not been issues from the neighbors until the expansion came forward. She stated this was a good opportunity for citizens to provide input and that she did not believe the violation was intentional. She stated this school was a benefit to the community and that she was hesitant to have a sunset provision on this case. She asked that the Board consider the three-year sunset provision. She stated she could not support the staff's recommended resolution.

Mr. Goodson stated that he appreciated the concerns that the applicant should have come forward with a long-term plan. He stated that he was also concerned that the applicants would need to make provisions for the next year. He stated that he would be willing to make an amendment to the resolution to provide a sunset date of June 30, 2010.

Mr. McGlennon stated that citizens should always be vigilant, but that residents should not assume anything more than what it was said to be other than a one-year extension. He stated the provisions discussed in the Planning Commission meeting were not discussed.

Ms. Jones stated that there was due notification.

Mr. Goodson stated a deferral may be necessary.

Mr. Kennedy stated that this issue was not about the school or the alleviation of the burden on the public school system. He stated his concern was that if the Board made an action that extended beyond the proposed one-year, it would disregard the previous SUP from 2002. He stated it was outside the parameters of the original application.

Mr. Goodson stated that what he understood as the major discussion was the issue of traffic.

Mr. Kennedy stated that there was also concern about preschool hours.

Mr. McGlennon stated that it does not impact the traffic issue because elementary school operates all day long rather than the two-shift preschool. He stated that those are the issues that would be permitted as a long-term or permanent operation, but required further discussion.

Mr. Icenhour stated that both resolutions mentioned elementary school grades K through 5, but not preschool.

Mr. Purse noted references to the preschool and stated that the sunset provision would apply only to the elementary school.

Mr. Icenhour stated that there was appreciation for the school and the assets of the use. He stated that the concern was the land use issue. He stated the Board discussed what was appropriate and that was disregarded. He stated that a sunset provision is needed or else the use will run in perpetuity. He noted that the concerns he has heard were not about the preschool, but rather the potential impact of the elementary school use. He stated that he was willing to allow them to continue with the preschool and that the proposed expansion was too intensive for the property. He said that the current location may not be appropriate

for the elementary school. He noted that he did not want to create a problem for those already enrolled and stated that he was comfortable with the one-year sunset provision. He said that a longer sunset date would warrant tighter SUP conditions. He stated that he would like the school to provide a long-term plan when the SUP expired.

Ms. Jones asked if all the students go to recess at the same time.

Mr. Purse stated that the students go to recess in shifts.

Ms. Jones asked if the zoning designation was low-density residential like other schools.

Mr. Purse stated that was correct.

Ms. Jones stated that she supported the greatest extent of the sunset provision.

Mr. Goodson stated that he would like to continue his amendment if the elementary school provision was limited to 60 students.

Mr. McGlennon stated that he was not comfortable with that and that it would be an issue every year until it was resolved. He asked to have a one-year extension and move forward from there.

Ms. Jones stated that she was uncomfortable to push the applicant in light of the current economy.

Mr. McGlennon stated that he did not assume they would relocate. He stated that he was willing to consider a limited enrollment at the current facility. He noted that he would like to see a clean case with a long-term solution.

Mr. Kennedy stated that he was in support of that and that this case requires its own hearing as it is a completely different proposal. He stated that a year was discussed as a limit at the last meeting where this case was discussed. He said that he did not want to piecemeal the application.

Mr. Goodson stated that he would withdraw the motion and then asked for a deferral until October 28, 2008.

Mr. McGlennon stated that the problem with that was that the school was currently operating without an SUP. He stated that the parents were told they would get assurance that this school year was not a problem.

Mr. Goodson stated that he was uncomfortable with giving the applicant such a short timetable for a long-term plan.

Mr. McGlennon stated that this would allow the Board to see if this was a transitional use, a permanent use, or no use for the future.

Mr. Icenhour stated that the applicant should be given an SUP to operate for this year. He stated that in a few months the applicant would have time to determine what the long-term plan should be and a full public hearing could be held.

Ms. Jones stated that the enrollment would be limited to 200 students, but with a different composition. She stated that it was a disservice to extend the process for this applicant.

Mr. McGlennon stated that when the Board acts, the applicant would have a legal SUP for the preschool.

Mr. Goodson stated that he believed it was in place.

Mr. Rogers stated that there was currently an SUP that was in violation, but it was not currently being enforced. He explained that if the SUP was not amended, the current operation of the elementary school on the site would be a violation.

Mr. Goodson asked if the SUP could be revoked if the applicant was in violation.

Mr. Rogers stated that if the matter went to court, one action that could be taken would be to revoke the SUP.

Mr. Goodson stated that he did not believe there was Board support to pursue the case. He stated that he could not support the resolution which gave a one-year sunset provision and that he would vote against the resolution.

Mr. Kennedy asked to what extent the deferral should be made.

Mr. Goodson stated that he hoped to create a resolution that could be supported.

Mr. McGlennon stated that the purpose of the deferral was to allow the applicant to come back with the changes they would like implemented. He stated that it was a disservice for the Board to write the SUP for the applicant.

Ms. Jones stated that was done.

Mr. McGlennon stated that was presented to the Planning Commission at the meeting, but it was advertised as a one-year extension.

Mr. Purse stated that the advertisement did not reference a sunset provision.

Ms. Jones stated that it was a general request.

Mr. Purse stated that was correct.

Mr. Kennedy stated that he could support a deferral.

Mr. Goodson stated that he could support a two- or three-year sunset provision, but he could not support a one-year provision.

Ms. Jones asked about the purpose of the deferral.

Mr. Goodson stated that the deferral would allow for a more suitable resolution to be drafted and approved.

Mr. Icenhour stated that the deferral would delay the decision of the Board.

Ms. Jones stated that she believed they had the long-term plans.

Mr. McGlennon stated that was not the case. He said there was a possibility of creating an elementary school elsewhere.

