MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Regular Meeting
July 15, 2008

6:00 p.m.

Meeting Convened. A Regular Meeting of the York County Board of Supervisors was called to order at 6:00 p.m., Tuesday, July 15, 2008, in the Board Room, York Hall, by Chairman Thomas G. Shepperd, Jr.

Attendance. The following members of the Board of Supervisors were present: Walter C. Zaremba, Sheila S. Noll, Donald E. Wiggins, and Thomas G. Shepperd, Jr.

George S. Hrichak arrived at 6:26 p.m.

Also in attendance were James O. McReynolds, County Administrator; J. Mark Carter, Assistant County Administrator; and James E. Barnett, County Attorney.

Invocation. Minister Joe E. Parrish, Seaford Church of Christ, gave the invocation.

Pledge of Allegiance to the Flag of the United States of America. Chairman Shepperd led the Pledge of Allegiance

HIGHWAY MATTERS

Mr. Todd Halacy, Residency Administrator, Virginia Department of Transportation, appeared to discuss highway matters of interest to the Board. He noted that last month Mr. Wiggins had a question regarding the bollards at the intersection of Route 17 and Goodwin Neck Road, and he stated one of the bollards was removed to allow the resident at 104 Goodwin Neck Road to make a left turn out of her driveway. He added they also evaluated the other bollards in that location and found that they needed to remain to prevent a safety hazard with conflicting movements from motorists turning left on Route 17 and those turning left into Walgreens. He also addressed his question regarding the culvert and drainage issues at 104 Shirley Drive, stating VDOT conducted a review of the site on several occasions over the last month to see how the ditch was functioning. He reported they found the grade of the ditch line appeared to be correct, and they also evaluated ditches after the recent rain events that had occurred and found that the water drained appropriately and ditches were dry within hours after the storm. He noted they did not find any cross over pipes or ditches that had any problems. Regarding Mrs. Noll's question concerning the mowing of Coventry Boulevard, he reported it had been mowed. Regarding Mr. Zaremba's questions and concerns about an evaluation of any improvements to the Airport Road/Mooretown Road intersection, he stated VDOT is in the process of finishing a traffic movement study at the intersection to determine the traffic volumes and the turning movements so that a recommendation could be made for the type of roadway improvements needed in this location. He stated once they determine the need, they will develop cost estimates and go from there.

Mr. Zaremba expressed appreciation for the detail in Mr. Halacy's email report that was provided before the meeting, stating the information gave the Board an idea of where VDOT was on the different projects. He added that the email was a nice initiative on Mr. Halacy's part, and he asked him to keep it up.

Mr. Wiggins thanked Mr. Halacy for removing the bollard and also for the email report.

Chairman Shepperd stated he was happy to report that VDOT had patched all holes in the road and cut all the grass in the ditches. He indicated his district was not having a lot of flooding, and he thanked VDOT for doing a great job.

PRESENTATIONS

ELECTORAL BOARD SECURITY PLAN

Ms. Nancy Rodrigues, Chief Election Officer for the State of Virginia, presented an Endorsed Certificate for the Electoral Board Security Plan adopted by the York County Electoral Board to Charles F. Noll, Chairman of the York County Electoral Board.

CITIZENS COMMENT PERIOD

Mr. Jim Berry, 101 Brassie Drive, addressed the Board expressing his disappointment that Ordinance No. 08-6 was not being enforced in Kiln Creek. He stated when he moved to Kiln Creek 12 years ago it was because it was beautiful community and he thought the Sanctuary was a jewel among those communities being surrounded by a golf course, three lakes, and a beautiful entrance. He stated he now feels the Sanctuary is an eyesore because of the failure of the property owner to cut the weeds and grass on the golf course surrounding the Sanctuary. He spoke of the pine trees that were planted by the owner, and showed a sample of what a typical pine looks like in the area. He stated the majority of the trees that were planted had not survived, and it would be 10 to 20 years before the trees would have any height to them. He stated that because of the current conditions of the area, it would be a challenge to try and sell his property. He expressed his strong support of Ordinance No. 08-6 and said he would be grateful if the Board would enforce the mowing ordinance.

