

AT A MEETING OF THE MIDDLESEX COUNTY BOARD OF SUPERVISORS  
HELD ON TUESDAY, APRIL 15, 2008, IN THE BOARD ROOM OF THE  
WOODWARD BUILDING, SALUDA, VIRGINIA:

Present: Kenneth W. Williams, Pinetop District  
Robert A. Crump, Saluda District  
John D. Miller, Jr., Saluda District  
Fred S. Crittenden, Pinetop District  
Wayne Jessie, Sr., Jamaica District

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

**CALL TO ORDER**

The Chairman Mr. Williams called the meeting to order at 7:30 P.M. Mr. Jessie offered a prayer and Mr. Culley led the Pledge of Allegiance.

**PUBLIC HEARING – REZONING APPLICATION 2008-02, GENE RUARK**

Planning Director, George Hayfield, presented the application submitted by Gene Ruark, to reclassify 630 acres from the Low Density Rural District to the Residential district with proffers. This property is located at Tax Map 37-5 and 37-99, off of General Puller Highway, Route 33, near the intersection with Grey's Point Road (Route 3). The parcel is located immediately to the north of the Healy's Mill subdivision on Route 629, which is currently zoned Residential. The proposed development is immediately south of the area of Harmony Village, currently zoned Village Community. The current use of the property is vacant land and agricultural uses. The intent of this subdivision is the creation of 379 lots for single-family residential development. The development of the parcel is proposed to follow the Conceptual Master Plan submitted along with this application.

This is the same property that was applied for rezoning, but withdrawn on December 17, 2007 after concerns of split zoning and a commercial use were expressed. The restaurant proposed in the previous application has been withdrawn. The current application proffers: conformance with conceptual master plan and phasing plan; modification of master plan/Planning Commission approval; nine (9) phase development with maximum 379 dwelling units; minimum dwelling unit size – 1,900 square feet; underground utilities; central water and sewer on all lots; architectural review committee and architectural standards; lake and hunting restrictions; no private boathouses or docks; streets meeting VDOT standards; entrance off Route 33 with landscaping at entrance to development; no buildings on open space; provision for trails; maintenance of common areas by HOA; restriction of

commercial use of property; sand pit closed; water in existing lakes made available to County for reservoir; \$3,000 cash proffer per lot to the County; \$1,000 cash proffered per lot to each – Hartfield VFD and Middlesex Co. Rescue Squad.

Staff summary of the project concluded that the land use is consistent and compatible with surrounding land uses and development patterns; the school system has immediate capacity at the elementary and middle school levels, however, because of the proposed developments of Rosegill and in the Water View areas, expansion may be needed at the high school; the restaurant proposed in the previous application has been removed from this application; proffers made to the County, fire department and rescue squad will help to offset capital costs and provision of services; applicant has addressed traffic impact through traffic studies and proffers; all proffers to the County have been reviewed by the County Attorney and requested amendments made. The Planning Commission recommended approval of the application with proffers, Conceptual Plan of Development and Conceptual Phasing Plan by a vote of 5-3. Concerns expressed by the Commission included open space, central water and sewer system details, single entrance and surrounding areas of Low Density Rural.

Mr. Williams opened the hearing for comments from the public.

Jim Smith – This application has had tremendous citizen input and is an opportunity for affordable, decent housing.

Marguerith Haasnoot – this could be an excellent retirement community.

Daniel Downs – reminded Board that cash proffers would not be received by the County until building permits are obtained, not when the lot is sold. If a second entrance is required, it needs to be placed somewhere other than Route 629.

Mary Ann Willis – concerned about second entrance on Route 629. Concerned about upland run-off and impact of additional water on integrity of the dam on Route 629.

Jean Vaughan – helps meet the great need for workforce housing in the County; application meets the criteria and is still off the beaten path.

David Milby – too many unknowns; application should be tabled or denied.

There being no further comments, Mr. Williams closed the hearing for comments. Mr. Williams noted that 12 letters had been received, with 11 in favor and 1 opposed to the application. Mr. Miller commented on some of the issues addressed, including that there would not be another entrance on Route 629. Mr. Miller questioned the use of the power line easement as a second entrance, noting that a high tension power line easement is different from a residential power easement. Mr. Miller also questioned the impact of the dam on the project.