Ms. Jones stated that with a three-year sunset, that could be a possibility.

Mr. Wanner asked if a vote should be taken on the deferral.

Mr. Goodson indicated that he would like a roll call vote to be taken on the deferral motion.

Mr. Goodson asked the applicant if he would like the deferral request withdrawn.

Mr. Johnson stated that he was unsure of the purpose of the deferral. He stated that a new application would need to come forward in the next week to meet the provisions of the June 2009 sunset deadline. He requested that the provision allow for the three-year period to prepare for a long-term application. He requested the three-year period to find an alternative site and come into operation before the three-year deadline.

Mr. Goodson stated that if the Board does not defer it, the case would cost the applicant more money in fees for the application process.

Mr. Johnson stated that the next application would be similar to the one presently before the Board to allow time for a long-term solution.

Mr. Goodson stated that was why he requested a deferral.

Mr. McGlennon stated that what was not in this application was that the church was planning to seek another site. He asked for language that suggested what the SUP would entail after the sunset date. He asked that the Board be allowed to see what the plans would be.

Mr. Goodson stated that the discussion was helpful and the resolution could be amended into language that the entire Board would support.

Mr. Johnson stated that the current application would not change in the next week before the submittal deadline.

Mr. McGlennon stated that the applicant requested no sunset provision on the SUP.

Mr. Johnson stated that the application was for a preschool through 5th grade school, which has not changed.

Mr. McGlennon asked why that was the case. He stated that it would be considered differently if the future of the case was explained more clearly.

Mr. Johnson stated that within three years a new application would need to move forward whether there was an extension of the SUP or a move to the new location.

Mr. McGlennon stated that the citizens have not had the opportunity to give input on the elementary school operation on the site.

Mr. Johnson stated that this was done at the Planning Commission meeting in August 2008. He stated that the current operations are temporary for one, two, or three years.

Mr. Goodson stated that he still felt this should be deferred.

Mr. Kennedy stated that he could support the deferral. He stated that the school continues to grow and in three years, the situation will be the same. He stated that he would like the applicant to bring forward a full case that goes through the entire legislative process. He asked if the matter of the SUP violation would be addressed.

Mr. Goodson stated that he would like to have a vote on a deferral.

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

The case was deferred to October 28, 2008.

2. Case No. SUP-0017-2008. Burlington Woods Subdivision SUP Renewal

Mr. David German, Planner, stated that Mr. Vernon Geddy, III, has applied on behalf of Burlington Woods, L.L.C. for an SUP to support and allow for the continued development and construction of the Burlington Woods subdivision. This subdivision features 26 single-family detached home lots on 17.22 acres and would be located at 3931 Longhill Road in the Powhatan District. The subject property is zoned R-2, General Residential, with proffers, and is designated "Low Density Residential" in the 2003 James City County Comprehensive Plan.

Mr. German stated that the project originally approved a recommendation of approval from the Planning Commission on April 4, 2005, and was approved by the Board on May 24, 2005, under SUP-0035-2004, Rezoning Z-0016-2004, and Master Plan MP-0012-2004. (A copy of the staff report which was presented to the Board in May 2005 is included as an attachment to this staff report for reference.) SUP-0035-2004 was needed to allow the density of the development to increase from the 1.0 dwelling units per acre (normally allowed in the R-2 Zoning District) to 1.5 dwelling units per acre as provided for in Section 24-254(C) of the Zoning Ordinance. This section specifies that the density of a development may be increased from 1.0 dwelling units per acre to a maximum of 2.0 dwelling units per acre if the Board can find that 1) the application implements Streetscape Guidelines, as outlined in the Streetscape Guidelines Policy; 2) the application implements the County's Archaeological Policy; 3) sidewalks are provided along at least one side of all internal streets in the development, including the entrance road; 4) recreational amenities are provided for the development in accordance with the County's Comprehensive Parks and Recreation Master Recreation Plan; and 5) the application implements the County's Natural Resources Policy. The SUP included a condition of approval which stated that the SUP would expire three years from the date of approval if a Land Disturbing Permit had not been secured, and land disturbing activities started on the site by the expiration date. In accordance with this condition, SUP-0035-2004 expired on May 24, 2008. The applicant is now seeking an SUP to replace SUP-0035-2004, which will allow development of the project to continue. The applicant is not seeking to alter the terms or content of Z-0016-2004 or MP-0012-2004 previously approved for the development.

Mr. German said that since the point when the Board approved the rezoning, SUP, and Master Plan, the developer has been actively involved with engineering the subject property, designing appropriate subdivision construction plans for the project, and addressing the various requirements required by both the conditions attached to the SUP and the proffers associated with the rezoning. One of the proffers for the project required that plans for recreation amenities be developed for the site and approved by the Development

Review Committee of the Planning Commission (DRC). The recreation amenities plan was presented to the DRC on January 4, 2008, at which time the DRC deferred the case and requested that further work be done on the amenities plan. A revised amenities plan was presented to the DRC on March 26, 2008. The DRC recommended approval of the new plan, and the full Planning Commission confirmed this recommendation on April 2, 2008, which granted Preliminary Approval to the subdivision construction plans for the project. Since that time, the developer has been working with his engineer (Bury + Partners) and the County to finalize and gain approval of the subdivision construction plans. Substantial delays with this effort were encountered when the developer and engineer entered into negotiations with a neighboring property owner to secure an off-site James City Service Authority (JCSA) utility easement, which is required for the case. These delays were compounded when the easement had to be repositioned so that the project would meet Zoning Ordinance requirements. The subdivision construction plans are now ready for final approval, pending the approval of a new SUP by the Board. The project has received a Land Disturbing Permit, and clearing and grading work is underway on the site. The developer has also turned in the Preliminary Plats for the project; review of these plats is ongoing.