Dr. Charles Behymer, 125 Spoon Court, President of the Kiln Creek Owners Association, stated he wanted to strongly reiterate the Association's support of Ordinance No. 08-6 that the Board adopted on April 15, 2008. He expressed their concern about the increased unsightly conditions in Kiln Creek after the three months the ordinance has not been enforced. He noted that the lands surrounding the Highlands and the Sanctuary are now a serious fire hazard, indicating the ordinance is important not just for the aesthetics and beauty of York County but for the health and safety of York County residents. On behalf of the Kiln Creek Owners Association, Dr. Behymer reiterated his invitation to the Board members to visit the Kiln Creek area and see the land in question before they reconsider this ordinance. He stated that while he realized the current owner had no pride in his property, he felt as elected government officials the Board would support its constituents who believe that York County communities and their leaders should protect the County's property and enforce common sense ordinances.

Mr. Dennis Darling, 1634 Willow Cove, addressed the Board regarding his concerns with the overgrown lakes and fairways in the York County portion of Kiln Creek, stating it reflected badly on the Newport News portion of Kiln Creek as well. He urged the Board to enforce the ordinance in question.

Ms. Janice Orr, 120 Spoon Court, addressed the Board regarding her concerns with the weeds. She stated she felt the growth around the areas for the waterway were going to be a real problem, and she asked the Board to take care of the problem.

Ms. Linda Rody, 165 Spoon Court, spoke about Ordinance No. 08-6 and asked the Board to keep the ordinance as is. She stated she handed each Board member a copy of a letter signed by the Sanctuary president with 91 signatures of people who supported the letter. She spoke of the possible health hazard which could occur due to breeding mosquitoes and rabid animals, and she asked the Board to enforce Ordinance No. 08-6 as written, which would require the landowner to cut the grass.

Mr. Walter Smith, 162 Spoon Court, addressed the Board regarding his concerns with the situation behind the Sanctuary and the other areas, stating the situation with the weeds had gotten out of hand. He asked to Board to enforce its laws and do it as soon as possible.

Mr. Bartholomew Myles, 164 Spoon Court, stated that in his recent letter to the Board he addressed their patterns since April 2006 of reneging on the founding ordinances and the proffer conditions for Kiln Creek and failing to protect vested rights of homeowners and establishing a precedent to permit closure of other fairways without due process. He spoke of the adoption of the grass and weeds ordinance amendment on April 15 with the subsequent sus-

pension of its enforcement in June. He questioned the Board's action to suspend enforcement on the ordinance without a motion and vote in open session. Mr. Myles questioned why the Board would not state its reason and give assurances that it was valid, legal, and ethical and that it was not for the personal interest of any board member, or was not influenced by a private individual who might have profited at the expense of the Board's constituents, that it was not the result of County business being discussed outside scheduled Board meetings, and it was not injurious to the integrity, credibility, and dignity of the Board of Supervisors. Mr. Myles stated it was time for the Board to enforce the overall community concept for Kiln Creek.

Mr. Edwin Mitchell, 709 Massie Court, spoke of the uncut fairways and unmaintained lakes in the York County portion of Kiln Creek. He stated they are having negative effect on the entire community of Kiln Creek. He added that the founding ordinances for Kiln Creek, the proffered conditions, and the ordinance that the Board was reconsidering needed to be enforced.

Mr. John Kirkpatrick, 106 W. Wedgwood Drive, spoke of the conditions of the overgrown fairways and the unmaintained lakes in Kiln Creek, stating it was having a really negative effect not only on the Sanctuary, but also on the whole Kiln Creek subdivision. He added that since the Board approved Ordinance No. 08-6 the grass had not been mowed, and he was in support of the Kiln Creek residents wishing to see Ordinance 08-6 enforced.

Mr. Steve Romolo, 144 Spoon Court, addressed the Board in support of all the other Kiln Creek residents who had spoken to support Ordinance No. 08-6 to enforce mowing the fairways. He stated his property backs up to the fairway of high grass and weeds, and he can't allow his young son to play in the backyard because it is a safety hazard to him with the possible rodents, pests, and fire hazards that were mentioned tonight.

COUNTY ATTORNEY REPORTS AND REQUESTS

Mr. Barnett reported he would be meeting with Mr. McReynolds and Mrs. Smith on Monday to take a first shot at assembling the draft 2009 Legislative Program. He stated he had received a couple suggestions to date, but he asked the Board members and Department heads to forward their recommendations to him by Monday.

COUNTY ADMINISTRATOR REPORTS AND REQUESTS

Mr. McReynolds thanked the volunteers, the 4th of July Committee, and County Staff for all the efforts that were put into making the 4th of July a great day for the County. He reminded the Board and the citizens of the Board's next regular meetings to be held on August 5 and 19.

