

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF SEPTEMBER 2009, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

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

B. MOMENT OF SILENCE

C. PLEDGE OF ALLEGIANCE – Navon Matthews, a fifth-grade student at James River Elementary School led the Board and citizens in the Pledge of Allegiance.

D. HIGHWAY MATTERS

Mr. Todd Halacy, Virginia Department of Transportation (VDOT) Williamsburg Residency Administrator, stated he had no updates to report at this time.

Mr. McGlennon thanked Mr. Halacy for arranging for him to meet with engineers regarding Jamestown Road, enabling the traffic signal study to be redone after the Colonial Parkway is reopened. He stated the study will evaluate the impact of the traffic light on neighborhoods and St. Martin's Church and its preschool. He stated that if the warrants demonstrate a need for a signal, VDOT will have to install it for safety reasons, but he stated his appreciation for re-evaluating the need.

E. PUBLIC COMMENT

1. Mr. Jack Fowler, 109 Wilderness Lane, commented on illegal junkyards and blight in the County.
2. Mr. John Rhein, 3505 Hunters Ridge, spoke on behalf of the National Federation for the Blind (NFB). He displayed the NFB commemorative coin which is being sold to benefit Braille literacy. He stated the NFB State Conference would be held at the Williamsburg Hospitality House in November, 2009.

3. Mr. Ed Oyer, 139 Indian Circle, commented on decreased real estate sale prices, decreased revenues, and improvements on Route 60 East.

Mr. Kennedy recognized Planning Commissioner George Billups and Planning Commission Chairman Rich Krapf.

Mr. Kennedy also recognized Mr. Mickey Chohany, former Councilman for the City of Williamsburg.

F. PRESENTATIONS

1. Virginia Association of Counties Achievement Award

Mr. Mike Edwards, Virginia Association of Counties, presented an award to Mr. Kennedy in honor of the James City County “Neighborhoods Organizing Ways to Achieve Connections” (NOWAC) program.

Mr. Kennedy recognized the Neighborhood Connections and IT staff who helped create the award-winning NOWAC program.

2. Community Services Building – Mr. Alex Kuras

Mr. Kuras gave a brief overview of the history of the Historic Triangle Community Services Building and the nonprofit human services organizations that operate in the building. He commented on the evolution of the building, including upgrading and converting the center meeting room. He stated the renovations would result in a more attractive space that would be more cost-efficient. He stated that a major fundraiser would be held to offset the current debt of roughly \$250,000. He commented that he would be happy to have referrals of additional potential tenants.

G. CONSENT CALENDAR

Mr. Goodson 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 – September 8, 2009, Regular Meeting

2. Revenue Sharing Program Emergency Traffic Signal – Fire Station 2 (UPC # 94645)

RESOLUTION

REVENUE SHARING PROGRAM EMERGENCY TRAFFIC SIGNAL –

FIRE STATION, UPC # 94645

WHEREAS, the Board of Supervisors of James City County desires to submit an application for an allocation of funds of \$80,000 through the Virginia Department of Transportation (VDOT) Fiscal Year 2010 Revenue Sharing Program; and

WHEREAS, \$80,000 of these funds are requested to fund Emergency Traffic Signal at Pocahontas Trail – Fire Station 2 (UPC # 94645), to match the Revenue Sharing Program funds; and

WHEREAS, the County will allocate a dollar-for-dollar along with the unmatched amount of \$100; and

WHEREAS, the combined County and State funding totaling \$160,100 is requested to fund Emergency Traffic Signal – Fire Station 2 (UPC # 94645).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$80,000 through the VDOT Revenue Sharing Program and the County will contribute \$80,100 as follows:

Revenue:

VDOT Revenue Sharing	<u>\$80,000</u>
----------------------	-----------------

Expenditures:

Station 2 Emergency Traffic Light	\$160,100
Operating Contingency	<u>(80,100)</u>
	<u>\$ 80,000</u>

3. Dedication of Streets in Fenwick Hills Sections 1, 2, and 3

RESOLUTION

DEDICATION OF STREETS IN FENWICK HILLS SECTIONS 1, 2, AND 3

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

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

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

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

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

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

4. Contract Award – James City/Williamsburg Community Center Gym Floor Replacement \$ 140,977

RESOLUTION

CONTRACT AWARD - JAMES CITY/WILLIAMSBURG COMMUNITY CENTER

GYM FLOOR REPLACEMENT - \$140,977

WHEREAS, a Request for Proposals to replace the gymnasium floor at the James City/Williamsburg Community Center was publicly advertised and staff reviewed proposals from firms interested in performing the work; and

WHEREAS, upon evaluating the proposals, staff determined that Royalwood Associates, Inc. was the most fully qualified and submitted the proposal that best suited the County's needs as presented in the Request for Proposals.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the \$140,977 contract to replace the gymnasium floor at the James City/Williamsburg Community Center to Royalwood Associates, Inc.