Staff found that unexpected delays that occurred on this project led to the previously granted SUP that expired prior to the issuance of a Land Disturbing Permit. Staff further notes that the developer has been very responsive and cooperative during the development process, which has led to a project improved over what was originally envisioned.

Staff recommended approval of the application.

Mr. Goodson asked about expiration dates on SUPs and the origin of these dates.

Mr. Allen Murphy, Development Manager, stated that for a number of years staff has supported an expiration date on SUP permits and previous Boards have supported the expiration dates. He stated that he cannot recall a specific directive.

Mr. Goodson stated that there was no standard date.

Mr. Murphy stated that the standard is 36 months.

Mr. Goodson asked how often these things have been extended due to undue circumstances.

Mr. Murphy stated that it was not very often.

Mr. Icenhour stated that there was one for the timeshares on Olde Towne Road.

Mr. Murphy stated that there was no progress on that case.

Mr. McGlennon stated that progress was made and asked if there were particularly unusual circumstances in this case.

Mr. German stated that the adjacent property was anticipated for utility improvements, but this did not come into fruition. He stated that the delay of these negotiations caused the applicant to seek a sewer easement on another property, which needed to be renegotiated.

Mr. McGlennon asked if these negotiations were atypical.

Mr. German stated that he believed this was a substantially longer negotiation process than anticipated.

Mr. Kennedy asked if the easements were the responsibility of the JCSA or the applicant.

Mr. German stated it was the responsibility of the applicant.

Mr. Kennedy asked at what point the applicant should recognize that there would need to be an extension of an SUP.

Mr. German stated that this may be difficult to determine as there may or may not be areas where time could be made up.

Mr. Kennedy asked if work had started and continued.

Mr. German stated that was correct, and the land disturbing permit was issued and a crew was working on the site.

Ms. Jones stated that this case was a rezoning from R8 to R2. She asked if it was unique to R2 that requires an SUP above the rezoning provisions.

Mr. German stated as part of the original rezoning, the SUP was developed with restrictions.

Ms. Jones asked for confirmation that the other zoning designations did not require this unless an SUP is requested.

Mr. Murphy stated that this applied to R1.

Ms. Jones asked why this was the case.

Mr. Murphy stated that this allowed the Board and Planning Commission more discretion to determine if the benefits warranted the additional density.

Mr. Goodson asked if the zoning designation was the same.

Mr. German stated that was correct.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, on behalf of the applicant, gave an overview and history of the application. He detailed the delays the applicant faced and explained the expiration of the SUP. He stated that there was no violation of the SUP conditions, but the expiration was overlooked. He stated there were no changes in the plans for the property. He said that the conditions for granting the SUP in this zoning district were spelled out and the applicant met all the criteria.

Mr. McGlennon stated that he did not understand what the improvements were in this case. He stated that he previously voted against this case due to a lack of significant community benefits. He stated that he would need to see significant community benefits before he could support this case as he could not previously support it.

Mr. Geddy stated that the rezoning continues to be in effect. He said the matter at hand was only the SUP that set forth very specific criteria.

Mr. German stated that there were additional environmental improvements and protections.

Mr. Mike Woolson, Environmental Division, stated that the original rezoning had Low Impact Development (LID) features within the Virginia Department of Transportation (VDOT) right-of-way internal to the subdivision. VDOT spoke against the features in its right-of-way, which forced the LID to the outer area of the site. He stated that additional LIDs were implemented as a result and that through redesign the applicant has saved forested conditions on the property.

Mr. Goodson stated that he had heard that issues with the sewer easement and environmental issues broke down the original arrangement.

Mr. Geddy stated that these were both issues.

Mr. Goodson asked if there was an arrangement that was not upheld because of environmental issues.

Mr. Geddy stated that was correct.

Mr. Icenhour asked for confirmation that when the original rezoning was done, there was an agreement in principle that the adjacent Taylor property could be used for sewer easement.

Mr. Geddy stated that he did not want to imply that there was any agreement to that effect, but that was assumed to be acceptable.

Mr. Icenhour asked if the negotiations broke down because of environmental issues.

Mr. Aaron Brooks, applicant, stated that there was not an official agreement for the sewer easement, but that at the time it was set to upgrade the pump station. He stated that the engineer at the time was told the applicant could get a sewer bridge, but that was not fiscally possible. He stated that he later approached another adjacent property owner for negotiations. He stated that turnover caused the applicant to deal with four different project managers, and the case was resubmitted six times. He stated that the SUP expiration was an oversight.

Mr. Geddy stated that the sewer issues were also a problem with the JCSA.

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

Mr. McGlennon stated that he opposed the original rezoning because he did not feel it provided particular community benefits, and he asked to allow a denser project. He stated that though he opposed it, the rezoning was in effect. He stated that he was unable to support the extension at this time, but that he would be interested in understanding the benefits more fully to make the decision of whether the community benefit is significantly more beneficial with the higher density.

Mr. Goodson stated that he felt comfortable supporting this as infill development. He stated it could be deferred if that was the feeling of the Board.

Ms. Jones stated that it was the responsibility of the applicant to ensure the SUP was maintained. She stated that as a Planning Commissioner she supported this project for its density within the Primary Service Area (PSA) and with the environmental benefits. She stated her concern and desire to reopen the rezoning process.

Mr. McGlennon stated that he did not want to reopen the process and that he would like to see the improvements.

Ms. Jones stated that she understood he wanted to reduce the density.

Mr. McGlennon stated that one acre per unit was already approved. He stated that he would like to see the environmental benefits so that he could be more comfortable with the SUP.

Ms. Jones stated her concern for the fiscal needs of the applicant and extending the time requirements.

Mr. McGlennon stated that if there was majority support, he could not object to moving forward, but he did not feel prepared to support it at this time.

Mr. Kennedy stated that when he was on the Planning Commission, he was opposed to this application. He stressed the need to maintain the process and SUP administration. He stated that the work has begun on the site and there were significant investments and he appreciated that fact.