MATTERS PRESENTED BY THE BOARD

Mr. Wiggins noted when the Board had its legislative breakfast with the County's delegates and Senator Miller he had talked with all the representatives about Edgehill and the VDOT problem with the ditches. He stated he had explained the funding problems, and Delegate Gear had recommended he talk to Senator Norment. He stated he had the opportunity to speak with Senator Norment the previous evening, and he told him the County would need about a million dollars from the State to correct the problem. Senator Norment had stated if the County would get all the information together, he would get it passed and get it along to Senator Miller. He said that Senator Miller had promised to take it to the House of Delegates, and both promised him that they could get it passed. Mr. Wiggins stated that Mr. Miller promised he would take it to the Governor, so hopefully the County will get some funding from the State for this VDOT responsibility.

Mrs. Noll expressed her appreciation to all the people from Kiln Creek who spoke to the Board to let them know there was a very serious problem with the grass and weeds ordinance, that the grass needed to be mowed, and that the Board should not change the ordinance. She stated she tried to count the residents as they were going out but she quit after about 40 but noted the side of the room was filled with residents from Kiln Creek who supported the ordinance. Mrs. Noll noted she was still receiving a lot of email on the matter. She stated she

hoped the Board members would take that into consideration when they reconsider the ordinance and that they consider it the way the people would like them to consider it.

Mr. Zaremba commented on an article that appeared in the Sunday Daily Press regarding the York County school division's year-end expenditure of $250 to every teacher. He stated he felt it was a fairly accurate and balanced article in terms of explaining why he was upset with the particular distribution. He added he had absolutely no problem with reimbursing the teachers for what they spend out of pocket, but he said this was not the case with the distribution which was not a reimbursement based on actual expenditures but an end of year gift to every teacher in the school division that amounted to almost $300,000. Mr. Zaremba stated it was the Board's job to be fiscally responsible to the citizens, and he would continue to do that.

Chairman Shepperd stated in follow-up to Mr. Zaremba's comment, the Board of Supervisors scrutinizes everything because when it spends the tax dollars, it has to know that those dollars are being spent correctly and to the benefit of the community. He stated it is important that the people realize that the School Board is an elected body that represents the citizens just like the Board of Supervisors, and the School Board, by law, has the right to spend its funds the way it wants to spend it. Mr. Shepperd then discussed the Federal Facilities Alliance and explained its importance in helping to protect the investment in federal operations. He noted that the Board might have to look at increasing contributions in this investment. He then stated he attended a tour of the Poquoson River conducted by a group of citizens that calls themselves the York County Waterway Alliance and which has a very focused purpose to take care of and clean up the Poquoson River.

CONSENT CALENDAR

Chairman Shepperd questioned if the County had a legal issue with proposed Resolution R08-9 in terms of the State requiring the County to do a comprehensive plan every five years.

It was determined by Mr. Barnett that there was not legal issue.

Mrs. Noll moved that the Consent Calendar be approved as submitted, Item Nos.5, 6, and, 7 respectively.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Hrichak, Shepperd
Nay: (0)

Thereupon, the following minutes were approved and resolutions adopted:

Item No. 5. APPROVAL OF MINUTES

The minutes of the following meetings of the York County Board of Supervisors were approved:

June 3, 2008, Regular Meeting
June 6, 2008, Adjourned Meeting
June 17, 2008, Regular Meeting

Item No. 6. PURCHASE RESOLUTION: Resolution R08-82

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR
TO CONSTRUCT BRANDYWINE DRAINAGE PROJECT

WHEREAS, it is the policy of the Board of Supervisors that all procurements of goods and services by the County involving the expenditure of $30,000 or more be submitted to the Board for its review and approval; and

WHEREAS, the County Administrator has determined that the following procurement is necessary and desirable, it involves the expenditure of $30,000 or more, and that all applicable laws, ordinances, and regulations have been complied with;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 15th day of July, 2008, that the County Administrator be, and hereby is, authorized to execute procurement arrangements for the following:

	AMOUNT
Brandywine Drainage Project	$227,547

Item No.7. COMPREHENSIVE PLAN: Resolution R08-93

A RESOLUTION TO A RESOLUTION ENDORSING A PROCESS FOR COORDINATION OF THE 5-YEAR CYCLES FOR REVIEWING AND UPDATING THE COMPREHENSIVE PLANS OF JAMES CITY COUNTY, YORK COUNTY AND THE CITY OF WILLIAMSBURG

WHEREAS, the Code of Virginia requires that all jurisdictions prepare and adopt a Comprehensive Plan addressing physical development within its jurisdictional limits for the purpose of guiding and accomplishing coordinated, adjusted and harmonious development that will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of its inhabitants; and