BE IT FURTHER RESOLVED that \$140,977 in anticipated insurance proceeds be appropriated as revenue in the Capital budget, with the offsetting increase added to the budget for the James City/Williamsburg Community Center Renovation Project.

5. County/State Project Administration Agreement, American Reinvestment and Recovery Act

RESOLUTION

COUNTY/STATE PROJECT ADMINISTRATION AGREEMENT,

AMERICAN REINVESTMENT AND RECOVERY ACT,

PROJECT # 0060-047-598, P101, C501 (UPC # 94542)

WHEREAS, the Code of Virginia provides localities the opportunity to administer projects financed by the American Recovery and Reinvestment Act (ARRA) in accordance with the Guide for Local Administration of Virginia Department of Transportation; and

WHEREAS, the Board of Supervisors of James City County, Virginia, has expressed its desire to administer the work of the Route 60 ARRA project located in the Roberts District for shoulder and drainage improvements within the vicinity of 8702 Pocahontas Trail known as Project No. 0060-047-598, P101, C501 UPC # 94542 in the amount of \$518,394.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Project Administration Agreement for the Route 60 ARRA project.

6. Appropriation of \$518,394 for the American Reinvestment and Recovery Act Project

RESOLUTION

APPROPRIATION OF \$518,394 FOR THE AMERICAN REINVESTMENT AND RECOVERY ACT,

PROJECT # 0060-047-598, P101, C501 (UPC # 94542)

WHEREAS, on September 22, 2009, the County/State Project Administration Agreement for Federal Aid Projects was adopted to authorize the County Administrator to execute the Route 60 American Reinvestment and Recovery Act (ARRA) Project 0060-047-598, P101, C501 (UPC # 94542) project; and

WHEREAS, the appropriation of these funds will allow the award of contracts for the Route 60 ARRA project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the previously adopted Capital Budget for the Fiscal Year ending June 30, 2010, and appropriates the following sum in the amount and for the purpose indicated below:

Fiscal Year 2010 Special Projects/Grant Fund

Revenue:

Federal ARRA Funds – Route 60 Shoulder and Drainage Improvement: \$518,394

Expenditure:

Route 60 Shoulder and Drainage Improvements \$518,394

- 7. Award of Bid – Oakland Estates Drainage Improvements and Yarmouth Creek Stream Stabilization Project \$239,662.70

RESOLUTION

AWARD OF BID – OAKLAND ESTATES DRAINAGE IMPROVEMENTS AND

YARMOUTH CREEK STREAM STABILIZATION PROJECT - \$239,662.70

WHEREAS, competitive bids were advertised for the above-referenced project to be constructed in James City County; and

WHEREAS, bids were received with the low bidder being Riverworks, Inc. with a bid of \$239,662.70; and

WHEREAS, previously authorized Capital Improvements Program (CIP) budgeted funds are available to fund this contract bid award and construction.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator or his designee to execute the necessary contract documents for the Oakland Estates Drainage Improvements and Yarmouth Stream Stabilization Project in the total amount of \$239,662.70.

H. PUBLIC HEARINGS

- 1. SUP-0016-2009. James City County Police Headquarters

Mr. Jason Purse, Senior Planner, stated Mr. Shawn Gordon, on behalf of the James City County Police Department, has applied to construct the new Police headquarters at 4600 Opportunity Way, across the street from the new Thomas Nelson Community College (TNCC) campus. The headquarters will consist of a main building, approximately 47,100 square feet in size, an accessory building for additional storage, specialty vehicle storage, as well as an impound lot located near the rear of the property. The new Police headquarters will allow the Police department to oversee all of its functions from one central site in the County and allow for its anticipated expansion well into the future.

Staff found the proposal, with conditions, to be generally consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, and the Comprehensive Plan Land Use Map designation. The Police headquarters provides a valuable service to the County and its central location will make it more convenient for the community. Additionally, the proposed conditions will help mitigate the impacts of the headquarters and the proposed architectural design, which is similar to nearby buildings of TNCC and Warhill High School and will help the facility blend in with the community.

At its meeting on September 9, 2009, the Planning Commission recommended approval of the application by a vote of 7-0.

Staff recommended approval of the resolution.

Mr. McGlennon commented on a letter from the Friends of the Powhatan Creek Watershed relating to environmental protection measures, including impervious cover and stormwater runoff.

Mr. Purse stated the original plan provided 61 percent impervious cover due to parking requirements. He stated that through a study and working with a design engineer, the impervious cover was reduced to 44 percent. He noted the geothermal heating and well system and that there would be a Best Management Practice (BMP) facility in the rear of the site.

Ms. Jones asked for information on steps to capture rainwater and bio-retention on the site.

Mr. William Cain, Environmental Engineer, stated the majority of the Warhill site was in a master plan in 2006, where runoff points were noted. He stated that the rear side of the police building would accommodate water quantity control with a dry pond. He stated that to increase water quality, some curb, gutter, and median would be reduced to allow for infiltration. He stated that a majority of the water is taken care of in this way. He stated that one of the leading credits to the building was that there was no irrigation system, which would eliminate the use of a cistern.