Mr. Charles Records of Zandler Development introduced other representatives that were working on various aspects of the project, including Danny Hatch of Dominion Soil Science, Ray Freeland of Freeland Engineering, P.C. and Bryant

Goodlow, traffic engineer. Mr. Records pointed out the following: there was no plan to connect to Route 629; each phase of the project would have its own storm water management plan to plan for not increasing downstream flows above pre-construction amounts; a second entrance would require Dominion Virginia Power approval and it would be an emergency vehicle entrance; the entrance to the project has been greatly oversized for the development (designed for 3000 lots), including a 1800' 2-laned entrance and 2-laned exit; a central sewer system would be served by package module plans with subsurface disposal.

Mr. Crittenden also questioned when the access road would be constructed for Lot 2, in the original section of the development that had been approved April 17, 2007. Mr. Ruark responded that the owners of the lots in that section have a deeded access through the proposed part of this application and the road would be completed when the development is approved. Mr. Records confirmed that the access road to the original lots would be constructed with the first phase of the development. Mr. Crump noted that the current property owners have the easement and the road is not required. The homeowners association would be responsible for maintaining the pond dams within the development. Mr. Crump commented that the homeowners are being guaranteed water access, however, what happens if there is no water because the poor integrity of the dam has caused the water to drain from the pond.

There was much discussion regarding the proposed sewage treatment system, with Mr. Freeland explaining how the system would work. Mr. Crittenden stated that he would like to see one of the plant packages that was proposed for this development. According to Mr. Hatch, systems of this type have been installed in Dawn and in Kilmarnock.

The motion to table action on the application was made by Mr. Miller, seconded by Mr. Crump and carried unanimously.

### **PUBLIC HEARING – SPECIAL EXCEPTION APPLICATION 2008-02, CLIFTON THACKER**

Mr. Hayfield presented the application submitted by Clifton Thacker to allow a service business of solid waste collection to operate at this location, Tax Map 27-84, a 35.4 acre site in a Low Density Rural zoning district. A portion of this property is currently an undeveloped open field where several waste hauling trucks and waste containers are temporarily permitted pending an outcome of this application. Surrounding property uses include agricultural operations, forests, a sandpit mining operation and solid waste transfer station/convenience center. The applicant proposes to use a portion of this property as a location to store solid waste containers and park heavy commercial waste hauling vehicles.

VDOT would determine at site plan review stage the type and level of vehicle traffic on Stormont Road and Faraway Road in determining any road improvements and/or entrance design requirements. At their meeting on March 13, 2008, the

Planning Commission voted 8-0 to recommend approval with the following conditions: maximum number of trucks on the property is nine (9) and maximum number of containers on property is twenty-five (25). In addition to these recommendations, staff recommends the following: defining the area of the site to be used; trucks stored on site shall be empty of solid waste; no cleaning or repair of trucks on site; County site plan review is required, to include provisions for storm water runoff; VDOT review is required; VDOT entrance requirements and road improvements shall be met; placement of permanent storm water structures to control runoff and protect a nearby stream from contamination from development site, to be determined at site plan review (potential storm water basin requirement)

Mr. Williams opened the public hearing for comments. Adjoining property owner, Lucy Smith, expressed concern about odors and what items may be stored in the roll-off containers. Mr. Thacker stated that the containers would be empty when they are on the site and if there was an odor, he could spray them with a sanitizing solution. There were no other comments from the public.

Mr. Soberick commented that because this is a special exception, the Board can impose reasonable conditions. Mr. Culley expressed his concern for a stream that Mr. Thacker's property drains to. The County is being required by the Department of Environmental Quality to monitor this stream. The concern is that there is a potential for runoff from waste trucks and containers to contaminate the stream, with it assumed that contamination was coming from the landfill.

The motion to table the application and have the staff and County Attorney work on conditions was made by Mr. Miller, seconded by Mr. Crump and carried unanimously.

## **PUBLIC HEARING – YOUTH ATHLETIC ACTIVITIES FOOD SERVICE EXEMPTION**

Mr. Williams opened the public hearing for consideration of a proposed food service exemption for youth athletic activities. Mr. Tammy Putney, representing the Middlesex Little League, requested the Board's approval of the exemption. Mr. Putney stated that the Little League served all pre-cooked foods at their events, from 8-10 weeks per year. There being no further comments, the public portion of the hearing was closed. The motion to adopt the following ordinance was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously:

### *AN ORDINANCE OF THE COUNTY OF MIDDLESEX PERTAINING TO YOUTH ATHLETIC ACTIVITIES FOOD SERVICE EXEMPTION*

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

#### *FOOD SERVICE EXEMPTION*

*Section 1. Title.*

*This article is titled "Exemption of Certain Youth Athletic Activities from the Rules and Regulations of the Board of Health, Commonwealth of Virginia, Governing Restaurants."  
This article may be cited as the "Food Service Exemption for Youth Athletic Activities Ordinance.*

