

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF FEBRUARY 2009, 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

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

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

C. PLEDGE OF ALLEGIANCE – Ashlyn Shier, a third-grade student at Clara Byrd Baker Elementary School, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Ms. Chris Rodgers, 316 Littletown Quarter, stated her support for the County providing funds for counsel to the Board of Zoning Appeals (BZA) related to the cellular tower decision in Kingsmill.

2. Mr. David Neiman, 105 Broomfield Circle, stated support for the BZA decision regarding cellular towers in Kingsmill and asked for legal counsel to be provided to the BZA. He requested an outside opinion to advise the Board.

3. Ms. Sarah Kadec, 3504 Hunters Ridge, on behalf of the James City County Citizens' Coalition (J4C), stated her organization has researched the cellular tower ordinances and pertinent legal decisions from other localities. She stated this information would be available in development of a new cellular tower ordinance. She asked for an immediate effort to revise the ordinance to reflect citizens' preferences.

4. Mr. Mark Wenger, 105 Thorpe's Parish, BZA Chair, stated the BZA adopted a resolution requesting legal assistance from the County. He stated that the BZA serves the County through the Circuit Court and provides an appeal process for citizens for the interpretation or application of ordinances. He stated that past appeals have been made against decisions of the BZA and counsel was provided in those instances. He requested that the Board allow for funds for legal counsel for the BZA.

5. Ms. Ruth Ann Wilson, 205 Frances Thacker, commented that the Board should not engage in litigation against the BZA. She asked that the Board drop the suit or support the BZA with funds for legal counsel.

6. Mr. William Haldeman, 109 Randolph's Green, on behalf of Kingsmill Wireless Advocacy Group, commented that it was his opinion that the Board's opposition to the BZA decision was unnecessary.

7. Mr. Roger Zensen, 313 Frances Thacker, commented that he felt the BZA vote on the cellular towers in Kingsmill was valid based on the presented information. He asked why the County would participate in the suit. He stated that Kingsmill residents would get minimal expanded coverage with these towers and better technology would benefit the residents of Kingsmill.

8. Mr. Patrick McDermott, 116 Roger Smith, requested that the Board support the decision of the BZA.

9. Mr. Bob Weber, 108 Moody's Run, commented that the County's participation in the suit was unnecessary and requested that the Board supply financial support for the BZA legal counsel.

10. Mr. John Rhein, 3505 Hunters Ridge, on behalf of the National Federation of the Blind (NFB), requested people who are visually impaired or legally blind to attend NFB local chapter meetings on the third Saturday of each month at the James City-Williamsburg Community Center (JCWCC) at 1 p.m. He commented that the state NFB meeting would be held at Williamsburg Lodge. He commented on cables on the roads in his subdivision. He stated that the Virginia Department of Transportation (VDOT) has not returned his request for information on this matter.

11. Mr. Ed Oyer, 139 Indian Circle, commented on second soft mortgages in Pocahontas Square; derelict property at 101 Indian Circle; State budget deficits and controlling spending; reduction of debt; and traffic on Route 60 East.

12. Mr. Robert Richardson, 2786 Lake Powell Road, commented on the cellular tower appeal of the BZA and the support of County staff. He requested that the Board withdraw from the suit, fund the BZA's legal counsel, cooperation of the County Attorney's office, and public information be released to explain the issue.

13. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on the closure of Jolly Pond Road. He stated that neighbors are sending appeals to the legislature on the issue. He commented on the potential delay of medical response due to the closure of the road. He stated that the dam safety regulations should be rewritten to govern regions rather than the entire State. He stated that bicycles should not cross the dam. He commented on money spent on bike paths rather than transportation or other financial needs from the State.

Mr. Kennedy amended the agenda to consider a resolution addressing legal representation of BZA.

E. AUTHORIZATION OF FUNDING FOR LEGAL COUNSEL FOR THE BZA

Mr. Goodson stated he asked staff to draft a resolution that would identify when legal counsel would be provided for the BZA.

Mr. Rogers stated that before the Board is a request from the BZA for legal counsel and that he created a resolution at the request of the Board to define when the BZA receives counsel. He stated the BZA is not a legal entity and it cannot sue or be sued. He stated the County is appealing the BZA decision, not suing the BZA. He stated that interested parties can join the appeal and state their arguments against approving the towers. He stated the resolution would provide the BZA legal representation for corporate counsel, government counsel, and litigation initiated against an individual member of the BZA in his or her official capacity.

Mr. Kennedy stated that he would like the resolution displayed for the members of the audience.

Mr. Rogers read the language of the resolution for the benefit of the public.

Mr. McGlennon stated he did not want to have the public misunderstand that there will be a change in what may happen in this process. He asked for clarification that the Board and the other litigants were not suing the BZA.

Mr. Rogers stated that was correct and the decision was being appealed. He indicated that the BZA's role in the appeal was to forward its record to the court.

Mr. McGlennon stated that this was a situation similar to a judge's decision being appealed to a higher court.

Mr. Rogers stated that the appeal was analogous to an appeal to a higher court; in a zoning matter, the case begins with the BZA, a quasi-judicial body, rather than a court.

Mr. McGlennon stated in the analogous case, the judge that rendered the original decision would not be represented in the appeal, but would provide a record of his or her decision.

Mr. Rogers stated that was correct.

Mr. McGlennon stated that there was nothing that prohibited an unhappy party to appeal a decision of the BZA to Circuit Court and the satisfied parties could present their arguments as well.