Mr. Goodson stated that while this site is 44 percent impervious, this parcel was subdivided from a larger parcel that may not be developed. He stated that the same criteria may not be considered as it would be in a larger legacy parcel.

Mr. Cain stated this site could effectively be 100 percent impervious but the Warhill Site could be set at less than 50 percent impervious.

Mr. McGlennon stated that the majority of the runoff would be treated.

Mr. Cain stated that the front three acres would drain to the trunk line with Prime Outlets and TNCC.

Mr. McGlennon stated that it appeared that only 50 percent of stormwater runoff was being treated, but it was actually significantly more.

Mr. Icenhour asked about the number of parking spaces.

Mr. Purse stated there were 119 spaces for officers and 33 spaces for the public for a total of 152, reduced from over 180 spaces. Mr. Purse noted that this number did not include the impound lot.

Mr. Icenhour asked how the 44 percent impervious cover compares to what is on-site at Warhill and TNCC.

Mr. Cain stated that the TNCC site would have been reviewed by the State, rather than the County, so that information was not readily available.

Mr. Kennedy asked about the change requesting the Development Review Committee (DRC) to review the landscaping and architectural review.

Mr. Purse stated that the landscaping portion was redundant, but the architectural review would likely be incomplete at the time of the DRC meeting, which would necessitate a second meeting.

Mr. Kennedy opened the Public Hearing.

1. Mr. Shawn Gordon, Capital Projects Administrator, gave a brief overview of the minimum silver Leadership in Energy and Environmental Design (LEED) certification of the Police Building, to be constructed by David Nice Builders. He reviewed the geothermal heating and cooling system, Low-Impact Development, Bio-retention drainage system, drought-tolerant landscaping, construction waste management plan and locally produced materials. He stated all staff and contractors involved in the project would be trained for implementing LEED in the field, and that the work would be subject to a third-party independent review for design and energy efficiency.

As no one else wished to speak, Mr. Kennedy closed the Public Hearing.

Mr. McGlennon 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-0016-2009. JCC POLICE HEADQUARTERS

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. Shawn Gordon, on behalf of the James City County (JCC) Police Department, has applied for an SUP to allow for the construction of the JCC Police Headquarters; and

WHEREAS, the subject parcel may be identified as JCC Real Estate Tax Map Parcel No. 3210100016. The 7.77-acre parcel is zoned PL, Public Land, and is located at 4600 Opportunity Way; and

WHEREAS, the proposed development is shown on a Master Plan, entitled "Special Use Permit Master Plan JCC Police Headquarters" dated August 24, 2009; and

WHEREAS, the Planning Commission of James City County, following its public hearing on September 9, 2009, recommended approval of this application by a vote of 7-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0016-2009 with the following conditions:

1. This SUP shall be valid for the operation of the JCC Police Headquarters and accessory uses thereto as shown on the Master Plan titled "Special Use Permit Master Plan JCC Police Headquarters" dated August 24, 2009 (the "Master Plan"). The Police Headquarters shall be located at 4600 Opportunity Way, further identified as JCC Real Estate Tax Map No. 3210100016 ("Property"). Development of the site shall be generally in accordance with the Master Plan as determined by the Director of Planning. Minor changes may be permitted by the Development Review Committee (DRC), as long as they do not change the basic concept or character of the development.
2. All exterior site or building 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 any side. Fixtures, which are horizontally mounted on poles, shall not exceed 30 feet in height. No glare, defined as 0.1 footcandle or higher, shall extend outside the property lines.
3. The Police Headquarters shall be developed in a manner that maximizes the buffering effects of trees. Tree clearing shall be limited to the minimum necessary to accommodate the Police Headquarters and related facilities. A screening and landscaping plan shall be provided for approval by the Director of Planning and the Development Review Committee prior to final site plan approval.
4. The fencing used to enclose the area shall be vinyl-coated and shall be dark green or black in color, or shall be another fencing material of similar or superior aesthetic quality as approved by the Planning Director. Any fencing shall be reviewed and approved by the Director of Planning prior to final site plan approval.
5. The applicant shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (the "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.
6. Prior to final site plan approval, the Director of Planning and the Development Review Committee shall review and approve the final building materials and colors for consistency with renderings entitled "Proposed James City County Police Headquarters" and dated August 24, 2009.
7. If construction has not commenced on this project within 24 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.

8. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

5. Ordinance to Amend James City County Code, Chapter 15, Offenses – Miscellaneous, by Adding Section 15-41, No Wake Zone; to Authorize the County to Establish a Procedure for No Wake Zones, as Permitted under Section 29.1-744, Code of Virginia

Mr. Adam Kinsman, Deputy County Attorney, stated Virginia Code Section 29.1-744(E) permits any person who desires to place or remove no wake markers relating to the safe and efficient operation of vessels pursuant to any local ordinance to apply to the local governing body. The local governing body then takes action on the request and forwards it to the Virginia Department of Game and Inland Fisheries (VDGIF) for further action.