WHEREAS, in the interest of promoting closer coordination and communication concerning Comprehensive Plan issues that cross jurisdictional boundaries, the Regional Issues Committee and the Planning Commissions recommended, and the governing bodies endorsed by resolution in 2006, a process under which James City County, York County and the City of Williamsburg would adjust their 5-year review cycles so that each begins its next review and update in 2010, and then every five years thereafter; and

WHEREAS, the staffs of the three jurisdictions recommend revising the proposed update schedule to begin the next review and update in 2012 so as to allow incorporation of data from the 2010 U.S. Census, and then beginning every five years thereafter.

NOW, THEREFORE, BE IT RESOLVED that the following proposed schedule for the coordinated update of the James City County, York County and the City of Williamsburg Comprehensive Plans be supported, endorsed and approved as the framework for the update:

- Summer 2010 – staffs of the three jurisdictions identify opportunities for jointly-conducted baseline studies and analyses of such things as population, economy, housing and transportation, as well as for a consistent format for the three plans.
- Fall 2010 – staffs of the three jurisdictions identify budget requests for any proposed jointly-conducted baseline studies and analyses for consideration in the FY12 budget deliberations.
- Fall 2011 – discussion forum, with planning commissioners from all three jurisdictions, to identify consensus regional issues to be addressed.
- Winter 2012 – two public forums to allow comments on the regional issues previously identified, to be held in the Williamsburg/James City County area and in Yorktown.
- Spring 2012 – discussion forum, with planning commissioners from all three jurisdictions, to review items discussed at the two public forums and to identify areas for coordinated efforts during the update process.

Meeting Recessed. At 6:50 p.m. Chairman Shepperd declared a short recess.

Meeting Reconvened. At 7:01 p.m. the meeting was reconvened in open session by order of the Chair.

PUBLIC HEARINGS

APPLICATION NO. PD-22-08, MID-ATLANTIC COMMUNITIES, LLC.

Mr. Carter made a presentation on proposed Ordinance No. 08-10(R) to amend the York County Zoning Ordinance by reclassifying from R20 (Medium-Density Single Family Residential) and GB (General Business) to PDMU (Planned Development Mixed Use), approximately 12.5 acres of land located at 113 Battle Road at the southeast quadrant of the intersection of George Washington Memorial Highway (Route 17) and Battle Road (Route 718). The Planning Commission considered the application and forwarded it to the Board of Supervisors with a recommendation of denial, and staff recommended approval of the application through the adoption of proposed Ordinance No. 08-10(R).

Discussion followed regarding student numbers, school enrollment projections, mixed use development in surrounding jurisdictions, building height of structures, bedroom sizes for the apartments, the number of apartment units, density of the proposed development, and traffic issues.

Mr. Barnett stated the applicant was taking the position that they have proposed this application to the Board with proffers for precisely 189 units, and they are asking the Board to accept or not accept it at 189 units.

Ms. Elizabeth White, attorney representing the applicant, noted a large part of the application was based on a lot of the concepts that that are embraced by the Sierra Club among others. She stated it was an application for a sustainable development, and it embraces the national sustainable trend towards smart growth. She explained that sustainable development is development that knits together adjacent properties to enhance the value of all the properties and that it reduces the pressure for suburban sprawl. She noted that smart growth is actually the opposite of sprawl, and smart growth reflects an appreciation for the type of communities represented by the Colonial Village of Yorktown and Colonial Williamsburg. She stated smart growth communities today like New Town in James City County and High Street in Williamsburg focus on combining compatible uses into areas of condensed development which are largely self sustaining. She added the application had evolved along a concurrent plan path with York County and the County's mixed use development ordinance and that the application represented the culmination of three years of the applicant and staff working together. Ms. White stated that the Board's recent adoption of the mixed use ordinance recognized the need for smart growth and sustainable development in York County. She also noted that York County's Comprehensive Plan demonstrated similar demographic trends to the nation in aging populations, fewer percentage of households comprised of what was considered the traditional nuclear family, and declining household sizes. She stated the trends toward smaller non-traditional households create a need for alternative housing choices in York County.

Mr. John Hopke, project architect with Hopke & Associates, Inc., spoke of how smart growth requires everyone to think differently about mixed use, appropriate density, and the heights of buildings. He explained that sustainable development does not replace the old development, but it knits into the community to a give broader range of residential opportunities and options, and it also creates spaces, community centers, and links pedestrian friendly corridors to adjacent commercial properties.