Mr. Rogers stated that was correct.

Mr. McGlennon stated that he did not believe the process was for the BZA to go into court and defend its decision.

Mr. Rogers stated the BZA acted as a quasi-judicial body and it was the decision which was being appealed. He pointed out that a BZA is not a committee or part of the County, but a body appointed by the Circuit Court. He stated that appeals of a BZA decision have occurred around the state, but this was the first time it had occurred in James City County.

Mr. McGlennon stated he was unhappy with the nature of the case, but he was in favor of initiating a resolution requesting revision of the ordinance. He stated that was not at issue with this resolution.

Mr. Rogers stated that if reconsideration of this ordinance was initiated, any applications that come in during the review process would be grandfathered under the old law. He noted that the last time the ordinance was reviewed, it took nearly two years for a consultant to evaluate the language. He stated that a decision on the application in question must be based on the current ordinance. He clarified that the Board cannot adopt an ordinance and apply the requirements to a previously heard case.

Mr. McGlennon stated that he understood this resolution would provide legal counsel if a member of the BZA was named in a suit.

Mr. Rogers stated the third paragraph of the resolution protects a member of the BZA named in a suit if he or she was acting in that role.

Mr. McGlennon stated that this resolution does not provide legal counsel for the BZA for this decision in a higher court.

Mr. Rogers stated that was correct.

Mr. McGlennon asked if parties in support of the BZA decision could present their case.

Mr. Rogers stated that they could join in litigation and then both sides would be before the court.

Mr. McGlennon stated that there are many aspects of this case with which he did not agree. He stated he supported revising the ordinance. He noted that he did not want the public to misunderstand that this resolution would change what would happen with this BZA case.

Ms. Jones stated when a BZA decision has been appealed that has been upholding an administrative decision or ordinance, the County Attorney has defended the decision. She asked how the representation would be provided if the decision did not uphold an administrative decision.

Mr. Rogers stated that the County's interest is what would be presented to the Court by the County Attorney's office. He stated the opposing party would appeal the BZA decision, and the County would join that litigation. He stated that the party in interest is the County, and not the BZA.

Ms. Jones said what was in question was the decision of the BZA. She asked how the BZA would defend its process in making the decision.

Mr. Rogers stated that a record appeal was different from an ordinary lawsuit. He stated that when an appeal is made to a higher court, what is considered is the decision, or finding of fact, and application of the law.

Ms. Jones stated that according to Section 15.2-2314 of the Code, any party can present its opinion to the Court. She asked if the BZA could be considered a party.

Mr. Rogers stated the BZA could not be considered a party to the suit because it was not an entity that could sue or be sued. He stated that additional evidence could be presented if the Circuit Court deemed that the present information was insufficient or if the evidence could not have been heard by the BZA.

Mr. Icenhour asked on behalf of the citizen who spoke during public comment how the BZA decision would nullify the ordinance provisions.

Mr. Rogers stated that during a past ordinance revision a consultant was assisting the County to provide an incentive to provide by-right towers that are camouflaged and met certain requirements. He reiterated that the ordinance required the tower to be camouflaged, and not invisible. He stated that specific standards were outlined and this mechanism was included to provide lower towers that meet the standards of not being noticeable to a casual observer. He stated it was important to protect that mechanism to ensure approval of a tower under those circumstances. He stated that the BZA decision could prevent future by-right towers that meet the select criteria from coming forward and promote specially permitted towers that were taller and more noticeable.

Mr. Icenhour asked if those who were party to the suit could speak for themselves or if an attorney must be present to speak.

Mr. Rogers stated counsel was not required. He stated that a Circuit Court judge would hold a party to arguments based on the record. He stated that it would be difficult to participate in the appeal without counsel.

Mr. Icenhour stated that in the past, a BZA decision has been appealed but the County supported the decision. He stated this was the first appeal where the County was not supporting the BZA decision.

Mr. Rogers stated that was correct.

Mr. Icenhour stated he understood that this was not uncommon in other jurisdictions and asked about this as an inconsistency in James City County. He stated that other localities would provide the County Attorney when it is in the interest of the County, but will not when it is not in its interest.

Mr. Rogers stated that when a case is presented to the BZA, some jurisdictions provide outside counsel to the BZA. He stated that he felt that was inefficient and stated there was no conflict of interest for his office. The County Attorney's office makes clear it represents staff in a case before the BZA. He stated that if the Board chooses to have counsel for the BZA, there is precedent for doing so.

Mr. Icenhour asked if the judge would decide the appeal based on the record and compliance with the ordinance, rather than the attorneys present.

Mr. Rogers stated that was correct. He noted that counsel for both parties hired a court reporter to provide a complete transcript of the proceedings. He stated that the court will look at exhibits, factual findings, and reasoning to determine whether or not the decision is consistent with law.

Mr. Icenhour stated he would like to revisit the ordinance dealing with by-right uses in residential areas. He stated his concern for personal liability for the BZA members, which is protected in this resolution. He stated his support for the resolution.

Mr. Goodson asked if in the event the County Attorney's office finds conflict in defending any member of the BZA, outside counsel would be provided.

Mr. Rogers stated that was correct. He stated that legal services funds could be provided or requested. He stated that the attorney would be paid by the County, but the attorney would work for the client.

Mr. Goodson made a motion to adopt the resolution.

Ms. Jones stated she supported counsel being provided for individual BZA members. She commented that she would support separate counsel on behalf of the BZA for a moderate cost to the County.