Mr. Kinsman stated that a local ordinance is required under the Virginia Code in order to have the VDGIF designate areas as “No Wake Zones.” The attached ordinance sets forth the process for considering No Wake Zones. Under this process, the cost to install and maintain the No Wake markers is the responsibility of the applicant. Because approval of VDGIF is required, enforcement would be a cooperative effort of State and local law enforcement officers. Violation of the ordinance is a Class 4 Misdemeanor, punishable by a fine up to \$250. Tickets would be issued by the State Conservation Police Officers and local Marine Patrol Officers using the Virginia Uniform Summons; therefore, payments would be directed to the court and then passed along to the County.

Mr. Kinsman commented that the U.S. Coast Guard and the James City County Police Department did not report any complaints. He stated that the VDGIF routinely patrols Powhatan Creek, which cited summons for lack of equipment and two warnings were given. He stated it was not a high-volume complain area. He noted the Hampton Roads Planning District Commission (HRPDC) study entitled “Erosion Control Options” and there were various studies that had opposite conclusions.

Staff recommended adoption of the ordinance.

Mr. Goodson asked about the options for addressing No Wake Zones.

Mr. Kinsman stated the ordinance in the packet was a procedural ordinance to allow someone to make out an application for the Board’s consideration. He stated that another section of the State Code would allow for the Board to consider a freestanding ordinance for a particular area which would then be sent to the VDGIF.

Mr. Goodson stated that if the freestanding ordinances were for individual properties or for larger areas.

Mr. Kinsman stated that the VDGIF would prefer contiguous properties for safety and simplicity. He stated that establishing a set application period would be reasonable, such as with the Agricultural and Forestal District (AFD) application process.

Mr. McGlennon stated that the first case was to provide for a procedure to apply for a No Wake Zone; in the second case a separate ordinance would be considered for each request.

Mr. Kinsman noted that freestanding ordinances would not be codified, but a policy of criteria would be established to evaluate them.

Mr. McGlennon stated that the VDGIF has the authority to establish No Wake Zones, and they would ultimately approve the No Wake Zones recommended by the Board of Supervisors.

Mr. Kinsman stated that was correct and that the VDGIF leaves the process to the locality.

Mr. Icenhour asked if citizens could apply directly to the VDGIF.

Mr. Kinsman stated that the VDGIF could not accept an application directly from a citizen.

Ms. Jones asked about safety rules near docks.

Mr. Kinsman stated that there were boating safety rules enforced by the Coast Guard or VDGIF, but this ordinance would apply to areas that would not regularly require no wake.

Ms. Jones stated that boaters were required to go through a safety class.

Mr. Kinsman stated that was correct.

Ms. Jones asked how the No Wake Zones would be enforced.

Mr. Kinsman stated the County's single VDGIF officer would enforce it. He stated that if a witness was able to positively identify a boater creating a wake, it could be enforced.

Mr. Kennedy asked how many citations were issued last year.

Mr. Kinsman stated one summons due to lack of a life jacket.

Mr. Kennedy asked if there were no wakes in canals, docks, and around other boats with similar safety rules.

Mr. Kinsman stated there were safety requirements that regulate wake, but this ordinance would apply to areas that were not already addressed.

Mr. Rogers stated that that they would already be regulated through State Code.

Mr. Kennedy asked how No Wake Zones affected buildings, docks, and other boats.

Mr. Rogers stated that boats and other vehicles required a controlled wake, but slowing down to no wake was required when within 50 feet of structures and buildings.

Mr. Kennedy asked Police Chief Emmett Harmon how this would affect the workload in the Police department.

Chief Harmon commented that it was unlikely with the Police Office's single boat; it would be unlikely that the Police department would be able to enforce no wake on Powhatan Creek very efficiently.

Mr. McGlennon asked how informed individuals were of the rules regarding No Wake Zones.

Chief Harmon stated that he understood that people were responsible for any damage as a result of their wake.

Mr. Kennedy opened the Public Hearing.

1. Mr. Steve Chantry, 118 Godspeed Lane, Powhatan Shores, stated his opposition to the No Wake Ordinance. He stated concern about the lack of requirement for a demonstrated need for no wake. He stated that he also opposed the lack of requirement for public notification. He stated that a No Wake Zone is a preventive measure for unknown buildings or docks ahead. He stated that safety dictated boaters to slow down in many cases.

2. Mr. Ron Campana, 101 Branscome Blvd., President of Powhatan Shores Homeowners Association, stated that the majority of the homeowners who have contacted him have stated their opposition to the ordinance.

3. Mr. Brian Jensen, 127 Branscome Blvd., on behalf of the Powhatan Shores Homeowners Association, commented on the efforts of the Powhatan Shores community to maintain its environment and safe and responsible boating. He stated that according to the VDGIF, there has been only one recreational boating issue on Powhatan Creek since 1999. He stated there was a standard of courtesy and safety among the community boaters. He stated the No Wake Zones would create a negative impact on property values and would create a potential safety hazard. He stated opposition to the proposed ordinance and requested denial to allow for a fair, open, and objective process.