Mr. Icenhour stated that he would not have voted for the original application. He stated that the rezoning stands with 17 units by-right. He stated that the additional nine units are in jeopardy due to delays for the applicant. He asked how to justify the remaining nine units without significant improvements. He stated that it does not benefit the public in either situation if there were no vast improvements, or if the applicant is subject to significant financial pressure.

Mr. Kennedy asked if there was liability on the County with this application.

Mr. Rogers stated that there was an agreement with the applicant to move forward with the land clearing simultaneously with the SUP renewal. He said it was understood by the applicant that this SUP would be needed.

Mr. Goodson stated that there was a request for a deferral.

Mr. McGlennon stated that the request for a deferral was with the understanding that staff and the applicant could display the environmental measures.

Mr. Murphy stated that he did not feel there was enough information from the rezoning case about the environmental concerns. He stated that was part of the subdivision review process that instituted additional environmental features that had not yet evolved at the time of the original proposal.

Mr. McGlennon stated that was not his understanding from the staff report, but that he would like to see the information.

Mr. Murphy stated that it was not specifically tied to the rezoning considered in 2005.

Mr. McGlennon stated that he did not want to ask for a deferral if these benefits could not be demonstrated by the applicant and staff.

Mr. Goodson stated that if the SUP failed, it could not be considered again for a year.

Mr. Rogers stated that if the SUP failed, the same SUP could not come forward within a year.

Mr. Kennedy asked if the same environmental changes would go away if the SUP failed.

Mr. Murphy stated that there was an approved engineering plan. He stated that what was at risk was the development.

Ms. Jones asked if this would go through the DRC.

Mr. Murphy stated that it did.

Ms. Jones asked if it was approved unanimously.

Mr. Murphy stated that it was.

Mr. McGlennon stated that he did not wish to hear the entire case. He stated that he wanted to have a better understanding of what environmental features were proposed and how the plan was different from the original submission.

Mr. Wanner asked to move forward on the agenda while staff could get plans for the Board to see.

Mr. Goodson stated that there was no motion at this time.

Mr. Kennedy stated that it has been approved and that he understood the financial and environmental aspects. He asked if the deferral would take a month.

Mr. McGlennon stated that he felt it could go forward on October 28, 2008.

Ms. Jones asked if Mr. McGlennon would support the increased density based on the environmental features included in the revised site plan.

Mr. McGlennon stated that he would like to decide whether or not to approve the SUP for the increased density based on the additional environmental improvements since the approval of the rezoning.

Mr. Kennedy stated that a decision had been made by a prior Board. He stated that the public is not served either way. He stated that he could support the SUP renewal and made a motion to adopt the resolution.

Mr. McGlennon stated that he did not object to that, but that he needed to see the improvements.

Mr. Wanner stated that a before- and after-summary could be provided.

Mr. Kennedy stated that he was looking at this case with compassion for the business owner.

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

## **RESOLUTION**

### **CASE NO. SUP-0017-2008. BURLINGTON WOODS SUBDIVISION – SUP RENEWAL**

WHEREAS, Mr. Vernon Geddy, III, on behalf of Burlington Woods, L.L.C., has applied for a Special Use Permit (SUP) to replace expired SUP-0035-2004 to allow for the continued development and construction of the Burlington Woods subdivision on a 17.22-acre parcel zoned R-2, General Residential, with proffers; and

WHEREAS, the proposed development is shown on a binding Master Plan, entitled “Burlington Woods Master Plan,” prepared by Rickmond + Bury Engineering Solutions, identified by James City County as MP-0012-2004, and dated December 23, 2004; and

WHEREAS, the proposed development was initially approved by the Board of Supervisors on May 24, 2005, with Rezoning Z-0016-2004 and Special Use Permit SUP-0035-2004 as a 26-lot, single-family detached home subdivision; and

WHEREAS, the subject parcel may be identified as James City County Real Estate Tax Map Parcel No. 3130100020 located at 3931 Longhill Road; and

WHEREAS, the Planning Commission of James City County, following its public hearing on October 1, 2008, recommended approval of this application by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0017-2008 with the following conditions:

- 1. Terms and Validity of Special Use Permit:** This SUP allows for the creation of a 26-lot, single-family detached home subdivision (“the Project”) as originally laid out in Z-0016-2004 and SUP-0035-2004. This SUP allows for the density of the project to be increased from 1.0 dwelling units per acre to a maximum density of 1.5 dwelling units per acre in accordance with the provisions of Section 24-254(c) of the Zoning Ordinance. A final plat must be recorded for the project within 24 months of the approval of this SUP, or the SUP shall become void. If a final plat is properly approved and recorded within the time allowed, the SUP shall run in perpetuity with the land.
- 2. Development of the Subdivision:** The Project, to be located at 3931 Longhill Road and further identified as James City County Real Estate Tax Map No. 3130100020 (the “Property”), shall be generally developed in accordance with and as depicted on the Master Plan drawing entitled “Burlington Woods Master Plan,” prepared by Rickmond + Bury Engineering Solutions, and dated December 23, 2004, (further identified by the County as MP-0012-2004 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.
- 3. Landscape Plan:** A landscaping plan shall be approved by the Planning Director or his designee prior to final approval of any subdivision plat for the development. The owner shall provide enhanced landscaping for the area along the property frontage on Longhill Road and adjacent to any existing residential dwellings on neighboring properties. Enhanced landscaping shall be defined as 133 percent of Zoning Ordinance landscape requirements.
- 4. Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

At 9:29 p.m. the Board took a break.

At 9:38 p.m. the Board reconvened.