Mr. McGlennon clarified that under State law, the decision rendered by the higher court has held that the BZA cannot sue or be sued. He stated that legal counsel was needed for the purposes of developing by-laws and organization. He stated that he did not understand why counsel would represent the BZA in any cases if it was not able to be party to the suit.

Mr. Rogers asked for clarification.

Mr. McGlennon stated that he understood that legal counsel for the BZA was not needed in such a case as this.

Mr. Rogers stated that in cases where there is no government attorney available to support the BZA, a contract attorney may be provided.

Mr. McGlennon asked if the BZA, having rendered its decision, could be party to a suit to defend itself in an appeal of its decision.

Mr. Rogers stated it cannot be party to a suit; it is a party to the appeal in order to get the record. He stated some jurisdictions have outside counsel for various boards or commissions. He stated that the BZA has made a decision and that decision is being appealed and moving into the next step in the judicial decision process.

Ms. Jones stated that the BZA is comprised of five citizens and if the comments of these citizens are being questioned, it made sense to have representation for the BZA.

Mr. Rogers stated that in an appeal, the opposing sides always question a decision maker in accordance with the record. He stated that that does not mean the decision maker is a party in interest.

Mr. McGlennon stated that in this case a party was someone affected by the decision, rather than someone who rendered a decision.

Mr. Rogers stated that was correct.

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

RESOLUTION

AUTHORIZING LEGAL REPRESENTATION FOR THE BOARD OF ZONING APPEALS

WHEREAS, the Board of Supervisors of the County of James City, Virginia has established a five-member Board of Zoning Appeals (BZA) in conformance with Virginia Code Section 15.2-2308; and

WHEREAS, the Virginia Supreme Court has determined that the BZA is a creature of statute possessing only those powers expressly conferred on it; and

WHEREAS, there is no statutory authority granting a board of zoning appeals the power to sue or be sued; and

WHEREAS, the Board of Supervisors wishes to provide the BZA with the assistance of counsel in those specific circumstances set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the BZA shall be provided with legal counsel, through the County Attorney's Office, in the following exclusive situations:

1. General corporate representation, such as the preparation, review, and revision of bylaws, rules, regulations, and organizational documents and parliamentary interpretation of such bylaws, rules, regulations, or organizational documents; and
2. General government representation to insure compliance with federal, State and local laws and regulations, such as Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), providing informal opinions regarding the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia), completion of required disclosure forms, and advice regarding general BZA meeting format and procedure; and
3. Litigation initiated against an individual member of the BZA in his or her official capacity as a member of the BZA.

F. CONSENT CALENDAR

Mr. McGlennon made a motion to adopt the items on the Consent Calendar.

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

1. Minutes -
 - a. January 24, 2009, Budget Retreat
 - b. January 27, 2009, Work Session
 - c. January 27, 2009, Regular Meeting
2. Grant Award – Bike Smart Virginia – \$1,000

RESOLUTION

GRANT AWARD – BIKE SMART VIRGINIA – \$1,000

WHEREAS, the James City County Police Department has been awarded a Bike Smart Virginia Project grant award in the amount of \$1,000 through the Virginia Department of Health (VDH); and

WHEREAS, the funds are to be used for the purchase of youth bicycle helmets for distribution at Bike Rodeos and other Community Service Unit events where bicycle safety education is delivered; and

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

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

Revenue:

VDH FY 09 – Bike Smart Virginia

\$1,000

Expenditure:

VDH FY 09 – Bike Smart Virginia \$1,000

3. Grant Award – Commonwealth Attorney – Virginia Domestic Violence Victim Fund – \$37,981

RESOLUTION

GRANT AWARD – COMMONWEALTH ATTORNEY –

VIRGINIA DOMESTIC VIOLENCE VICTIM FUND - \$37,981

WHEREAS, the Commonwealth Attorney for the City of Williamsburg and James City County has been awarded a \$37,981 grant from the Virginia Domestic Violence Victim Fund through the State Department of Criminal Justice Services; and

WHEREAS, this grant would help fund the personnel costs and travel expenses of a part-time position in the prosecution of misdemeanors and felonies involving domestic violence, sexual abuse, stalking, and family abuse through December 31, 2009.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the additional appropriation to the Special Projects/Grants Fund through December 31, 2009, for the purposes described above:

Revenue:

DCJS Domestic Violence Grant \$37,981

Expenditure:

Domestic Violence Prosecutor Personnel Costs \$37,981

4. Grant Award – Rescue Squad Assistance Fund – \$104,984

RESOLUTION

GRANT AWARD – RESCUE SQUAD ASSISTANCE FUND – \$104,984

WHEREAS, the Virginia Department of Health (VDH), Office of Emergency Medical Services (OEMS) has awarded the James City County Fire Department a Rescue Squad Assistance Fund (RSAF) grant in the amount of \$104,984 (\$52,492 RSAF; \$52,492 local match); and

WHEREAS, the grant requires a local match of \$52,492, and the funds are available in the General Fund; and

WHEREAS, the funds will be used to purchase a Defibrillator-AED/manual combination system, adult and infant Virtual IV Training Systems, and to send 25 of the Departments’ Advanced Life Support (ALS) providers to a practical airway class at Johns Hopkins University Hospital located in

Baltimore, Maryland.