4. Mr. Rick Young, 116 Discovery Lane, commented on the extent of a No Wake Zone request and the impact of non-contiguous No Wake Zones. He stated the VDGIF is on Powhatan Creek frequently and there have been very few incidents in the area. He commented on erosion and stated the wake helped reduce the necessity of dredging. He stated that the issue should come forward when it becomes a safety issue.

5. Mr. Frank Boyer, 110 Discovery Lane, stated his opposition to the ordinance. He stated that safety dictated being responsible for the boat's wake by structures, docks, and other boats. He stated that other rules cover most safety concerns and he felt the ordinance was unnecessary.

6. Ms. Carolyn Cox, 313 Neck-O-Land Road, commented that her late husband grew up on Powhatan Creek. She stated that her husband had spent years laying rip-rap on the property due to erosion. She said that boats have not observed the No Wake Zone within 50 feet of her dock. She requested approval.

7. Ms. Wendy Hinkle, 309 Neck-O-Land Road, attributed the lack of incidents reported to the lack of information to homeowners. She stated that most boaters know and obey laws, but inexperienced boaters do not observe the rules in her area. She stated that the areas are regulated with a 50-foot No Wake Zones, but no signs are posted to indicate that. She requested approval of the ordinance.

8. Mr. Craig Metcalfe, 4435 Landfall Drive, stated his support for No Wake Zones in the County to protect properties from boat ways. He stated that there was a death resulting from a speeding boat collision. He stated that it is illegal for citizens to post their own No Wake Zone signs. He requested for the opportunity to post a sign to request people to slow down.

9. Mr. Tim Cleary, 103 Lands End Drive, stated his support for No Wake Zones when necessary. He stated that with the many waterways in James City County, a process is needed to establish No Wake Zones. He requested denial of the ordinance and requested that the ordinance establish the requirement of a public hearing for the No Wake Zone, require demonstrable evidence of safety hazard, and should require review and consideration by County staff. He requested an open, fair, objective process to consider No Wake Zone applications.

10. Mr. Michael Watson, 4389 Landfall Drive, stated his opposition to the No Wake Zone ordinance. He stated that he did not feel the threat existed on Powhatan Creek. He stated in other localities, marsh grasses minimize the impact of wake, development creates more sediment than boating, and decreased motor boating has an impact on property values. He stated that without motor boating, the channel would fill and restrict access to fisherman and recreation boaters. He asked that the Board require clear documented evidence to require the No Wake Zones. He stated there were laws that require training and licensure and to ensure safety near docks, other boats, and buildings. He stated that this was an enforceable law. He stated there were also rules that apply to paddlers that must be observed.

11. Mr. Robert Beck, 6425 Conservancy Road, commented that there was a problem with erosion on College Creek. He requested approval of the ordinance.

12. Mr. Tom Williamson, 4385 Landfall Drive, stated his support for the ordinance. He stated that the laws were unlikely to be enforced. He stated that this would be a way to determine if enforcement is needed.

13. Ms. Susan Swinford, 4384 Landfall Drive, stated her support for the ordinance. She requested the Board approve the ordinance to protect the property and the boaters on the creek.

14. Mr. Dennis Shook, 218 Neck-O-Land Road, stated his opposition to the ordinance. He stated that individuals should be responsible for their own wakes.

15. Ms. Elsie Johnson, 210 Red Oak Landing Road, requested approval of the No Wake Zone ordinance due to the impact on marshlands. She stated her concern for erosion in the marshes as a result of the wakes.

16. Mr. Bingham Jones, 8 Hiawatha Court, commented on the ordinance before the Board would establish a procedure to invoke the right to request a No Wake Zone. He stated that the public would still need to have a set of requirements for the request. He stated that while he believed there was a legitimate need for No Wake Zones, the procedure with defined requirements was a necessity.

17. Mr. Joe Swanenburg, 1026 The Pointe, Chickahominy Haven, stated he believed the ordinance had loopholes. He stated he felt there should be a committee that would determine if the No Wake Zone was needed, with the assistance of the zoning and environmental divisions.

18. Mr. Jim Lenceski, 103 Godspeed Lane, commented that he believed the ordinance had many loopholes. He stated that as a jet skier, he observed the rules of the waterways, but No Wake Zone signs would not deter some boaters from being discourteous. He stated that erosion would occur over time regardless of boat traffic.

19. Mr. Larry Waltrip, 100 Lands End Drive, stated that this ordinance was a vehicle to make an application. He stated that the purpose was not to create a No Wake Zone on the entire creek. He stated that he had observed boaters who did not demonstrate courtesy near his property. He stated he was in support of

freestanding resolutions rather than the ordinance as written. He stated he would appreciate if all boaters in the area would demonstrate common courtesy and observe the no wake laws. He reiterated he would not support the current ordinance, but would support freestanding ordinances where individual property owners could apply for the No Wake Zone.