3. Case No. SUP-0013-2008. Lafayette High School Wireless Tower

Ms. Kate Sipes, Senior Planner, stated that Ms. Febronia Christ has applied on behalf of Verizon Wireless for an SUP for a proposed 145-foot, non-camouflaged monopole wireless communications tower on the site of

Lafayette High School. A ten-foot lightning rod would make the total height of the tower 155 feet. The 12-panel full antenna array would be located at a centerline of 141 feet above ground level. Based on propagation maps included with the application, the objective of the applicant is to infill coverage approximately between Centerville Road and Richmond Road, including the northern half of the Ford's Colony subdivision (please see Tabs 7B and 7C in the attached binder).

Ms. Sipes explained that existing on the site is an abandoned 145-foot tower with four guy-wires, each surrounded by chain link fence. This tower is proposed to be removed. Williamsburg-James City County (WJCC) School Board records regarding the tower are not detailed; Mr. Alan Robertson with WJCC Community Schools has indicated this tower seems to have been on-site since at least the early 1970s and has not been in service for at least 20 years. The original purpose is not known, but suspected to be related to a previous long-distance learning project that is no longer active.

Staff found the application to be consistent with the Comprehensive Plan and the replacement of the existing abandoned guy-wired tower is generally compatible with the 2003 Comprehensive Plan and the Performance Standards for Wireless Communication Facilities.

At its meeting on September 10, 2008, the Planning Commission recommended approval by a vote of 7-0.

Staff recommended approval of the application.

Mr. Icenhour asked if the existing tower has been out of service for 20 years.

Ms. Sipes stated that is correct.

Mr. Icenhour stated that there was a policy to take down towers that were not in service for some time and asked when the policy went into effect.

Ms. Sipes stated that she was not sure when that policy went into effect, but this tower predated that policy.

Mr. Icenhour asked how many more towers were in the County that were not in service.

Ms. Sipes stated that the tower was erected for a specific purpose through a grant by the schools, but she was unaware how many similar opportunities exist in the County at this time.

Mr. Icenhour stated that the new tower would fall under the new policy.

Ms. Sipes stated that was correct.

Mr. Icenhour stated that he would like to see if there were more towers that were out of use.

Mr. Wanner noted that the policy began ten years ago.

Mr. Goodson stated that a lease payment would be made. He asked if this would be paid to the schools.

The applicant responded that was correct.

Mr. Goodson opened the Public Hearing.

1. Mr. Steven Romine, on behalf of the applicant, gave an overview of the application, site layout, and proposed tower.

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

Mr. McGlennon made a motion to adopt the resolution.

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

### **RESOLUTION**

#### **CASE NO. SUP-0013-2008. LAFAYETTE HIGH SCHOOL WIRELESS TOWER**

WHEREAS, the Board of Supervisors of James City County has adopted by ordinances 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 a 155-foot-tall non-camouflaged monopole wireless communications tower in the PL, Public Lands, zoning district, located at 4460 Longhill Road, further identified as Parcel No. (1-1) on James City County Real Estate Tax Map No. (32-3), and also known as Lafayette High School; and

WHEREAS, a public hearing was advertised, adjoining property owners were notified, and a hearing was held on Case No. SUP-0013-2008; and

WHEREAS, on September 10, 2008, the Planning Commission recommended approval of the 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 SUP-0013-2008 as described herein with the following conditions:

1. This SUP shall be valid for a total of one wireless communications facility at a total height of 155 feet including all appurtenances on the property as depicted on Sheet C-1 of the *Survey and Site Plan* prepared by Clark Nexsen and stamped June 10, 2008, by Stuart Patterson, Professional Engineer (Tab 5 in the applicant binder).
2. All colors used shall be approved by the Planning Director, or his designee, prior to final site plan approval.
3. Within 30 days of the issuance of a final Certificate of Occupancy by the County Codes Compliance Division, certification by the manufacturer, or an engineering report by a structural engineer licensed to practice in the Commonwealth of Virginia, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the tower, including the total number and type of antennas which may be accommodated on the tower, demonstrating to the satisfaction of the County Building Official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.

4. No advertising material or signs shall be placed on the tower.
5. At a distance of 25 feet the enclosed generator associated with this structure shall produce sound no greater than 70 decibels.
6. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Conveyance of Drainage Easement – Ironbound Square

Mr. Rick Hanson, Housing and Community Development Director, stated that staff is requesting approval of conveyance of a 20-foot-wide conservation easement to convey to the Williamsburg Redevelopment and Housing Board. He stated that it was east of Ironbound Road and south of Carriage Road. He stated that it was no longer needed to serve the area. He stated that the easement needed to be abandoned for compliance with the Ironbound Square master plan. He requested approval.

Mr. Goodson opened the Public Hearing.

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

Mr. McGlennon made a motion to adopt the resolution.

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

**RESOLUTION**

**CONVEYANCE OF DRAINAGE EASEMENT – IRONBOUND SQUARE**

WHEREAS, the County of James City owns a 20-foot drainage easement shown and described as, “20’ EXISTING DRAINAGE EASEMENT TO JAMES CITY CO., D.B. 205, PG. 520-522, (TO BE ABANDONED)” on that certain plat entitled, “PLAT SHOWING PROPERTY LINE EXTINGUISHMENT NORTH AND SOUTH OF WATFORD LANE OWNED BY WILLIAMSBURG REDEVELOPMENT AND HOUSING AUTHORITY, PREPARED FOR JAMES CITY COUNTY HOUSING AND COMMUNITY DEVELOPMENT, BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA” made by AES Consulting Engineers, dated October 8, 2007, and recorded in the Circuit Court Clerk’s Office for the City of Williamsburg and County of James City on April 25, 2008, as Instrument No. 080011210. Said easement is over and across the properties more commonly known as 4380 Ironbound Road, designated as Parcel No. (1-160) on James City County Real Estate Tax Map No. (39-1) and 107 Carriage Road, designated as Parcel No. (19-48) on James City County Real Estate Tax Map No. (39-1) in the Berkeley District of James City County, Virginia; and

WHEREAS, the James City County Board of Supervisors finds that the above-described 20-foot drainage easement is no longer in use and is made obsolete by the storm sewer system constructed by James City County within the rights-of-way on Carriage Road and Watford Lane in accordance with the Ironbound Square Revitalization Roadway Improvement Phase 1 site plan approved in 2006.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after conducting a public hearing, hereby authorizes the County Administrator to execute the appropriate documents conveying the said 20-foot drainage easement to the Williamsburg Redevelopment and Housing Authority.