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 and the transfer from the General Fund:

Revenue:

RSAF – Medic Equipment/Training	<u>\$52,492</u>
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Expenditure:

Fire - RSAF Medic Equipment/Training	\$104,984
Operating Contingency	<u>(\$52,492)</u>

Total	<u>\$ 52,492</u>
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G. PUBLIC HEARINGS

1. Case No. Z-0003-2008/MP-0003-2008. The Candle Factory

Mr. Jose Ribeiro, Planner, stated that the applicant has requested deferral of this case to March 10, 2009.

Mr. Kennedy opened the public hearing.

As no one wished to speak to this matter, Mr. Kennedy continued the public hearing to March 10, 2009.

2. Case No. SUP 0019-2008. Former Stuckey’s Site Special Use Permit

Mr. Luke Vinciguerra, Planner, stated Mr. Rick LaMere, of North South Construction, has applied for a Special Use Permit (SUP) to allow for the operation of a gasoline station, convenience store, and four fast-food restaurants at the location formerly known as “Stuckey’s.” Located at the southeast quadrant of the Route 30 interchange (Exit 227) on Interstate 64, Stuckey’s initiated its commercial activities in 1984 as a business selling fuel, food, and snacks to the motoring public until closing in 2004. The proposal is to demolish the existing structures on-site and build a one-story structure to accommodate four fast-food restaurants, a convenience store, and a 16-pump gasoline station. Convenience stores that dispense fuel and proposals that generate 100+ peak hour trips in the B-1, General Business, District require an SUP. The subject property is located on approximately 6.27 acres of land, on a parcel zoned B-1, General Business. Neighboring parcels north of the site and directly across Interstate 64 are zoned Planned Unit Development Commercial (PUD-C). The adjoining parcels located east, west, and south of the site are zoned B-1. The 2003 Comprehensive Plan designates this parcel as Mixed-Use and it is located within the Stonehouse Mixed-Use area. This parcel fronts Route 30. Route 30 is designated as a Community Character Corridor (CCC) by the 2003 Comprehensive Plan and therefore the parcel is subject to special considerations.

Staff found the application to be generally consistent with surrounding land uses.

At its meeting on January 7, 2009, the Planning Commission voted 6-0 with one vacancy to recommend approval of the application.

Staff recommended approval of the application.

Mr. McGlennon asked if there was concern over changing the closing time.

Mr. Vinciguerra requested that the closing time be pushed back one hour to 10 p.m.

Mr. McGlennon stated that the gas station and fast food-restaurant across Route 60 from the Stuckey's Site were open until 10 p.m.

Mr. Vinciguerra stated he was unaware of the closing time.

Mr. Kennedy recognized Mr. Billups in attendance representing the Planning Commission.

Mr. Kennedy opened the public hearing.

1. Mr. Steve Romero, Landmark Design Group, gave an overview of the property and the application. He stated that he believed that the applicant had addressed issues brought forward.

Mr. Icenhour stated that the Planning Commission had asked to improve design for better traffic flow at the gas pumps. He asked if the entire building needed to shift backward.

Mr. Romero stated that was correct, but the rear buffer was not reduced.

Mr. Icenhour asked if the right side was one-way traffic and the left side was two-way traffic.

Mr. Romero stated that was correct.

Mr. Icenhour stated that previously, the adequacy of the septic field was in question.

Mr. Romero stated that no expansion was required. He stated the applicant is ready to make any adjustments due to the age of the field.

Mr. Icenhour asked about the anticipation of the beginning of the project.

Mr. Romero stated he hoped to move forward as soon as possible.

Mr. Goodson asked when the facilities would be opened.

Mr. Rick LaMere, applicant, stated he hoped to open as soon as possible.

Mr. McGlennon asked about the closing hours of surrounding properties.

Mr. Romero stated he was not certain, but he believed the fast-food restaurant was open 24 hours a day.

Mr. Kennedy stated the Texaco station may be open 24 hours as well.

Mr. McGlennon asked if the restaurants would be food-court style.

Mr. LaMere stated that they had three tenants so far and it would be food-court-style. He stated with approval, the plans would move forward.

Mr. McGlennon asked if the drive-through window serviced all the tenants.

Mr. LaMere indicated that the drive-through window would service the Dairy Queen only.

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

Mr. Goodson made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-0019-2008. FORMER STUCKEY'S SITE

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. Rick LaMere has applied for an SUP to operate a maximum of four fast-food restaurants and a convenience store with fuel distribution in a single building on approximately 6.27 acres of land on a parcel zoned B-1, General Business; and

WHEREAS, the proposed development is shown on a layout entitled "Former Stuckey's Site" and dated January 21, 2009; and

WHEREAS, the property is located at 9220 Old Stage Road on property more specifically identified on James City County Real Estate Tax Map No. 0440100016 (the "Property"); and

WHEREAS, on January 7, 2009, the Planning Commission recommended approval of the application by a vote of 6-0; 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 Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0019-2008 as described herein with the following conditions:

1. Master Plan and Use: This SUP shall be valid for the "Former Stuckey's Site" Master Plan, prepared by LandMark Design Group and dated January 21, 2009 (the "Master Plan"), and accessory uses thereto. The Property shall only be used for a maximum of four fast-food restaurants and a convenience store within a single building, along with eight fueling islands as shown on the Master Plan. The Property shall not contain any shower or laundry facility, vehicle wash facilities, or scales.
2. Landscaping: Prior to final site plan approval, a landscaping plan shall be approved by the Planning Director or his designee. The owner shall provide enhanced landscaping for the area along those portions of the Property that front along Old Stage and Barhamsville

Roads, and along areas designated on the Master Plan for parking. Enhanced landscaping shall be defined as 125 percent of the Zoning Ordinance landscape size requirements.