Mr. Lamont Myers, representing Mid-Atlantic Communities, explained why the project had changed somewhat over the years and said it had required extensive analysis. He stated they had meet with appraisers, lenders, contractors, and management people, and they had determined that in order to do a high quality community project such as this there would have to be a much higher level of staffing. He stated to insure long-term financial viability for this project, they had determined they would need about 180 to 200 units. Mr. Myers stated there was a need for alternative housing choices for children who want to come home and find a place to live and for parents who cannot keep up the big house anymore, and this project was an attempt to provide a place for those people to stay in York County.

Chairman Shepperd called to order a public hearing on Application No. PD-22-08 that was duly advertised as required by law. Proposed Ordinance No. 08-10(R) is entitled:

> AN ORDINANCE TO APPROVE A 12.5-ACRE MIXED-USE PLANNED DEVELOPMENT WITH 189 APARTMENT UNITS AND APPROXIMATELY 29,400 SQUARE FEET OF RETAIL/OFFICE SPACE ON 12.5 ACRES OF LAND LOCATED ON THE EAST SIDE OF ROUTE 17 SOUTH OF BATTLE ROAD (ROUTE 718)

Mr. Paul Zabicki, 705 York Warwick Drive, appeared to speak in opposition to the project, stating the size and scope of the project on a 12-acre parcel was ridiculous. He stated he had reviewed the Comprehensive Plan, and he believed the demographics and the citizenry have changed. He stated his interpretation of the numbers in the Comprehensive Plan indicated it was borderline whether or not the citizenry wanted multi-use development. Mr. Zabicki stated the impact on the school system was understated, and he urged the Board to vote against this project.

Mr. Bill O'Dell, 110 Tides Run, stated York County was a great place to live in, and most of the work being done by Board of Supervisors in the County was wonderful. He stated his biggest criticism was probably the same as with many citizens of the County, and that was the Route 17 corridor. He stated he felt the development being proposed was too big and too dense for the location, and it was too close to the Historic area. He expressed his concern that the County Administrator's office was recommending approval of the project which was disapproved by the Planning Commission by a 6 to 1 vote. Mr. O'Dell also expressed his concerns regarding traffic congestion and the number of school students which would be added by the development.

Ms. Carole Ferro, 303 Mill Road, spoke in opposition to the application, expressing her concerns regarding traffic, the schools, water, and sewage. She indicated she thought it was too dense a development for the acreage. She stated she was on the Comprehensive Plan Committee that discussed multi-use development, but the people she had talked to never imagined this type of development would be as close to the historical area. Ms. Ferro urged the Board not to approve the application.

Ms. Sara Martin, 112 Bailey Road, expressed her full support of the application, saying she had been both a homeowner and a renter in York County since 2000. She stated she was very upset by the comments that were made during the Planning Commission public comment portion of the meeting, stating the residents who spoke made it seem like renters were second-class citizens in the County, were lawbreakers, would require more County services, and would overcrowd the schools. Ms. Martin stated she helps elderly residents in the County who have owned traditional homes and who can no longer take care of the homes as they are aging. She stated they need a choice of places to live, and she felt that Yorktown Green would offer a great product with great amenities that the elderly residents are looking for.

Mrs. Linda Hampton, 118 Allen Harris Drive, appeared before the Board in opposition of the proposed plan. She stated she was asking the Board to vote against approval of this for all reasons previously stated, but she wanted to specifically note where it would be located and how close to Route 17 it would be situated. She stated a structure of this nature with that height right at the gateway to where historical Yorktown begins would not complement the area at all, and the plan would be much better served on a larger plot in another area of York County which would still give the citizens a choice of housing opportunities. Ms. Hampton asked to Board to take into consideration the impact the plan would have on the tourist industry.

Mr. David Hampton, 118 Allen Harris Drive, appeared before the Board voicing his concerns with Yorktown Green both as a resident and as an educator in the York County School Division, specifically to address the over-crowded school situation in the county. He stated he did not have a permanent space to work with the children because there was no available space.

Ms. Theresa McLeod, 116 Allen Harris, appeared before the Board to speak in opposition to the application. She asked the Board to consider the residents and to consider that this was too

much of project for the location. Ms. McLeod requested that she be allowed to enter into the record a petition with 305 signatures in opposition to the proposed development.

Mr. Mark McLeod, 116 Allen Harris, spoke in opposition to the application. He stated the proposed project had been changed many times, and he felt if the Board approved the development, it would be proffered and changed over and over. He asked the Board to consider its mission statement and that this was about the County and not about money for the developer.