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

Ms. Jones asked if there was anything that prohibits property owners from posting a No Wake Zone sign on a dock or boathouse.

Mr. Kinsman stated that the VDGIF regulates the signage and buoys for No Wake Zones.

Ms. Jones asked if the property owner could go through the VDGIF.

Mr. Kinsman stated that the property owner would still need to work through the local government.

Mr. Icenhour asked how there were signs on the creek now.

Mr. Kinsman stated that some predate the heightened regulation of the VDGIF since 2001.

Mr. McGlennon stated that he understood there may be some places in the County to designate a No Wake Zone and expect it to be respected. He stated that he believed there was some consensus on the uncertainty about where the ordinance would go. He stated there were many who may believe that the existence of a No Wake Zone ordinance would end discourteous behavior by boaters. He agreed that what was needed was attaching the ordinance to guidelines that demonstrate the standards, procedures, and expectations of the application process. He stated the ordinance references the State Code which provides for the public hearing and the cost involved. He said that the appropriate mechanism needed to be determined to allow for application and consideration of No Wake Zones. He stated it would be reasonable to have evidence to determine there was a problem. He said he would request the Board to defer the ordinance and bring it back with refined guidelines. He stated that there were a number of people who have identified appropriate places for No Wake Zones. He noted that the Watershed study of Yarmouth Creek calls for No Wake Zones. He stated that even if the ordinance is not adopted, a citizen may request a freestanding ordinance, and a set of guidelines is necessary in either case.

Mr. Goodson stated that he did not support this approach for No Wake Zones. He stated he understood there were concerns at College Creek and stated he would ask staff to investigate a No Wake Zone for this area. He stated in this case, it could result in a piecemeal series of No Wake Zones. He requested a Board policy to move forward on a No Wake Zone area with established guidelines.

Mr. McGlennon stated that was essentially what he was recommending.

Mr. Goodson stated that he did not see a need to defer the ordinance to determine a policy.

Mr. Icenhour stated that would be piece-mealing the process. He stated that if there was no ordinance and policy, the freestanding ordinances would be individual properties. He commented that the process should clarify that the whole process would require a public hearing, that fees would be paid by the applicant, and on establishing a documented need. He asked to establish the magnitude of the problem, including safety, environmental impacts. He stated his support for a deferral and asked that staff work with the citizens to create a clear policy.

Mr. Goodson stated the problem with the ordinance would only allow for a property owner to apply in front of his/her own property.

Mr. Kinsman stated that any citizen may apply for a No Wake Zone within the territory of the County.

Mr. Goodson stated that citizens would have to come forward to defend their rights.

Mr. McGlennon stated there would be established guidelines to regulate the process. He stated that the freestanding ordinances would not prohibit random applications throughout the year.

Mr. Goodson asked if a committee would evaluate the applications.

Mr. Wanner stated a community committee could be established to work with staff to determine guidelines.

Mr. McGlennon stated that he did not want to prejudge whether the final vehicle would be the ordinance or freestanding ordinances.

Mr. Wanner stated that it was possible to deny the proposed ordinance and direct staff to create the policy and guidelines.

Mr. Goodson stated that was his preference.

Mr. Kennedy stated he agreed with denying the proposed ordinance.

Ms. Jones stated that the issue was mainly a concern of discourtesy by the boaters. She stated the homeowners needed to know whom to contact when there was a problem. She stated that the areas that are giving issues to homeowners are currently no wake areas, but the regulations are not being enforced.

Mr. McGlennon stated he believed Mr. Goodson wanted a no wake area in the County.

Mr. Goodson stated he disagreed with this vehicle.

Ms. Jones stated that the enforcement of the current policy was needed.

Mr. Kennedy stated that clarification on how to file a complaint would be posted on the County website. He stated that he did not believe he could support this, since it would be difficult to enforce. He stated his opposition to this ordinance.

Mr. Icenhour asked if someone was able to take video evidence of a violation, and what enforcement was possible for the citizen filing the complaint.

Chief Harmon stated video evidence would help identify who broke the law. He stated that many violations occur at a distance, which would make identification difficult.

Mr. Icenhour stated that it would be hard to enforce this. He stated his concern that there are legitimate infractions that are not being addressed.

Ms. Jones asked to increase awareness of trouble in specific areas.

Mr. McGlennon stated that there was not a No Wake Zone in the area.

Ms. Jones stated there were docks and boathouses.

Mr. Rogers stated that it was not a No Wake Zone area, but it would be a violation.

Mr. Goodson asked what the difference was between a No Wake Zone and the other laws.

Mr. Rogers stated there were independent State laws regarding no wakes around structures or docks within 50 feet; he stated that No Wake Zones were codified under a different section.

Mr. Goodson stated that the zones that are already protected are not being enforced.

Mr. Icenhour stated that at his lake property, his entire cove is a No Wake Zone, and in other areas that allow a wake, there is a major difference.

