

AT A MEETING OF THE MIDDLESEX COUNTY BOARD OF SUPERVISORS
HELD ON TUESDAY, DECEMBER 21, 2004 IN THE BOARD ROOM OF THE
WOODWARD BUILDING, SALUDA, VIRGINIA:

Present: Lenora O. Weber, Saluda District
Wayne Jessie, Sr., Jamaica District
Fred S. Crittenden, Pinetop District
John D. Miller, Jr., Saluda District
Kenneth W. Williams, Pinetop District

Charles M. Culley, Jr., County Administrator
Michael T. Soberick, County Attorney

CALL TO ORDER

Mrs. Weber called the meeting to order at 7:30 P.M. and opened with a prayer. Mr. Culley led the group in the Pledge of Allegiance. Mrs. Weber announced that she would not be accepting for the position of chairperson next year and thanked the Board and staff for their support in her two years serving as chairperson.

RECOGNITION OF MIDDLESEX VOLUNTEER FIRE DEPARTMENT

Mrs. Weber read the following resolution recognizing the Middlesex Volunteer Fire Department and Chief Bill Thrift for their assistance.

*Middlesex County, Virginia
Board of Supervisors*

Whereas, Middlesex County is blessed with many dedicated volunteers that are part of the county's emergency services force; and

Whereas, the Middlesex Volunteer Fire Department and its volunteers serve the area that includes the Middlesex County Courthouse Complex; and

Whereas, the Middlesex Volunteer Fire Department has responded to numerous emergencies at the Courthouse Complex that were potentially life and property threatening; and

Whereas, there have been instances that the Fire Department and specifically Chief William J. Thrift, Jr. have been called upon to provide other assistance such as emergency power, emergency lighting and water;

Now Be It Resolved by the Board of Supervisors of Middlesex County, that it be made fully known to all those who shall follow,

To wit:

That the Board of Supervisors hereby publicly recognizes the volunteers of the Middlesex Volunteer Fire Department and specifically Chief William J. Thrift, Jr. for providing services to the citizens of Middlesex County above and beyond the scope of their normal duties and for always working in a professional and responsible manner.

Adopted this 21st day of December, in the two thousand and fourth year of our Lord.

PUBLIC HEARING – SPECIAL EXCEPTION 2004-13, ROBERT LENZ, APPLICANT

Planning Director, Matt Higgins presented Special Exception application #2004-13, requesting approval to locate more than one principal residential structure on an individual parcel of land for an immediate family member. This property is zoned Low Density Rural and is located at 56 West Hickory Neck Road, Tax Map 18-149, a 6.812 acre parcel. The Planning Commission recommended conditional approval of the application.

Mrs. Weber opened the hearing for comments from the public. There being no comments, the public portion of the hearing was closed. The motion to approve the application with the following conditions was made by Mr. Jessie, seconded by Mr. Miller and carried unanimously:

1. The Health Department shall approve a permit for a new septic system or connection to an existing septic system prior to obtaining a Zoning and Building Permit.
2. The property owner shall remove one of the manufactured homes from the property within ninety- (90) days of the discontinuance of use.

PUBLIC HEARING – GOLF CARTS AND UTILITY VEHICLES

Mr. Williams commented that he had brought forth the request from several citizens that live along Route 712 to allow golf carts and utility vehicles on the road. Mr. Williams stated that this area of road had a low volume of traffic and a high need for use of the vehicles by handicapped people. Mrs. Weber opened the hearing for comments from the public. There being no comment, the public portion of the hearing was closed. The motion to adopt the following ordinance was made by Mr. Williams, seconded by Mr. Crittenden and carried unanimously:

AN ORDINANCE OF THE COUNTY OF MIDDLESEX, VIRGINIA AUTHORIZING THE USE OF GOLF CARTS AND UTILITY VEHICLES ON A PORTION OF VIRGINIA ROUTE 712 (ROBINS POINT AVENUE) IN MIDDLESEX COUNTY, VIRGINIA

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF MIDDLESEX COUNTY, VIRGINIA, THAT THE FOLLOWING ORDINANCE IS HEREBY ADOPTED:

PREAMBLE

This ordinance is adopted by the Board of Supervisors of Middlesex County, Virginia, after considering the speed, volume, and character of motor vehicle traffic using Virginia Route 712 (Robins Point Avenue), and determining that golf cart and utility vehicle operation on Virginia Route 712 (Robins Point Avenue) is compatible with state and local transportation plans and consistent with the Commonwealth's Statewide Pedestrian Policy provided for in §33.1-23.03:001.