*Section 2. Statutory Authority.*

*The governing body of Middlesex County adopts this ordinance pursuant to the authority granted in §35.1-26(2) of the Code of Virginia, 1950.*

*Section 3. Purpose.*

*The governing body of Middlesex County deems enactment of this Ordinance necessary in order to enhance youth athletic activities and to provide for public convenience through the provision of food service to the participants and spectators at such activities, the provision of a cost-effective and affordable means of providing food service at such activities and the provision of a means of revenue generation for the financial support of such activities while preserving the health, safety and general welfare of the public.*

*Section 4. Recognition of certain youth athletic activities.*

*The Middlesex County Little League Incorporated and all youth athletic activities provided, promoted or sponsored by the Middlesex County public schools or the Middlesex County Department of Parks and Recreation, jointly or individually, are hereby recognized as being a part of the recreational program of Middlesex County.*

*Section 5. Exemption from restaurant regulations.*

*Concession stands, food booths and similar facilities used for the preparation, dispensation and/or sale of food and drink during the games or other activities of those organizations and programs recognized as such in Section 4 herein as being part of the recreational program of Middlesex County are hereby exempt from the rules and regulations of the State Department of Health governing restaurants and the provisions set out in Title 35.1 of the Code of Virginia, 1950, as amended. However, such exemption shall not include inspection by the Health Officer for the County of Middlesex County, or a qualified person designated by the Health Officer, for the purposes of ensuring the cleanliness in the preparation, handling, protection and preservation, including refrigeration and heating, of food and drink prepared, dispensed and/or offered for sale at such concession stands, food booths and similar facilities.*

*Adopted this 15th day of April, 2008 by the following vote:*

*THIS ORDINANCE SHALL BE EFFECTIVE UPON ADOPTION*

## **FY 08 BUDGET AMENDMENT**

Mr. Culley reminded the Board of Supervisors and public of the purpose for the hearing, to consider adoption of an amendment to the current, FY 08 budget, in the amount of \$670,000.00 to fund the remainder of a dredging project for Broad Creek. These funds would be appropriated from the fund balance. A draft grant application has been prepared for submittal to the Virginia Marine Resources Commission (VMRC) to fund a portion of the project with a deadline of June 15, 2008. Approximately \$328,000.00 has been made available to the Army Corps of Engineers to begin the project. Mr. Williams opened the hearing for comments from the public.

Carolyn Schmalenberger – business owner on Broad Creek. The dredging is critical at this point. Boats are running aground almost on a daily basis. There are 13 marinas on the Creek, one of which has a federal contract. These marinas employ 77 full time

employees and at least 30 part time. Over 2,000 boats use the Creek. A Coast Guard warning to navigation was issued in December.

Jack Dozier – a lot of business has been lost due to the channel being filled in, especially large boat business.

Onna Grimm - Not only are marinas affected, but the loss of boaters effects restaurants, parts/supply stores, grocery stores and tourist activities.

There being no additional comment the public portion of the hearing was closed.

Mr. Crittenden commented that this area has been the County's "industrial park" without the County having to pay anything for the benefits it provided. Mr. Miller commented on the application for grant funding through VMRC and the requirement that the County would have to maintain the project for 30 years if grant funds were used. There was also concern that federal money would not be offered any more if the County funded this project. Mr. Crump commented that these were state and federal waterways and if the County started volunteering to dredge creeks then everyone would be asking for dredging. Discussion continued between those in favor of the project and those opposed.

Mr. Dozier stated that County funding would not be a detriment to future federal funding. Mrs. Schmalenberger asked about the possibility of using Port Authority funds. Mr. Culley noted that Army Corps did not provide the project numbers before the deadline for applying for Port Authority funds. Also, the Port Authority grant required a 50% match that had to be all County funds.

The motion to table further action until at least the day meeting was made by Mr. Crump seconded by Mr. Miller and carried by a vote of 3-2, with Mr. Crump, Mr. Miller and Mr. Jessie voting in favor of the motion; Mr. Williams and Mr. Crittenden opposed.

## **AIRPORT HANGAR PROJECT**

### ***Retaining Pond and Swale:***

Mr. Culley explained that the current retaining pond was only a temporary measure installed for the hangar construction. A plan had been designed by the contractor's engineer to handle runoff from a 10-year storm. The proposed location is such that a 5-unit hangar could be placed behind the new unit. This pond is designed to reduce run-off from entering the pond across the road. Final plan approval would be required from the County's engineer on the hangar project, the State's Department of Conservation and Recreation and the County's permitting office. The motion to approve the change order and appropriation of funds in the amount of \$26,989.00 for the permanent pond was made by Mr. Crittenden, seconded by Mr. Miller and carried unanimously.