3. Prior to any removal or trimming of trees within the Virginia Department of Transportation (“VDOT”) right-of-way, the Planning Director shall be notified 30 days in advance of the applicant’s contacting VDOT and review and approve of any plan for the tree removal or trimming.
4. Water Conservation: The owner 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 may 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 material including the use of drought tolerant plants where appropriate; and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
5. Erosion and Sediment Control: An erosion and sediment control and runoff management plan shall be approved by the Environmental Director prior to final site plan approval.
6. Stormwater: The area beneath the fuel area canopy shall not drain directly into the infiltration Best Management Practices (BMPs) for the facility. A spill containment structure such as an alternate BMP or separation system to accept spills from any fueling area shall be shown on the site plan and shall be approved by the Environmental Director prior to final site plan approval.
7. Existing Fueling Islands: Prior to the issuance of any Certificate of Occupancy (CO), the owner shall receive approval from the Department of Environmental Quality, obtain a County demolition permit, and remove the existing gasoline and diesel pumps, canopy, and underground fuel tanks from the Property.
8. Proposed Fueling Islands: There shall be no more than 14 gasoline pumps and two low-pressure diesel pumps located on eight fueling islands on the Property. The fueling islands shall be arranged in a configuration generally consistent with the Master Plan, prepared by LandMark Design Group and dated January 21, 2009. None of the fueling pumps shall be of a design intended to refuel tractor trailers as determined by the Planning Director.
9. Spill Prevention and Control Plan: Prior to issuance of any CO a spill containment plan that addresses the chemical handling and storage areas shall be submitted to the Environmental Director and to the Fire Chief for their review and approval.
10. Stormwater Pollution Prevention Plan: Prior to issuance of any CO, a stormwater pollution prevention plan shall be submitted to the Environmental Director for review and approval.
11. Architectural Review: All buildings on the Property including outdoor covered areas such as the pump island canopies shall be architecturally integrated by the use of similar materials, color, and architectural detailing and shall be generally consistent with the rendering titled “James City County Convenience Store Schematic Elevations” dated December 23, 2008, prepared by Balzer and Associates on file with the Planning Division (“the Rendering”) as determined by the Planning Director. Prior to final site plan

approval, the Planning Director shall review and approve the final architectural design, colors, and materials of all structures on the site for consistency with the Rendering. Decisions of the Planning Director may be appealed to the Development Review Committee, whose decision shall be final.

12. Fueling Island Canopies: The maximum height of the pump island canopy shall not exceed 20 feet from existing grade as shown on the Master Plan. The clearance height of the canopy shall be clearly indicated on the structures. Prior to final site plan approval, the Planning Director shall review and approve canopy design and materials for consistency with the proposed building. Decisions of the Planning Director may be appealed to the Development Review Committee, whose decision shall be final.
13. Lighting: Any new exterior site or building lighting, including canopy lighting, shall have recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. Fixtures which are horizontally mounted on poles shall not exceed 15 feet in height unless otherwise approved by the Planning Director. No glare defined as 0.1 foot-candle or higher shall extend outside the property lines.
14. Signage: No more than one sign shall be allowed on the fueling island canopy provided; however, one non-illuminated gasoline-pricing sign may be allowed on a monument type sign in the parking area or the columns of the canopy.
15. Overnight Vehicular Parking: No overnight vehicular parking shall be allowed on the Property.
16. Off-site Vehicular Parking: Fencing or other features shall be provided along both sides of the Frontage Road (F-827) as shown on the Master Plan to prevent parking of motor vehicles along the sides of the frontage road. The location and design of the fence or other features shall be approved by the Planning Director.
17. Dumpsters: The dumpster pad(s) and all heating, cooling, and electrical equipment shall be screened by fencing and landscaping in a manner approved by the Planning Director prior to final site plan approval.
18. Trash Removal: Trash cans shall be available for use by customers during all operating hours and the trash cans shall be emptied and cleaned on a daily basis.
19. Hours of Operation: Both the convenience store and gasoline station shall be allowed to operate 24 hours a day. The daily hours of operation for the restaurants shall be limited to the hours of 5:30 a.m. to 10:00 p.m.
20. Commencement of Construction: If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.
21. Turn Lane upgrades: Prior to issuance of any CO, all turn lanes providing access to the Property shall be upgraded to current VDOT standards as determined by the VDOT Residency Administrator.

22. Junk Removal: All junk shall be removed from the Property prior to issuance of any CO. For purposes of this SUP condition, "junk" shall mean trash, unusable fuel pumps, wood, lumber, concrete, construction debris, pallets, tires, waste, junked, dismantled, or wrecked automobiles, inoperable equipment, machinery, or appliances, 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, or moved into an appropriate off-site enclosed storage building or facility. The James City County 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 Property.
23. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. SUP 0025-2008. Americans with Disabilities Act (ADA) Accessible Playground at James City-Williamsburg Community Center (JCWCC)