Section 1. Definition

Golf Cart means a self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course.

Utility Vehicle means a motor vehicle that is (i) designed for off-road use, (ii) powered by an engine of no more than 25 horsepower, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. "Utility vehicle" does not include all-terrain vehicles as defined in § 46.2-915.1 of

the Code of Virginia, riding lawn mowers, or any other vehicle whose definition is included in § 46.2-100 of the Code of Virginia.

Section 2. Authorization

Golf carts and utility vehicles are hereby permitted to be operated on the eastern most half mile of Virginia Route 712 (Robins Point Avenue) in Middlesex County, Virginia, subject to the following restrictions:

- (a) No golf carts or utility vehicles may cross any highway at an intersection where the highway being crossed has a posted speed limit of more than 25 miles per hour.
- (b) No person shall operate any golf cart or utility vehicle on any public highway unless he has in his possession a valid driver's license.
- (c) Every golf cart or utility vehicle, whenever operated on a public highway, shall display a slow-moving vehicle emblem in conformity with § 46.2-1081 of the Code of Virginia.
- (d) Golf carts and utility vehicles shall only be operated between sunrise and sunset, unless equipped with such lights as are required in § 46.2-1010 et seq. of the Code of Virginia, for different classes of vehicles.
- (e) The operation of golf carts and utility vehicles shall be in such a manner so as not to impede the safety and efficient flow of motor vehicle traffic.

Adopted by the Board of Supervisors of Middlesex County, Virginia, on the 21st day of December 2004, as follows:

	YES	NO
LENORA O. WEBER	<u> X </u>	<u> </u>
WAYNE H. JESSIE, SR.	<u> X </u>	<u> </u>
FRED S. CRITTENDEN	<u> X </u>	<u> </u>
JOHN D. MILLER, JR.	<u> X </u>	<u> </u>
KENNETH W. WILLIAMS	<u> X </u>	<u> </u>

PUBLIC HEARING – NOISE CONTROL

Mrs. Weber opened the hearing for comments regarding a proposed ordinance pertaining to noise control and imposing penalties for excessive noise. This ordinance was drafted at the request of the Sheriff's Department. The following offered comments:

Judy Aldredge – exceptions need to be made for businesses that make noise, such as marinas or her metal recycling business.

Pat Ramey – commented that neighbors target shoot in the yard, 200 yards away.

Dan Downs – asked if generators should be included as an exception.

There being no further comments, the public portion of the hearing was closed. Mr. Soberick responded that generators during an emergency situation would already be covered as an exception. He added that the ordinance could be expanded to include an exception for any lawful business activity conducted in the normal course of business. Sheriff Abbott requested an adjustment to the times, making the ordinance effective from 11:00 PM – 8:00 AM, Sunday through Thursday and from Midnight to 8:00 AM, Friday and Saturday. The motion to adopt the ordinance with the changes

suggested was made by Mr. Williams, seconded by Mr. Jessie and carried unanimously:

AN ORDINANCE OF THE COUNTY OF MIDDLESEX PERTAINING TO NOISE CONTROL AND IMPOSING PENALTIES FOR EXCESSIVE NOISE

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF MIDDLESEX COUNTY, VIRGINIA, THAT THE FOLLOWING ORDINANCES NEWLY ADOPTED:

NOISE CONTROL

Section 1. Declaration of policy.

At certain levels, noise can be detrimental to the health, welfare, safety and quality of life of inhabitants of the county, and in the public interest noise should be controlled. It is, therefore, the policy of the county to reduce noise in the county and to prohibit unnecessary, excessive and annoying noises from all sources subject to its police power.

Section 2. Definitions.

For the purposes of this article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

Dwelling complex means an apartment complex, residential condominium or any other collection of dwelling units, which are located on a single tract, or parcel of real property.

Dwelling unit means one or more rooms arranged, designed or intended to be occupied as separate living quarters by one or more persons and including permanent provisions for living, sleeping, eating, cooking and sanitation.

Large party public nuisance means a gathering of ten or more people where the gathering is not contained within a structure, but spills outdoors into balconies, yards, common areas, parking lots, or other outdoor spaces, which creates a noise disturbance.

Motor vehicle means every vehicle defined as a motor vehicle by § 46.2-100 of the Code of Virginia (1950), as amended.

Noise disturbance means any sound which by its character, intensity and duration:

- (1) Endangers or injures the health or safety of persons within the county, or
- (2) Annoys or disturbs reasonable persons of normal sensitivities within the county.

Public property means any real property owned or controlled by the county or any governmental entity.