Mr. Goodson commented that this was an estuary used for travel.

Mr. Icenhour stated that to establish this on a main waterway would be problematic and would require a compelling reason. He stated that the ordinance would only create a vehicle to evaluate it. He stated the ordinance would not ensure that the result was a No Wake Zone. He stated that the application would have to stand on its own merits. He stated he supported a deferral, but he wanted to come back with a policy to handle the issue.

Mr. McGlennon asked that staff develop a set of guidelines for the consideration of No Wake Zones.

Mr. Rogers stated that if there is no action on the ordinance, the ordinance is not approved. He stated staff could come back with guidance.

Mr. Goodson stated he agreed with that.

No action was taken on the ordinance. The Board requested staff establish guidelines.

Mr. Rogers stated that if an ordinance was required, it would need to be readvertised to be approved with the guidelines.

Mr. Kennedy recessed the Board for a short break at 9:23 p.m.

Mr. Kennedy reconvened the Board at 9:35 p.m.

2. Abandonment of a Portion of the Right-of-Way for Route 658 (Olde Towne Road), Section 1

Mr. Leo Rogers, County Attorney, stated this was an abandonment of a portion of right-of-way on Olde Towne Road. He stated that once it is abandoned, it is still State property, but is no longer designated as right-of-way. He stated that it contributes to the realignment of Olde Towne Road.

Mr. Icenhour asked about the delay.

Mr. Rogers stated the State requested the abandonment.

Mr. Kennedy opened the Public Hearing.

As no one 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

ABANDONMENT OF PORTIONS OF THE RIGHT-OF-WAY FOR ROUTE 658

(OLDE TOWNE ROAD), SECTION 1

WHEREAS, the Virginia Department of Transportation (VDOT) has provided the James City County Board of Supervisors a sketch dated October 16, 2003, entitled "Changes in the Primary and Secondary Systems Due to Relocation and Construction on Route 199, Project 0199-047-F03, C-501" (VDOT sketch) which resulted in the reconstruction and relocation of a portion of State Route 658, Olde Towne Road, which sketch is hereby incorporated herein by reference; and

WHEREAS, the new road serves the same citizens as those portions of the old road identified to be abandoned and those segments no longer serve a public need.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby abandons from the Secondary System of State Highways those portions of Route 658 identified as Section 1, on the VDOT sketch, pursuant to Sections 33.1-155 and 33.1-151 of the Code of Virginia.

BE IT FURTHER RESOLVED that this Board orders that a certified copy of this resolution be forwarded to the Resident Administrator for VDOT.

3. Ordinance to Amend James City County Code, Chapter 15, Offenses – Miscellaneous, by Adding Section 15-39, Graffiti; to Authorize the County to Remove or Repair the Defacement of Buildings, Walls, Fences and other Structures, as Permitted under Section 15.2-908, Code of Virginia

Mr. Adam Kinsman, Deputy County Attorney, responded to recent incidents of graffiti. He stated that ordinarily when graffiti was observed, the property owner is contacted and the County requests him/her to address it. He stated that there are instances when the property may be vacant or the property owner may be outside the County. He stated that there were two instances covered in the ordinance, which included public property and private property within sight of the public right-of-way. In the instance of a private building, the property owner has 15 days to comply before the graffiti is removed by the County, with the costs being recovered from the property owner. He stated if the perpetrator was caught, the costs could be recovered from him/her. He stated this was a last-resort option as the property owners would still be contacted. He recommended adoption of the ordinance.

Mr. Goodson stated his appreciation for work on this ordinance.

Mr. McGlennon asked if the County could remove graffiti within 15 days in certain circumstances.

Mr. Kinsman stated the 15-day notice would allow for reimbursement of costs and that the graffiti could be removed earlier, but the County would not be reimbursed.

Mr. Kennedy commented on graffiti at Pocahontas Hotel. He asked if a graffiti fund was able to be established by individuals who were caught.

Mr. Kinsman stated that was a consideration.

Mr. Kennedy stated that this could be a devastating cost to property owners through no fault of their own.

Mr. Wanner stated that a separate line item could be setup through the Treasurer.

Mr. Kennedy opened the Public Hearing.

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

Mr. Goodson made a motion to adopt the ordinance.

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

4. Ordinance to Amend James City County Code, Chapter 15, Offenses – Miscellaneous, by Adding Section 15-40, Drug Blight; to Authorize the County to Require Removal, Repair, Etc., of Buildings and other Structures Harboring Illegal Drug Use, as Permitted under Section 15.2-907, Code of Virginia

Mr. Adam Kinsman, Deputy County Attorney, stated the drug blight ordinance was a companion to the graffiti ordinance. He stated that this was an uncommon circumstance in the County, but the Police department was vigilant toward drug and gang activity in the County. He stated that the basic operation of the ordinance is that the Chief of Police would need to determine that drug blight exists on a property. He stated that once the Police Chief determines that, the problem would need to be addressed through increased patrols or other means. He stated that if that does not help, an affidavit would be issued to the building code official. The building official would then notify the property owner of the problem and require a 30-day time frame to fix the problem. He stated if at that time, it was not fixed, the building official would then issue another letter requiring a 15-day time frame to fix the problem, and if there was still no compliance, the County would then move forward to make the improvements.