5. Case No. SUP-0014-2008. Freedom Park Water Main Extension (Continued from September 9, 2008)

Ms. Leanne Reidenbach, Planner, stated that Mr. Aaron Small, on behalf of James City County, has applied for an SUP to allow for the extension of approximately 13,400 linear feet of maximum 12-inch waterline from existing services located along Centerville Road near its intersection with Theodore Allen Road. The extension is proposed to primarily follow the entrance road and old logging road in Freedom Park, would serve amenities within the Park, and connect to the previously approved waterline at the 4th middle school and 9th elementary school site on Jolly Pond Road to improve reliability and fire flow. The proposed route generally follows that of the sewer force main approved by the Board of Supervisors on January 8, 2008, and so would also include the construction of a paved multiuse trail in the same cleared area. The parcel is located on a portion of 5537 Centerville Road which can be further identified as James City County Real Estate Tax Map No. 3010100009. An approximately 1,000-foot connection is also proposed to stem off the main to service the proposed Freedom Park Interpretive Center and an additional line to serve the Educational Center. The project would be completed in multiple phases with the first phase including the extension to serve the Interpretive Center, and the second and third phases extending the line to the Education Center and school site respectively to create a larger waterline loop.

Staff recommended that the Board of Supervisors approve the SUP for a 12-inch looped waterline. Mr. Reidenbach explained that though the 12-inch loop is preferred, staff has provided an alternative resolution for the extension of a 12-inch waterline to be truncated in Freedom Park and would find this an acceptable alternative as well.

Mr. McGlennon stated that he was surprised at the cost of the independent well. He asked what drove the cost of that well.

Mr. Larry Foster, General Manager, JCSA, stated that it would be a public water system that provided service for the interactions within the buildings and the Health Department had regulations based on that. He stated that the second reason would be to comply with regulations for fire protection. He indicated that the third issue would be an independent water system that would be similar to what would be provided to a neighborhood and that there were standards in place in the event that it was taken over by the JCSA water system. He said that the distance between buildings would also drive up the cost. He said the average daily water demand would drive up those costs.

Mr. Goodson asked if the route for the loop line would be preserved if it was not built at this point. He asked if any development in Freedom Park would restrict building the line in the future.

Ms. Reidenbach stated that the waterline would follow the same route as the sewer force main. She stated that the route would be maintained in an adjacent easement.

Mr. Goodson asked if it was being constructed simultaneously with the sewer line.

Mr. Small stated that the sewer line was not being built simultaneously.

Mr. McGlennon asked if the sewer line would be constructed at the same site.

Mr. Small stated that parallel location was what was planned, and there would be less clearing required.

Mr. McGlennon asked for the facilities schedule.

Mr. Phil Mease stated that there was no funding currently approved in the Capital Improvements program (CIP) for buildings at Freedom Park. He stated that there was currently funding for trails.

Mr. Wanner stated that currently there were three reconstructed free black settlement structures. He stated that at this time, there was no public water going. He stated that the idea was to take advantage of the climate to get the infrastructure in place prior to development of the Freedom Park master plan.

Mr. Icenhour stated that the Interpretive Center construction was based on bond money. He asked if this project was planned to be constructed on a faster timeline.

Mr. Mease indicated that these would be done within the next few years.

Mr. Icenhour asked for confirmation that there was no timeline or funding for other buildings.

Mr. Mease stated that was correct.

Mr. Icenhour asked what was being spent on the Interpretive Center.

Mr. Mease stated that the bond was granted for \$4.3 million for the Freedom Park project, including infrastructure.

Mr. Icenhour stated that the water and sewer lines were coming from the County funds.

Mr. Wanner stated that the sewer line was being done through the schools.

Mr. Mease indicated that the money from the bond referendum was paying for the water and sewer lines.

Mr. Icenhour asked if the loop was the recommendation of staff.

Mr. Wanner stated that the recommendation was to loop it if possible, but he appreciated the possibility of truncating the line if looping was possible in the future.

Mr. Goodson opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, asked if the original property owners could be allowed to access the waterlines.

Mr. Goodson stated that was a condition that could be put into place.

Ms. Reidenbach stated that there was no stipulation on particular property owners, but any properties that have been subdivided at this time would get one connection.

Mr. Icenhour asked if someone who bought the property at a later date and subdivided it would only get one water connection for the entire property.

Ms. Reidenbach stated that was correct.

Mr. Wanner stated that if it stayed zoned PL, public lands, there would be no other connections other than at Jolly Pond Road.

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

Mr. Kennedy made a motion to approve the resolution.

Mr. Goodson stated that he was struggling with this issue because he did not understand why it had to be part of the JCSA system rather than creating a well system.

Mr. Wanner stated that wells for Parks and Recreation facilities are operated for Parks and Recreation by the JCSA.

Mr. Icenhour stated that the source of the money was what was important. He stated that it was difficult for him to accept the extra \$643,000 to loop the line. He stated that it could always be extended later on, but he asked if this was the appropriate time to loop the waterline. He stated that the benefit would be to avoid flushing the line and to have higher firefighting capabilities for the schools. He asked if those improvements were worth \$643,000 in bond money at this time.

Mr. Powell stated that even if the Board approved the loop, it would be built in phases. He stated that he did not believe there was sufficient bond money to build the entire loop.

Mr. McGlennon asked what portion of the total cost would be expended now.

Mr. Powell stated that the cost was \$330,000 to build Phase I to the Interpretive Center.