Real right-of-way means any street, avenue, boulevard, highway, sidewalk or alley.

Real property boundary means the property line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

Residential has reference to single-family, two-family, and multifamily zoning district classifications, pursuant to the Middlesex County Zoning Ordinance.

Sound means an oscillation in pressure, particle displacement, particle velocity, or other physical parameter, in a medium with internal forces that cause compression and rarefaction of characteristic of sound, including duration, intensity and frequency.

Section 3. Noise disturbances – Prohibited generally.

It shall be a public nuisance for any person to willfully make, permit to be made, continue or cause to be made, permitted or continued any noise disturbance and upon being found guilty thereof, such person shall be subject to a fine of not less than \$100.00 and not more than \$500.00 for each violation.

Section 4. Same – Specific prohibitions.

Subject, to the exceptions provided in Section 5, any of the following acts, or the causing or permitting thereof, among others, is declared to be a noise disturbance constituting a public nuisance in violation of this ordinance, but such enumeration shall not be deemed to be exclusive:

- (1) *Radios, television sets, musical instruments and similar devices.*

Operating, playing or permitting the operation or playing of any radio, amplifier, television, record, tape or compact disc player, drum, musical instrument or similar device:

- a. On Sunday through Thursday, between the hours of 11:00 p.m. and 8:00 a.m. and on Friday and Saturday, between the hours of midnight and 8:00 a.m. in such manner as to be heard across a residential real property boundary or when the sound source is located within or on the grounds of a dwelling complex in such manner as to permit sound to be heard within any dwelling unit of the dwelling complex other than a dwelling unit from which sound emanates; or
 - b. When the sound source is located within or upon a motor vehicle on or upon public right-of-way or public property or on the grounds of a dwelling complex and the sound can be heard more than 50 feet from its source.
- (2) *Loudspeakers, public address systems and sound trucks.*
- a. Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom on a public right-of-way or public property for any commercial purposes; or
- (3) *Horns, whistles, etc.* Sounding or permitting the sounding of any horn, whistle or auditory sounding device on or in any motor vehicle on any public right-of-way or public property, except as a warning of danger.
- (4) *Yelling, shouting, etc.* Yelling, shouting, whistling or singing between the hours of 11:00 p.m. and 8:00 a.m. on Sunday through Thursday, and between the hours of midnight to 8:00 a.m. on Friday and Saturday, so as to create a noise disturbance across a residential real property boundary or on a public right-of-way or public property or so as to create a noise disturbance to any occupant of a dwelling unit in a dwelling complex other than a dwelling unit from which such noise emanates.
- (5) *Schools, public buildings, churches and hospitals.* The creation of any noise disturbance within any school, court, public building, church or hospital or on the grounds thereof.
- (6) Any large party public nuisance as defined hereinabove, occurring at any hour of the day or night.

Section 5. Same – Exceptions.

Sections 3 and 4 of this ordinance shall have no application to any sound generated by any of the following:

- (1) Sound which is reasonably necessary for the protection or preservation of property or the health, safety, life or limb of any person.
- (2) Non-commercial public speaking and public assembly activities conducted on any public right-of-way or public property for which a permit has been issued by the county, within such hours, at such locations and with such other limitations as may be imposed for the issuance of the permit.
- (3) Radios, sirens, horns and bells on police, fire or other emergency response vehicles when operated pursuant to the intended purposes of such vehicles.
- (4) Parades, fireworks, school-related activities and other special events or activities for which a permit has been issued by the county, within such hours, at such locations and subject to such other limitations as may be imposed as conditions for the issuance of the permit.
- (5) Activities on or in municipal and school athletic facilities and on publicly owned property and facilities which have been specifically authorized in advance by the owner or agent in charge of such property or facility; provided that such activities do not take place between the hours of 11:00 p.m. and 8:00 a.m., on Sunday through Thursday, or between the hours of midnight and 8:00 a.m., on Friday and Saturday.
- (6) Fire alarms and burglar alarms complying with Chapter 3.1 of this Code.
- (7) The operation of mobile lawn and garden equipment powered by an internal combustion engine such as lawn mowers, pressure washers, weed eaters, leaf blowers and chain saws; provided the operation of such equipment is limited to the hours of 6:00 a.m. to 9:00 p.m., and such equipment is operated with the original manufacturer's equipped or equivalent muffler(s) or other sound dissipating devices.
- (8) The construction, repair, maintenance, demolition or alteration of structures; streets and other vehicular ways; sewer, water, electric, gas, cable and other utility lines; or the

clearing or excavation of property and related activities between the hours of 6:00 a.m. and 9:00 p.m.; except that emergency operations necessary for the health, safety and welfare of the county and its residents may be conducted at any time.