Mr. Randy Galloway, 107 Madison Court, appeared to speak in opposition to the application. He stated it was too small an area, and it would overburden York County's infrastructure. He said the neighbors in this area were being asked to take a personal hit on their quality of life. He stated a project of this magnitude would impact their quality of life along with their property values, as apartments depreciate in value. He asked the Board to deny the application.

Mr. Robert Duckett, 302 Sommerville Way, Public Affairs Director for the Peninsula Housing & Builders Association, expressed support for the mixed use proposal, stating it was the first to come before the County since the County adopted the planned development mixed use ordinance. He stated the project was in one of the six areas the County had identified in the Comprehensive Plan as a potential location for this type of development, and he spoke of the benefits of mixed use development, stating the proposal also addressed the need for multifamily housing in York County. He stated it was important for the County to address its housing needs to provide a wide balance of housing types, and he urged the Board to support the proposal.

Ms. Susan Kelley, 107 Allen Harris Drive, asked all those present opposed to the application to stand. She stated she moved back to York County because she wanted to raise kids in this environment and she wanted to sprawl out. She said she wanted to live on a street where her kids could ride their bikes, and she wanted neighbors that cut their grass and took pride in their homes. She stated there were other places in York County where this use would fit beautifully, but not at this end of the County because it was one of the corners of the historic triangle. Ms. Kelly urged the Board to vote against the application.

Mrs. Debbie Brooks, 111 Allen Harris Drive, spoke in opposition to the application, stating she and her husband moved back to York County for the third time in 2003 after he retired, and they bought a house in Settlers Crossing because it was an investment. She said she did not want to open her window shade every morning to see a four-story apartment building. Mrs. Brooks stated she was totally against this rezoning for numerous reasons, and she asked that the Board deny it.

Mr. Larry Brooks, 111 Allen Harris Drive, expressed agreement with his wife, stating his concern was how the Planning Commission had embraced the planned development, mixed-use concept. He stated that when the phone survey was conducted regarding York County's Comprehensive Plan 2025, the question was asked should the County allow higher density neighborhoods to be built in order to provide more affordable housing, and 70 percent of the residents said no. He stated this was higher density, and it would not be affordable according to the developers.

Mr. Ed Ashley, 110 Allen Harris Drive, stated he moved to this end of the County 19 years ago when the houses were spread out and not crammed together, and without a lot of traffic. He said he watched that slowly deteriorate over the last 18 years, and he urged the Board to turn down this application and look for other areas for mixed use development.

Mr. Paul Hite, Jr., 129 C Little Bay Avenue, expressed his full support for the application and stated he had been a renter in York County for 10 years by choice. He stated that some opinions expressed indicated that renters were a lower class of person because they preferred that life. He said he would hope York County would welcome people if they were apartment dwellers or a single family, and York County residents should welcome everybody.

Mr. Peter Eckert, 113 Calumet Turn, addressed the Board in support of the rezoning and urged the Board to approve the proposed development. He said he had been appraising commercial real estate for almost 35 years, specializing in multifamily properties. He explained that in his study of the Yorktown Green proposal, he had made a few observations and had reached some

conclusions such as York County has the lowest percentage of multifamily units in the entire Hampton Roads Region; rental rates for the existing apartments in York County are 109 percent of the regional average, where the proposed rental rates for Yorktown Green are 137 percent of regional average; and Yorktown Green was patterned after other mixed use multifamily projects in the market, and it was expected to be a high quality and attractive development.

Mr. Craig Read, 106 Ocean Breeze Drive, spoke in support of the application, stating he had a commercial real estate firm that he had been operating for 30 years, so he was very familiar with mixed use development. He indicated he thought this would be a great project to have in York County which could bring better retailers. He stated a mixed use development was needed in York County to balance out the housing market.

Mr. Bobby Horne, 310 Allen Harris Drive, expressed his agreement with his neighbors in opposing the application. He expressed his concerns with traffic and the impact to the schools. He indicated it would be a great development somewhere else where it would fit better.

Mr. Tony Woodward, 106 Lookout Point, appeared before the Board in support of the application. He stated there was a need in the County for this kind of housing for kids that are getting out of college and need a place to. He noted there was no project like this in York County, and it would be an ideal for his 23 year old daughter and provide a place for his parents who are in their upper 70's. Mr. Woodward stated there was a need for this type of project in York County, and he urged the Board to support the project.