Ms. Kate Sipes, Planner, stated Mr. John Carnifax of James City County and Ms. Carolyn Murphy of the City of Williamsburg have applied for an SUP to construct a playground area that is entirely accessible at the site of the existing JCWCC. This property is located at 5301 Longhill Road. An SUP is required because community recreation facilities, including playgrounds, are specially permitted uses on land zoned PL, Public Lands. There are currently no public playgrounds in the Historic Triangle that are compliant with the Americans with Disabilities Act (ADA). The closest ADA-accessible playground is Deer Park in Newport News. The proposal includes a playground occupying approximately 6,000 square feet, to be designed so that every child in the Historic Triangle regardless of ability or disability is welcome. In addition to barrier-free play equipment, the proposed playground will include a fence along two sides of the playground that are adjacent to vehicular circulation, a soft-surfaced fall zone, and a sidewalk leading from the parking lot to the play area. The proposed location on the property is an area between the existing parking lot and ball fields; this area is currently a grassy field. The applicants are members of the Leadership Historic Triangle (LHT) Class of 2009, who have voted to fund and build this facility as their class project. *My Place*, as the class has named it, will be donated to James City County upon completion; the James City County Parks and Recreation Division will manage and maintain the facility in the future.

Staff found the proposal to have minimum additional impacts and to be compatible with the 2003 Comprehensive Plan.

At its meeting on January 7, 2009, the Planning Commission, by a vote of 6-0 with one vacancy, recommended approval of the application.

Staff recommended approval of the application.

Mr. McGlennon asked that the LHT Class present its idea for this project.

Mr. Kennedy opened the public hearing.

1. Mr. Chris Basic, AES Consulting Engineers, on behalf of the LHT Class of 2009, stated that there were no accessible playgrounds in this area and stated there was a need for citizens in this area.

Mr. Icenhour asked about the cost of construction and asked how the money is provided.

Mr. Basic stated the goal of fund-raising for this project was \$130,000 but the project depended on how much money was provided.

Mr. Kennedy asked how the money was being raised for the project.

Mr. Basic stated that there were several projects, including an engraved paver program as well as corporate donations from community members.

Mr. Kennedy asked how the fund-raising was progressing.

Mr. Basic stated it was good in light of the economy.

Mr. McGlennon asked if this is something that could be phased over time.

Mr. Basic stated the goal was to complete the project by May, but he would like to continue to pursue it afterward.

Mr. McGlennon asked if Mr. Carnifax could speak to how this fits into the County's recreation plan.

Mr. John Carnifax, Parks and Recreation Deputy Director, stated that the most requested public facilities are a playground area and a picnic shelter. He stated that the LHT class wanted a project that would be present for the future.

Mr. Wanner noted that Cortney Langley and Deputy County Attorney Adam Kinsman are members of this LHT class.

Mr. Basic also noted Mr. Peter Henderson, Jr. from Henderson Incorporated was in attendance as a member of LHT 2009.

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

Mr. Icenhour made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-0025-2008: AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBLE

PLAYGROUND AT JCWCC

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 community recreation facility in the PL, Public Lands, zoning district, located at 5301 Longhill Road, further identified as Parcel Identification No. 3910100153, also known as James City/Williamsburg Community Center (JCWCC); and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing held on Case No. SUP-0025-2008; and

WHEREAS, the Planning Commission recommended approval of the application by a vote of 6-0 on January 7, 2009.

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. Development of the site shall be generally in accordance with the master plan entitled "Master Plan for *My Place*, an ADA Accessible Playground at JCWCC," dated November 26, 2008, as determined by the Director of Planning. Minor changes may be permitted by the Director of Planning, as long as they do not change the basic concept or character of the development.
2. If final site plan approval has not been received for this project within 36 months from the issuance of an SUP, the SUP shall become void.
3. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Sale of Property – 4881 Longhill Road

Ms. Sue Mellen, Assistant Manager of Financial and Management Services, stated she was the governmental appointee to the Colonial Group Home Commission, of which Crossroads Community Youth Home is a part. She stated that in May 2007 the Board of Supervisors passed a resolution requesting staff to identify a buyer and prepare for the sale of property of the Crossroads Community Youth Home. She stated that the property is identified as Parcel No. 3240100032 on the James City County Real Estate Tax Map and is owned by James City County, York County, Gloucester County, and the City of Williamsburg as tenants in common.

Ms. Mellen stated that the new facility at 5684 Mooretown Road was completed and ready to be occupied as a co-ed residential group home. She stated that the former site was ready to be sold and after advertisement and pursuit of potential buyers, King of Glory Lutheran Church has requested to purchase the site at a negotiated price of \$855,345.

Staff recommended approval of the resolution.

Mr. McGlennon asked if proceeds from the sale would be donated to the new facility.

Ms. Mellen stated the Board had adopted a budget of approximately \$300,000 for the construction of the new facility, and the sale price has come in above that cost. She stated that would reduce the County's funding of that facility.

Mr. Icenhour asked if all jurisdictions would have to pass similar resolutions. He asked when the other jurisdictions would move forward.

Ms. Mellen stated that each locality would need to go through a similar public hearing process and that James City County was the first to move forward. She stated Gloucester would be the last to move on this sale and that it should be completed in March.

Mr. Kennedy opened the public hearing.

1. Mr. Ed Oyer, 139 Indian Circle, asked if the sale amount would be portioned out among the localities.

Ms. Mellen stated that was correct, as each locality had a proportional interest which would be applied to the new proportional interest in the facility on Mooretown Road.

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

Ms. Jones made a motion to adopt the resolution.