Mr. McGlennon asked about the possibility of an Aquatic Center.

Mr. Wanner stated that the original master plan situated the Aquatic Center closer to Centerville Road.

Mr. McGlennon stated that in that case it would already have water service.

Mr. Wanner stated that it did not have water service, even at Centerville Road, because of the location. He stated that because of topography and other factors, it is not very active right now. He stated that he was hoping the citizen group would find a location and build the Aquatic Center.

Mr. McGlennon stated that if the County spent \$330,000 for the initial line, it would still be truncated and it would still need to be flushed.

Mr. Icenhour said the estimate indicated Alternate 3-A was \$607,000.

Ms. Reidenbach stated that the \$607,000 estimate was for the first two phases.

Mr. Icenhour stated that there was the bond money for the first phase to the Interpretive Center; he asked how the remainder would be funded.

Mr. Wanner stated that there was money set aside for Freedom Park to build as much as possible. He said that the Parks and Recreation master plan being developed that might change what is recommended for Freedom Park, so a priority other than the waterline that would be under the Board's discretion.

Mr. Goodson stated that fire suppression could be achieved by storage at the site.

Mr. Wanner stated that it required storage and a fire pump, which was expensive.

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

## **RESOLUTION**

### **CASE NO. SUP-0014-2008. FREEDOM PARK WATER MAIN EXTENSION -**

#### **12-INCH LOOP**

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. Aaron Small of AES Consulting Engineers, on behalf of James City County Parks and Recreation, has applied for an SUP to allow for the extension of approximately 13,400 linear feet of maximum 12-inch waterline from existing services on Centerville Road near its intersection with Theodore Allen Road; and

WHEREAS, the extension is proposed to service the amenities in Freedom Park and provide backup supply to the 4th middle school and 9th elementary school site on Jolly Pond Road; and

WHEREAS, the property is located on land zoned PL, Public Land, and can be further identified as a portion of James City County Real Estate Tax Map/Parcel No. 3010100009; and

WHEREAS, the Planning Commission of James City County, following its public hearing on August 6, 2008, recommended approval of this application by a vote of 4-2; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing does hereby approve the issuance of SUP No. 0014-2008 as described herein with the following conditions:

1. Where the water main is adjacent to the Freedom Park entrance road, it shall generally be placed within the areas previously cleared for the road. Any additional clearing shall require approval by the Director of the Environmental Division.
2. For all portions of any temporary construction easements that have been cleared, but that do not need to remain clear after construction, 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 as part of the site plan depicting the utility extension. The reforestation or re-vegetation of any temporary construction easements shall be completed as determined by the Director of Planning or his designee within two years of the initial clearing of the easement.
3. 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 to 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.

4. James City County shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) prior to final development plan approval. The standards shall include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought-resistant native and other adopted low-water-use landscaping materials and warm-season turf where appropriate, and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
5. No connections shall be made to the water main which would serve any property located outside the Primary Service Area (PSA) except for connections of Freedom Park and the 4th Middle/9th Elementary School project and existing structures located on property outside the PSA adjacent to the proposed water main. In addition, for each platted lot recorded in the James City County Circuit Court Clerk's office as of October 14, 2008, that is vacant, outside the PSA and adjacent to the water main, one connection shall be permitted with no larger than a 3/4-inch service line and 3/4-inch water meter.
6. For water main construction adjacent to existing residential development, adequate dust and siltation control measures shall be taken to limit adverse effects on adjacent property.
7. The final location of the water main and all construction related activity shall, where practical, avoid previously undisturbed areas of the Resource Protection Area (RPA) and the RPA buffer. Should the pipe alignment need to cross a previously undisturbed RPA or previously undisturbed RPA buffer, the waterline shall be bored underground to avoid any aboveground disturbance. Previously uncleared portions of the RPA and RPA buffer shall remain undisturbed except as approved by the Director of the Environmental Division.
8. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
9. A Land Disturbing Permit shall be obtained within 24 months from the date of the issuance of this SUP, or this SUP shall be void.

## **H. BOARD CONSIDERATIONS**

### **1. James City County Code of Ethics**

Mr. Rogers stated that the original Code of Ethics was adopted in 2006. He stated that a work session was held in August where changes were suggested. Mr. Rogers indicated that the changes were implemented and submitted for approval. He recommended adoption of the revised Code of Ethics.

Mr. Icenhour stated that he struggled with Paragraphs 8 and 12. He stated that when the original Code of Ethics was done, one of the basic tenets was that the State Conflicts of Interests statute was particularly weak. He stated that the purpose of the Code of Ethics was to reassure the public that the Board would hold itself to a higher standard than the legal requirement. He said he understood that it reflected the majority of the Board, but he was unable to accept the changes to Paragraph 8. He said there was a little less difficulty with Paragraph 12, but the language was unclear with the compromised language that he felt was somewhat misleading.

Ms. Jones stated that she felt that the spirit of the document held merit since the Board was monitoring itself.

Mr. Kennedy stated that he understood there was an agreement in the work session on what staff was bringing forward.

Mr. Icenhour stated that there was some consensus, but that he would like to make his position clear.

Mr. Goodson stated he thought there was consensus on this item. He moved to eliminate the Code of Ethics entirely since citizens are skeptical and it has not accomplished what was hoped. He stated that there were standards in place and that the Board members hold themselves to certain standards, so he found it superfluous.

Mr. McGlennon asked to defer the item at this time. He stated that in Paragraph 12 the revision attempted to make it clear that a member of a Board could speak before a regional authority, General Assembly, or other means of public capacity, but did not put this action outside the scope of public behavior.

Ms. Jones stated that it was self-policing, so the written standard presents a spirit of good faith for citizens.

Mr. Goodson stated that these things can be used politically. He stated there were good changes, but since there was no consensus, he felt that it should be repealed. He stated that the original document had a consensus, but there were some major difficulties. He stated that he could support deferral to continue to discuss it.