Ms. Wendy Drucker, 633 Haystack Landing Road, one of the partners of Drucker and Falk, addressed the Board in support of the proposed development.

Mr. Charles Newbaker, 3312 Sassafras Road, appeared in support of the application as the site plan preparer for this project. He spoke to the questions relating to drainage, utilities, water works issues, and the traffic issues, stating he felt they had complied with all these issues and would have no problems obtaining the objectives.

Mr. Donald Phillips, 200 Dogwood Court, addressed the Board expressing his concerns with the proffers of the project. He asked the Board to disapprove the rezoning and the project.

Mr. Hal Bourque, Executive Vice-President of the Virginia Health Services, owner and operator of the York Convalescent Center, addressed the Board in support of the rezoning and proposed development. He asked the Board to consider the application from their perspective, stating he felt this project was far superior to any matter-of-right use that could come along and occupy this property. Mr. Bourque stated that as a neighbor and property owner, the use of the property next door to the York Convalescent Center was very important.

Ms. Kathleen Johnson, 114 Copeland Lane, appeared before the Board in opposition to the application and asked the Board to disapprove it. She spoke of her concerns with the density and traffic. She stated she moved into York County specifically to get away from heavy density, and she urged to Board to deny the application.

Mr. Allen Hogge, 1240 Dare Road, stated he was before the Board because his taxes have increased and because 80 percent of his income goes to taxes in York County. He stated no one had told him how much more his taxes would increase because of increased services that will have to be provided for people in this high density project. He asked the Board to disapprove the application.

Mr. Jan Briede, 504 Old Dominion Road, expressed support of the proposed mixed use development, stating he could not envision a Target or strip mall at this location.

Mr. Ray Schmidt, 106 Allen Harris Drive, stated he and his wife were the first residents in Settlers Crossing 20 years ago. He expressed his concerns with the density of the proposed project and the traffic impact it would have on Settlers Crossing. He said the project does not fit the location, and he urged to Board to deny the application.

Mr. Stuart Pendleton, 105 Mason Court, addressed the Board to oppose the application and stated he was upset by how this would be supported by a County Administrator after the Plan-

ning Commission said it was not a good idea. He indicated he thought it was a fine idea in the wrong location, but it was too large a project for such a small, highly visible piece of property entering into the colonial district.

Mrs. Nancy Pendleton, 105 Mason Court, stated she was shocked that this project was being discussed after being voted against by the Planning Commission. She asked the Board to vote against this project.

Mr. J.R. Crigler, 103 Mason Court, stated he agreed with everything his neighbors said, and he totally opposed this project for all the reasons that had been stated. He asked the Board to deny the application.

Ms. Margaret Bruce, 405 Wormley Creek Drive, appeared to address the Board in opposition to the application, and said she thought the development was a beautiful concept, but she did not see that it fit the parcel of land, and she was concerned about how close it would be to Route 17.

Ms. Julie Steele, 11836 Fishing Point Drive, stated she had provided environmental and wetlands services throughout the state of Virginia and had worked on hundreds of projects. She said from the review she made of this project, it was a fantastic, high quality project from an environmental standpoint, having no wetlands impacts and so few other environmental impacts if any. She thought the project consultants had done a fantastic job on the design of the project from an environmental perspective, and she strongly encouraged the Board to approve the project.

Ms. Susan Copenhaver, 201 Fielding Lewis Drive, appeared before the Board to speak in favor of the Yorktown Green development. She spoke about the need to recognize economic growth in York County. She shared her concern that Route 17 was developed fairly randomly over the past 40 to 50 years, and that was the kind of sprawl that she feared in York County. She noted her second concern involved the limited availability of well-designed, moderately priced homes in the community. She asked the Board to consider limiting the development of strip shopping centers and revise the zoning for this particular piece of property and surrounding properties.

Ms. Donna Stephens-Gailey, 152 Lone Oak Drive, an associate broker with Mid-Atlantic Commercial and a business owner in York County, expressed her full support for the application and urged the Board to move forward with the project.

Mr. Stephen Barrs, 208 Sylvia Drive, appeared before the Board in support of the application. He stated he was the owner C.A. Barrs Contractor and Yorktown Materials, and his business was located within a mile of the proposed community. He stated that as a resident and business owner in the County, he felt strongly that this project would actually be beneficial to the County. He said his employees needed more opportunities to live closer to where they work. He stated he felt the developer would produce a quality project, and he trusted that the Board of Supervisors and the County staff will oversee them and ensure that the project was a responsible community.