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

RESOLUTION

SALE OF PROPERTY - 4881 LONGHILL ROAD

WHEREAS, on May 8, 2007, the Board of Supervisors adopted a resolution that directed staff to identify a suitable buyer and to prepare for the Board's consideration and approval all details of a proposed sale of the Crossroads facility that is located at 4881 Longhill Road, Williamsburg, VA 23188; and owned by the counties of James City, York, Gloucester, and the City of Williamsburg as tenants in common; and

WHEREAS, the property is identified as Parcel No. 3240100032 on the James City County Real Estate Tax Map and is owned by the counties of James City, York, Gloucester, and the City of Williamsburg as tenants in common; and

WHEREAS, the availability of the Longhill Road property was advertised to the public and any and all potential buyers were actively pursued; and

WHEREAS, King of Glory Lutheran Church has offered to purchase the property for a negotiated price of \$855,345.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute any and all documents necessary to sell the above-referenced property to King of Glory Lutheran Church.

5. **Case No. ZO-0004-2008. Retail Sale and Repair of Lawn Equipment**

Mr. Jose Ribeiro, Planner, stated upon citizen request, staff is proposing to amend the Zoning Ordinance to allow the retail sale and repair of lawn equipment in A-1, General Agricultural, District. Retail sale and repair of lawn equipment are by-right uses in B-1, General Business; M-1, Limited Business/Industrial; and MU, Mixed Use Districts, under the general title of "Retail and service stores...including yard goods." The proposed change would be as follows:

1. Amend Section 24-213, Specially Permitted Uses, within the A-1, General Agriculture, District to allow the retail sale and repair of lawn equipment with outdoor display area up to 2,500 square feet and repair limited to a fully enclosed building.

There are a limited number of uses allowable either by-right or as an SUP in the A-1 District that deal with retail sale as well as mechanical equipments. By-right uses include farmers' markets up to 2,500 square feet; wayside stands for agricultural products limited in area to 500 square feet; and wineries including retail shops for the sale of wine. Specially permitted uses include convenience stores; farmers' markets over 2,500 square feet; feed/seed and farm supplies; gift and antique shops; lumber and building supply stores; manufacture and sales of wood products; retail shops associated with community recreational facilities; wayside stands for agricultural products over 500 square feet; and retail sales of plant and garden supplies.

Current by-right uses within the A-1 District that involve mechanical equipment include storage and repair of heavy equipment as an accessory to a farm. Specially permitted uses include "repair of commercial equipment accessory to a dwelling with no outdoor storage or operations, farm equipment sales and service, and storage and repair of heavy equipment."

The "lawn equipment" should be generally understood to be mechanical lawn and garden equipment including riding lawn machinery, tillers, chippers, blowers, and chainsaws. Staff researched other localities in Virginia to determine if the retail and repair of lawn equipment are permitted uses in their respective agricultural areas. Of the nine jurisdictions researched, Goochland, Loudoun, and Shenandoah Counties generally allowed the sale and repair of lawn equipment as a specially permitted use in agricultural district areas.

Staff maintains that limited retail and repair of "lawn equipment" are appropriate for inclusion in the A-1, General Agriculture, District. These establishments provide a necessary service to residents on a limited scale in agricultural areas of the County. To ensure compatibility with the natural and rural character of the area, staff notes that the proposed amendment to the ordinance limits outdoor storage to 2,500 square feet and that repair of equipment is limited to a fully enclosed structure. Further, should this amendment be approved as a specially permitted use, as proposed by staff, a case-by-case review during the SUP and site plan process would allow specific conditions to be applied in order to maintain, improve, and/or mitigate any impacts to the natural and rural character of James City County's agricultural areas. This type of land use can, with the right conditions, complement existing uses in A-1 such as farmers' markets, feed/seed and farm supplies, retail sales of plant and garden supplies, and farm equipment sales and services.

On January 7, 2009, the Planning Commission voted 6-0, with one vacancy, to recommend approval of the amendment to Section 24-213 to allow the retail, sale and repair of lawn equipment as a specially permitted use in the A-1 Zoning District.

Staff recommended approval of the ordinance amendment.

Mr. Kennedy opened the public hearing.

1. Ms. Carla Brittle, County Business Facilitator, stated she was working with a citizen on this process and stated that this citizen has operated a similar business in York County for many years and hopes to locate a similar facility in James City County.

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

Mr. Goodson made a motion to adopt the resolution. He stated he felt this was an update to the resolution to incorporate changes in the lawn and garden industry. He stated this was a good way to open up to new economic development opportunities.

Mr. McGlennon stated he felt this was a perfectly logical use in the A-1 Zoning District and was glad to welcome new businesses to the County.

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

H. PUBLIC COMMENT

1. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on James City County expenditures, including new schools, the Shaping Our Shores development, and a community airport facility.

2. Mr. Robert Richardson, 2786 Lake Powell Road, commented on the ethics of the reappointments of Mr. Chris Henderson and Mr. Peck to the Planning Commission.

3. Mr. Ed Oyer, 139 Indian Circle, asked if the transfer of property indicates that the owner is responsible for anything left on the property.

Mr. Rogers indicated that that information was not in the deed, but it would be a contractual issue raised during the closing process.

I. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated Mr. Powell has provided a proposal on how staff would recommend the Board implement a pre-work session opportunity for citizens to present information to the Board that would exceed three minutes during public comment. He asked for feedback to be directed to Mr. Powell in order to begin on the afternoon of March 24, 2009. He noted that February 16, 2009, is a County, State, and Federal holiday and County offices would be closed. He stated that when the Board completed its business, it should adjourn to 9 a.m. on February 17, 2009, at Legacy Hall for a joint meeting with the City of Williamsburg and the Williamsburg-James City County Schools with the primary discussion being the school budget. He stated that the Board has on its agenda certain appointments and he would recommend doing these appointments in open session and the Board should hold a closed session when it completed its business for the consideration of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offers, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711(A)(29) of the Code of Virginia.

Mr. Wanner announced that after discussions with the Board, staff, citizens, and his family, he will delay his retirement until 2010. He stated that with Board support, he is prepared to help address the challenges of James City County for the future.

J. BOARD REQUESTS AND DIRECTIVES

Mr. Goodson stated that during the challenging economic times, a strong and knowledgeable leader was needed.

Mr. Kennedy stated that he was pleased that Mr. Wanner agreed to provide stability during this time of need. He stated he had discussed the matter with each Board member. He proposed a resolution of appreciation for Mr. Wanner in recognition of this decision.

Mr. Kennedy made a motion to adopt the resolution.

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

RESOLUTION

RESOLUTION OF APPRECIATION

SANFORD B. WANNER

WHEREAS James City County faces uncertainty due to the severe economic recession affecting the national and international economies; and

WHEREAS the County desires to continue to address the basic needs of our citizens and maintain necessary services in spite of difficult economic conditions; and

WHEREAS meeting the needs of citizens and providing an acceptable level of service will require creativity, insight, experience, and the confidence of the community in the administration of local government; and

WHEREAS the current County Administrator possesses the skills, institutional knowledge, and leadership to uphold the County's policies, programs, and personnel through the economic recession; and

WHEREAS at the request of the James City County Board of Supervisors, Sanford B. Wanner has agreed to postpone his anticipated retirement, originally announced for June 30, 2009.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby expresses its appreciation for, and confidence in, County Administrator Sanford B. Wanner and pledges to work cooperatively with him to guide the County through this challenging economic period in the nation, the Commonwealth of Virginia, and James City County.

Mr. Goodson stated there have been a number of responses to the Request for Proposal (RFP) for Executive Search Services. He asked staff to contact these firms to inform them of the new timetable.

Mr. Wanner stated the plan was to work the number of responders down to a manageable amount to dismiss those that are not desired and then work with those remaining for the future.

Mr. Goodson stated the process should move forward this year.

Mr. Wanner stated he felt that some progress should be made at this time.

Ms. Jones stated from her perspective, she believed Mr. Henderson was doing a satisfactory job on the Planning Commission. She stated that his presence was professional and beneficial.

Mr. McGlennon thanked Mr. Wanner for his decision to continue as County Administrator. He commented on the spending decisions brought forward by Mr. Richardson. He noted that the money for the schools was already borrowed and stated that the bid climate was very positive and millions have been saved on the construction of the projects. He stated this will be helpful for the local construction industry, but it was also a long-term benefit of the County. He stated he agreed with the sentiments of the other two projects. He stated that no decision has been made to purchase an airport, but he anticipated a great deal of discussion on this item.

Mr. Wanner noted there would be a work session in May with the Airport Feasibility Study Committee.

Mr. McGlennon stated he attended a community program on the Shaping Our Shores project, and noted that no decision has been made on this item. He stated that a great deal of discussion would be incorporated. He stated that he agreed that the greenspace funds used would warrant that the County should minimize the development on that property.

Mr. McGlennon noted that the House and Senate have passed bills to allow the County to address derelict structures. He stated the House has approved legislation that would ban the prohibition of installation by any County or City for alternative sewer systems. He stated that it was unsettling for the State to disallow preventative measures that may protect public health and future homeowners.

Mr. Icenhour stated he would like to address the developer at Mason Park to clean out the construction area and asked to keep in mind for staff to note where significant retail vacancies and residential foreclosures were taking place in the County. He congratulated staff on the impervious cover update in the Reading File. He noted significant increases in impervious cover in the watersheds and stated the build-out capacity was roughly 30 percent. He asked to have staff present this at a work session in March and to incorporate this information into the watershed plans.

Mr. Icenhour stated Ford's Colony has negotiated garbage collection for a volume discount. He stated it would serve the best interest of the County to provide optional collective bargaining for all citizens for waste collection.

Mr. McGlennon asked to move the appointments in open session of Rosemary Van Houten to a three-year term on the Historical Commission; Loretta Garrett and Larry Abbot to three-year terms on the Purchase of Development Rights Committee; and Mary Smallwood Delaney and Roger Schmidt to two-year terms on the Stormwater Program Advisory Committee; and Robert Winters, P.E. to a four-year term on the Stormwater Program Advisory Committee.

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

K. CLOSED SESSION

Mr. Goodson made a motion to go into Closed Session for the consideration of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offers, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711(A)(29) of the Code of Virginia.

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

At 9:20 p.m. Mr. Kennedy recessed the Board into Closed Session.

At 9:39 p.m. Mr. Kennedy reconvened the Board.

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

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

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)(29) of the Code of Virginia, to consider the award of a public contact involving the expenditure of public funds, including interviews of bidders or offers, and discussion of the terms or scope of such contact, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

L. ADJOURNMENT to 9 a.m. on February 17, 2009

Mr. McGlennon made a motion to adjourn.

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

At 9:40 p.m. Mr. Kennedy adjourned the Board to 9 a.m. on February 17, 2009, at Legacy Hall.

Sanford B. Wanner
Clerk to the Board