Mr. Rogers asked when the item should be heard.

Mr. McGlennon stated that he preferred not to set an arbitrary date.

The Board deferred this item indefinitely.

### **2. Contingency Transfer – Organizational Effectiveness and Efficiency Study**

Mr. John McDonald, Manager of Financial and Management Services, stated that the resolution transferred from the contingency budget to fund an efficiency study. He stated that this would audit the

programs and processes of the departments over a four-month process. There were 13 proposals through Request for Proposals (RFPs). These were narrowed down to three and these were investigated. He recommended approval and that the contingency funds be transferred to the Board of Supervisors Contractual Services budget.

Mr. McGlennon asked the main sources of information the contractor would evaluate.

Mr. McDonald stated that they would look at the Comprehensive Plan policy manuals, etc., and then they would go through a series of interviews. They would also use surveys solicited by the County in the past. He stated that they would focus specifically on areas defined as targets from the document review and interviews and support functions. He stated this would be compiled and a presentation would be made.

Mr. McGlennon asked what the baseline was on the services provided to citizens.

Mr. McDonald stated that the criteria of what services should be primary and what should be secondary would be a legislative decision.

Mr. McGlennon stated that if the County is not currently doing enough, how would it be demonstrated.

Mr. McDonald stated that it would be viewed through benchmarks, other localities, the International City/County Management Association (ICMA), and other organizations.

Mr. McGlennon asked if the contractor would inform the Board if it found that the County was significantly below a benchmark.

Mr. McDonald stated that was correct.

Mr. McGlennon stated that it would tell us what would be feasible with a 77-cent tax rate.

Mr. McDonald stated it did not. He stated that it would show the County where it could use the money more wisely.

Mr. McGlennon stated that he did not understand where to get information for the underlying conditions.

Mr. McDonald stated that it was possible.

Mr. McGlennon stated that other localities have had to change their tax rate to make up for assessments.

Mr. McDonald stated this study focuses on certain areas that were not core functions.

Mr. McGlennon stated that it was behind in expenditure.

Mr. McDonald stated that the County has audits very regularly. He stated that it is usually determined that things are done very well and that this process was to offer improvements.

Mr. McGlennon stated that this review would be strained by the idea that there was a need to demonstrate significant cost savings if they feel the County was not meeting certain standards.

Mr. McDonald stated that it would be suggested that there would be a fiscal problem in 2010 and the report would take that into consideration.

Mr. Icenhour asked if it would identify adverse impacts if the standards were not met.

Mr. McDonald stated that changes would be identified and that some would be short term and others would be long term.

Mr. Icenhour asked if it was likely it would come up with savings.

Mr. McDonald stated that it was possible.

Ms. Jones asked what the tax revenues for the County have been.

Mr. McDonald stated that it was roughly the same as in recent years.

Ms. Jones asked if taxes had increased.

Mr. McGlennon stated that over the past ten years the tax rate had decreased a cumulative ten cents.

Mr. McDonald stated that the land book has increased significantly.

Ms. Jones stated that in upcoming years the County will need to be more cautious with revenues.

Mr. Kennedy stated that he would like to see the efficiencies from an outside source to see things in a different way.

Mr. McDonald stated that in roughly four months, there would be a detailed study with the outside perspective.

Mr. Kennedy stated that he would prefer to have a more comprehensive study.

Mr. Wanner stated that the schools had already completed an efficiency study.

Mr. McDonald explained that the resolution transferred the money to fund the study from Contingency to the Board of Supervisors Professional Services budget.

Mr. Kennedy 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**

### **CONTINGENCY TRANSFER – ORGANIZATIONAL EFFECTIVENESS AND**

### **EFFICIENCY STUDY – \$71,780**

WHEREAS a Request for Proposals (RFPs) to provide consultant services to conduct an Organizational Effectiveness and Efficiency Study was publicly advertised and 13 proposals were submitted; and

WHEREAS, upon evaluating the proposals, staff determined that Municipal and Financial Services Group was the most fully qualified firm and its proposal best suited the County's needs as defined in the Request for Proposals and a fair and reasonable price was negotiated; and

WHEREAS, the need for this project was identified after the FY 2009 budget was approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the \$71,780 contract to provide consultant services to conduct an Organizational Effectiveness and Efficiency Study to Municipal and Financial Services Group and amends the previously adopted budget for FY 2009 as follows:

Expenditures:

Board of Supervisors Professional Services (001-011-0203)	<u>\$71,780</u>
Operating Contingency (001-193-0705)	<u>(\$71,780)</u>

**I. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, commented on the upcoming efficiency study. He stated that for the cost of \$71,000 there was not going to be an in-depth efficiency study.

**J. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that the County hosted some officials from Kyrgyzstan. He stated that he and Mr. McGlennon spent an hour with the officials and explained open government in James City County. He stated that the past weekend was the Historic Triangle Neighborhoods Conference. He stated that there was a closed session on the agenda for appointments pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, for the consideration of a personnel matter, the appointment of individuals to County boards and/or commissions.

He stated that when the Board completed its business, it should adjourn to 4 p.m. on October 28, 2008, for work sessions on Financial Trends, Investments, and Human Resource responses to items related to the budget process.

**K. BOARD REQUESTS AND DIRECTIVES**

Mr. Goodson stated that he would like to put off the appointment of the Board of Building Code Adjustments and Appeals (BAA) if a closed session would not be held.

Mr. McGlennon made a motion to replace Mr. Joe Poole as a Steering Committee member with Mr. Rich Krapf of the Planning Commission.

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

**L. ADJOURNMENT** to 4 p.m. on October 28, 2008.

Mr. McGlennon made a motion to adjourn to 4 p.m. on October 28, 2008.

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

At 10:45 p.m. Mr. Goodson adjourned the Board.

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Sanford B. Wanner  
Clerk to the Board

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