- (9) The operation of equipment and machinery in any lawful business in the normal course of such business, or in planting, tending or harvesting activities in a zoning district where agriculture business operations are allowed, whether such agriculture operations are allowed of right or legally non-conforming.
- (10) Activities permitted by law for which a specific license or permit for a demonstrated public purpose has been granted by the county, state or federal government; including, but no limited to, noise generated by and necessary for the conduct of public festivals, operations or airplanes and airports, operations of trains, railway stations and railway yards, operations of ships and shipyards, and celebrations of recognized federal, state and local holidays.
- (11) Lawful and permitted sports activities including racetracks and speedways.

Adopted by the Board of Supervisors of Middlesex County, Virginia on this 21st day of December, 2004.

	YES	NO
LENORA O. WEBER	<u> X </u>	<u> </u>
WAYNE H. JESSIE, SR.	<u> X </u>	<u> </u>
FRED S. CRITTENDEN	<u> X </u>	<u> </u>
JOHN D. MILLER, JR.	<u> X </u>	<u> </u>
KENNETH W. WILLIAMS	<u> X </u>	<u> </u>

THIS ORDINANCE SHALL BE EFFECTIVE UPON ADOPTION

PUBLIC HEARING – BUSINESS PROFESSIONAL AND OCCUPATIONAL LICENSE TAX ORDINANCE

Mrs. Carolyn Schmalenberger and Mr. Roger Anglin, on behalf of the Tax Revenue Committee, addressed the Board in support of adopting both a flat rate business license and a business license based on gross receipts. The Committee has estimated that with approximately 1,156 eligible businesses (1266 total less 110 located in Urbanna), a \$30.00 license fee would generate \$34,680.00; a tax based on an average rate of \$0.20 per \$100 of gross receipts would generate approximately \$196,700.00. The Committee has recommended that various caps be set for the estimated 49.6% of businesses that have gross receipts above \$15,000.00, with the highest tax to be paid, at \$1,000 for the 20 businesses that have gross receipts in excess of \$4 million. The Committee presented two options with pluses and minuses for each:

Option 1: implement BPOL and Gross Sales Tax as soon as possible and eliminate Merchants Capital, Tool and Equipment and Machinery taxes. This option would broaden the county tax revenue base and fairly spread the tax burden to all county businesses. However, decisions would be made upon less than complete data and it accepts some risk.

Option 2: Implement BPOL and Gross Sales Tax in two phases:

First year – implement BPOL only and retain Tool and Equipment and Machinery taxes. This would allow an adjustment period to confirm business population and gross sales categories within Middlesex County. It also enables the Board of Supervisors to make informed decisions when establishing tax categories and tax rates (income only or by type of business)

Second or third year – fully implement BPOL and Gross Sales Tax and cancel Tool and Equipment and Machinery Taxes. County tax revenue base is broadened; tax burden is fairly spread to all county businesses; decisions will be made with complete data; minimizes risk.

The Committee recommended implementation of Option 1.

The ordinance that was prepared by the County Attorney addresses only a gross receipts tax, with a \$30.00 fee to be collected if gross receipts are between \$4,000 and \$50,000. If gross receipts are above \$50,000, the fee would be calculated and would depend on the type of business. The fee collected would be \$30 or the calculated tax, whichever is greater. Rates for businesses with gross receipts above the \$50,000 are based on the maximum allowed by State Code.

Mrs. Weber opened the hearing for comments from the public.

John England – BPOL is a much fairer way to tax. The merchant's capital tax has been very discriminatory. Mr. England also favored getting rid of the Machinery and Tools tax, but could understand the Committee's recommendation for phasing. Mr. England stated that he pays a fee as a building contractor to Gloucester County to do business there and questioned whether or not he would have to continue to pay the fee. Mr. England also asked if the Board was considering other taxes, such as readdressing the meals tax issue. The response to this question was "yes".

Melvin Beverley – does not object to paying taxes as long as everyone pays their share. Additional resources will be necessary to make sure that everyone that is supposed to be taxed is taxed. According to Mr. Beverley, he knows of approximately 25 contractors living in the county that do not have their state license and other licensed contractors have to pay extra to the state because of them.

John (Buddy) Moore – adoption of a flat rate business license will help identify people. Once implemented, information can be provided by the State to assist with the collection of the gross receipts tax. He also agreed that Merchant's Capital is not a fair tax.