***Hangar Rental:***

The Board considered the proposed lease agreement and rental fees for the hangars at the airport. The amounts recommended by the Airport Committee of \$325 per month for 6 units and \$350 per month for 4 units are based on receiving an estimated \$36,900.00 in first year rents in addition to \$8,500.00 in additional revenue due to increasing taxes and 8-10 new planes at the airport. The Committee has also recommended that the rents be held to the current price if tenants sign a 3-year lease and pay the full year in advance.

It was noted that the annual loan payment is \$45,590.41, based on a loan of \$350,000.00 from the IDA at 5%. It was a consensus of the Board that the rental payments should also cover the construction of the retaining pond. The motion to increase the monthly rent payments by \$10.00 each to \$335.00 and \$360.00 per month and approving an annual lease agreement only, was made by Mr. Miller, seconded by Mr. Crump and carried unanimously.

**VDOT/ROSEGILL**

Board members considered a request from the Rosegill Development to reduce the speed limit on Route 227 to 35 mph and also to reduce the right of ways and pavement width within the development. Portions of these requests also required consideration by the County's Emergency Services Committee, which recommended approval. It was noted that the development would have sidewalks along Route 227 and also pedestrian crossings at the entrances, from one side of Route 227 to the other.

The motion to approve the following was made by Mr. Crump, seconded by Mr. Jessie and carried unanimously:

- (1) Approval to reduce the speed limit from 55 mph to 35 mph on Route 227 from Ivy Shores Blvd. to the existing 35 mph at Urbanna Bridge.
- (2) Reduction of pavement width to 30' with 40' right of way on Rosegill Drive West and Chandler's Circle, Chandler's Circle North and Chandler's Circle East, and limiting on-street parking to one side of the pavement opposite of the proposed fire hydrants. These streets are less than 0.5 miles in length and have vehicles counts between 401 and 2000 vehicles per day.
- (3) Reduction of pavement width to 26' and 35' right of way for cul-de-sac streets, Old Channel Drive, Cove Point Way and Headwaters Way and limiting on-street parking to one side of the pavement opposite of the proposed fire hydrants. These roads are less than 0.5 miles long and have vehicle counts less than 400 vehicles per day.

**BAY AGING – COMMUNITY ACTION AGENCY**

Kathy Vesley-Massey was present representing Bay Aging in their request to be named as the Community Action Agency (CAA) for the County. According to Mrs.

Massey, Bay Aging has acted informally as a CAA for almost 30 years, proving many of the same services as a CAA: housing repair, indoor plumbing rehabilitation, meals on wheels, senior centers, transportation, etc. The State Department of Social Services has determined that it wants all jurisdictions of the State to be served by a CAA. No additional funding for this designation would be necessary, because Bay Aging already receives a local contribution from the County.

Board members expressed their concern that this designation may require additional funding and/or that this designation could prevent other groups that perform similar services from receiving any benefits. The motion to table action until the meeting on April 22, 2008 was made by Mr. Crump, seconded by Mr. Crittenden and carried unanimously.

### **PAYROLL**

The motion to approve payroll for the month of April was made by Mr. Miller, seconded by Mr. Crump and carried unanimously. Checks numbered 61376 through 61443 totaling \$302,501.77 were distributed as approved.

### **DISBURSEMENTS**

The motion to approve disbursements was made by Mr. Crump, seconded by Mr. Miller and carried unanimously. Checks numbered 61444 through 61523 for \$195,122.48 were disbursed as approved.

### **CLOSED MEETING**

The motion to meet in Closed Session for consultation with legal counsel regarding issues of pending litigation regarding the Courthouse, pursuant to §2.2-3711.A7, was made by Mr. Jessie, seconded by Mr. Crump and carried unanimously. Upon reconvening in open session, the following motion was made by Mr. Miller, seconded by Mr. Crump and carried unanimously:

- To the best of the members' knowledge only public business matters lawfully exempted from open meeting requirements under Code of Virginia §2.2-3711.A7 as identified in the motion by which the Closed Meeting convened were heard, discussed, or considered by the public body.

Action:

The motion to accept a settlement from Wiley and Wilson of \$100,000.00 in the Courthouse lawsuit, was made by Mr. Crump, seconded by Mr. Jessie and carried unanimously.

**RECESS**

There being no further business, the meeting was recessed until the meeting advertised for April 22, 2008, at 7:30 p.m., in the Board Room.

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Kenneth W. Williams, Chairman  
Board of Supervisors