Mr. Kennedy opened the Public Hearing.

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

Mr. McGlennon made a motion to adopt the ordinance.

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

I. BOARD CONSIDERATIONS

1. Adoption of Planning Commission Job Description

Mr. Sanford Wanner, County Administrator, stated that staff has prepared a job description for the Planning Commission and its members. He stated that this issue came forward in previous years. He said that the job description outlines general expectations and duties of commissioners. He stated in the last few years, he has become aware of possible interference of the legislative process as well as interference with the role of the County Administrator. He stated the resolution allows for the adoption of the Planning Commission job description. He stated that Planning Commission Chairman Rich Krapf has submitted a letter requesting deferral for additional review and input. He stated that if the Board wished to defer the item, it should come forward on October 27, 2009, to allow for staff to converse with the Planning Commission Chair.

Ms. Jones requested a more general description and reference to the Code. She stated her appreciation for the input of the Planning Commission.

The item was deferred to October 27, 2009.

J. PUBLIC COMMENT

1. Mr. Mike McMahan, 6233 Weathersfield Way, President of the Homeowners Association of the Villages of Westminster, commented on additional damage to the Powner Court roadway; he stated his concern that it should be fixed properly. He commented on sporadic mowing on Route 60 near his neighborhood and line painting in the intersection. He requested more consistent enforcement of the noise ordinance.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated the item scheduled for closed session could be done in open session. He stated certain Board, Economic Development Authority, and Planning Commission members will visit the City of Charlottesville and County of Albemarle on September 28, to discuss how growth and density are handled. The Board was provided a memo regarding leaf collection elimination. He stated the cost of one leaf collection this year was \$28,400, which could be appropriated from contingency to pay for it. He noted that the County would provide free drop-off of leaves this fall as a result of the elimination of the curbside pickup. He requested guidance from the Board on this matter. He stated the free drop-off would benefit the citizens for a longer time. He requested a vote from the Board authorizing him to be the voting representative at the VML Annual Conference. He stated when the Board completed its business, it should adjourn to 7 p.m. on October 13, 2009.

L. BOARD REQUESTS AND DIRECTIVES

Mr. Goodson made a motion to designate Mr. Wanner as the Virginia Municipal League Voting Designee for the VML Annual Conference.

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

Mr. McGlennon made a motion for Mr. Fred Boelt to be reappointed on the Historical Commission.

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

Mr. Goodson commented on the homeowners association of the Villages of Westminster taking over mowing near the neighborhood.

Mr. Icenhour stated that he spoke with Mr. Halacy, who would meet with Mr. McMahan to create an agreement with the homeowners association.

Mr. Icenhour asked the status of the road repairs at the Villages of Westminster.

Mr. Steven Hicks, Manager of Development Management, stated the purchase order has been approved and he was waiting for some signatures and a meeting with the citizens.

Mr. Icenhour asked to ensure that the homeowners association was involved in the discussion to make sure the road is repaired adequately. He stated he would speak with Mr. Halacy about the line-painting issue.

Mr. Icenhour stated the current noise ordinance is a criminal offense, and that the County had an ability to change the noise ordinance to a civil charge.

Mr. Rogers stated that this was being addressed by a Supreme Court issue in Virginia Beach, but the County's noise ordinance is still being enforced. He stated that a group of attorneys are in a working group to create a legislative program item and different ways of adopting noise ordinances. He stated that this would likely be considered on the Board's legislative agenda.

Mr. Icenhour stated that he would like to assist the citizens in any way possible under the current ordinance.

Mr. Rogers stated he was currently working on this.

Mr. McGlennon stated he would like to make a motion to restore the one-time leaf collection this year as he felt it may be difficult for many people to transport all their leaves. He stated this would help minimize the number of leaves in storm drains.

Mr. Goodson asked about the cost of the collection.

Mr. Wanner stated the \$28,400 would come from contingency.

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

Mr. McGlennon asked to consider Stormwater Management as a work session.

Mr. Doug Powell, Assistant County Administrator, stated Stormwater Management was currently on the Board's work session schedule. He stated it was originally scheduled for October, which would correspond with the Executive Search Services interviews, but it could be moved to November.

Ms. Jones commented on stimulus money received by other localities for stormwater management.

Mr. Wanner stated that the County had applied for stimulus funds for stormwater management but had been denied.

M. ADJOURNMENT to 7 p.m. on October 13, 2009.

Mr. Goodson made a motion to adjourn.

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

At 10:05 p.m., Mr. Kennedy adjourned the Board to 7 p.m. on October 13, 2009.

Sanford B. Wanner
Clerk to the Board

092209bos_min