Daniel Downs – favored adding more to the budget to enforce this proposed ordinance and other ordinances that are already on the books.

Judy Aldridge – concerned with businesses that operate in residential areas. More little businesses are needed in the County, but the County also has to be careful not to run them underground by over taxing them.

Bob Henkel – the proposed ordinance was not a part of the Committee’s responsibility. Mr. Henkel thanked the Committee for their hard work.

Mary Lou Stephenson – questioned Option 2 proposed, which she said would cause the County to lose revenue. There was also a question of what taxes could be maintained along with the BPOL tax.

Jimmy Pitts – the County has to start somewhere; this is a more equitable way to go.

There being no further comments, the public portion of the hearing was closed. Mr. Soberick commented on the complexity of the ordinance and cautioned the Board that there was much for the Commissioner to learn in order for it to be implemented. Mrs. Weber agreed with Mr. Pitts that the County would have to start somewhere. Mr. Williams commented that the merchant’s capital and machinery and tools taxes were antique and that new ways to pay for everything must be devised. Mr. Crittenden expressed opposition to implementing a cap and stressed the need to make sure that the ordinance would work. He also added that the meals tax is the most urgent tax that needs to be enacted. Mr. Jessie stated that another employee needed to be factored in to help with this. Mr. Soberick noted that the ordinance as proposed does not separate the two taxes by creating two separate fees.

Mr. Anglin suggested that for the first year, the Board could implement the \$30 fee and drop the merchant’s capital tax. This would maintain a safety net of some revenue coming in. He added that the Committee had proposed a cap on the gross receipts tax.

Mr. Culley noted that the County would make money if everyone pays their portion but that setting a cap would also make this an unfair tax. After much discussion, the Board proposed implementation of a flat rate \$30.00 tax on all businesses with gross receipts above \$4,000.00 effective January 1, 2005. Effective January 1, 2006, the tax would be based on gross receipts with varying rates attached and the businesses will pay either \$30.00 or the calculated tax, whichever is greater. This motion was made by Mr. Jessie, seconded by Mr. Williams and approved unanimously by roll call vote.

REQUEST TO WAIVE FEE

The motion to waive a building permit fee of \$61.63 for improvements being made by Hands Across Middlesex was made by Mr. Miller, seconded by Mr. Williams and carried unanimously.

ANIMAL SHELTER

The following bids were received for construction of a new animal shelter at a site behind the old Rappahannock Central Elementary:

BIDDER	BID
J. Sanders Construction, West Point	\$ 325,000.00
Brooks & Company, Richmond	\$ 321,700.00
Howard Construction, Crozier	\$ 330,000.00
The Allen Group, Urbanna	\$ 285,450.00
Interwork, Inc.	no bid

These prices do not include the following elements: fencing, connections to water and sewer, a permanent access road, truck wash down area and parking area. The motion to contract with The Allen Group for \$285,450 to be paid from the capital improvements fund and authorizing the County Administrator to sign the contract, was made by Mr. Jessie, seconded by Mr. Miller. The motion passed by a vote of three in favor (Jessie, Miller, Weber) to two opposed (Williams, Crittenden)

DISBURSEMENTS

The motion to approve disbursements in the amount of \$76,164.25 was made by Mr. Miller, seconded by Mr. Williams and carried unanimously. Checks numbered 50801 through 50867 were disbursed as approved.

PLANNING COMMISSION SUBCOMMITTEE

Mrs. Weber commented that the next Planning Commission Subcommittee meeting to discuss possible ordinance revisions to accommodate planned rural developments would be held on January 6, 2005, at 7:30 P.M., in the Board Room.

DATE SET FOR ANNUAL MEETING

The date of January 4, 2005 was set as the Board's annual meeting for establishing regular meeting dates and times.

CLOSED MEETING

The motion to convene in closed session to discuss matters relating to consultation with legal counsel regarding possible litigation per Code of Virginia §2.1-3711.A7, was made by Mr. Crittenden, seconded by Mr. Jessie and carried unanimously.

Upon reconvening in open session, the following motion was made by Mr. Jessie, seconded by Mr. Williams and carried unanimously:

- To the best of the members' knowledge only public business matters lawfully exempted from open meeting requirements under Code of Virginia §2.1-3711.A7 as identified in the motion by which the Closed Meeting convened were heard, discussed, or considered by the public body.

Action:

As a result of the Closed Session, there was no action taken.

ADJOURN

The motion to adjourn until the annual meeting on January 4, 2005, was made by Mr. Miller, seconded by Mr. Williams and carried unanimously.

Lenora O. Weber, Chair
Board of Supervisors