Ms. Barbara Conley, 202 Treis Trail, stated there are a lot of apartment complexes her in part of the County, and those apartments are mixed in with condos, townhouses, and single family units, and they do tend to be on much larger tracts of property. She indicated she had not heard anything tonight against this mixed use development, and she thought everyone was in favor of the whole concept, except for the major concern about the size of the complex on such a small tract of land. Mrs. Conley agreed that it was too large of a complex on the particular property, and the Planning Commission had already heard all the same arguments the Board was hearing tonight when they voted to deny the application. She asked the Board members to summarize their own personal reasons for the way they were going to vote in order for the citizens to understand their vision of what was important for York County.

Ms. Jeanne Eickhoff, 106 Mason Court, appeared before the Board to join her neighbors in opposing the project. She questioned if apartments were really needed in York County when already 25 percent of the County was occupied by renters. She also questioned if it could be proved that the costs of these new residences would be offset by monies that the County hoped

to gain by the property taxes. She asked the County to use forward thinking management and build an infrastructure first.

Ms. Debbie Noble, 405 Allen Harris Drive, thanked the Chairman of the Board for his patience in listening to the multiplicity of viewpoints expressed tonight and for many of his personal responses to her emails which made her feel that he was interested in the voice of the citizenry of this County. She stated one point that had not been brought up was the impact on the future residents of Yorktown Green and whether or not those several hundred residents would find the particular quality of life they were looking for. She suggested to the Board that perhaps the development should be tabled until the project could be downsized to more of its original concept.

There being no one else present who wished to speak concerning the subject application, Chairman Shepperd closed the public hearing.

Mr. Hrichak stated several comments had been made regarding the widening of Route 17, and he asked what its effect was going to be on the development.

Mr. Carter stated the segment of Route 17 programmed for widening was between Wolf Trap Road and Route 134, and it was scheduled to begin sometime in FY 2010. He explained that in the early 1990s the segment between the Coleman Bridge and Fort Eustis Boulevard was going to be widened, but the Board of Supervisors worked with VDOT and requested that VDOT reorient its priorities to the segment between Wolf Trap Road and Route 134. He stated the Board annually submits requests to VDOT for widening of other segments of Route 17, but those segments are at the southern end from Route 134 down to Newport News. He added that to the best of his knowledge, the segment from Fort Eustis Boulevard north to the bridge was not even on VDOT's long-range plan, and he thought its long-range plan for widening ended at Route 105. Mr. Carter explained that even if it were added to the plan tomorrow, with the way the sequencing of projects works, it would be 10 years before anything could be done. He stated there would certainly be some type of landscape buffer out front whether it was all of the existing trees or not. Mr. Carter stated he thought any utility relocation would be set back far enough so that any future highway widening, if it ever occurred, could be accommodated.

Mr. Hrichak stated some of the properties already border on the shopping center, and he asked if building the multi-use facility would have any impact on property values on the citizens living behind the property.

Mr. Carter stated he could not answer the question.

Mr. Hrichak stated that mention was made of overburdening the infrastructure, but he thought the statements in the information materials from both the Fire Chief and the Sheriff said that they had sufficient capability to take care of the proposed development. He also noted that from statements made earlier by other people, there would not be an issue with sewer, water, and drainage.

Mr. Carter stated that was correct, that it would all be taken care of during the development review process, and there were adequate capacities to handle the development.

Mr. Hrichak asked if there was a documented need in the County for more small retail space or this type of housing.

Mr. Carter stated he would agree with the statements that have been made that there is very little additional multi-family property in the County designated or zoned. He added that most of the multi-family property had been developed already, so he would say if there was additional demand for apartments, there was additional demand for land that was not currently designated for apartments. He stated he could not answer the retail question, but he believed that the vacant retail buildings listed on the Economic Development website were not as extensive as the earlier figures that were quoted.

Mrs. Noll asked Mr. Carter to clarify if she heard him say that the developer had proffered underground utilities, and she asked if any development that went in along Route 17 would have to have underground utilities.

Mr. Carter stated the County's zoning ordinance requires that if utilities are required to be moved to accommodate any feature of the development, then they have to be put underground. He added that he thought the installation of the turning lane would require overhead utilities to be moved, so even though they proffered it, it would likely have to be done anyway.

Mrs. Noll asked for clarification on the question of whether or not the things that had been proffered would actually have to be done.

Mr. Carter stated the proffers run with the land and they become as effective a zoning requirement as if it is written in the County's current zoning ordinance. He stated the applicant had proffered the architectural renderings that were in their package. He explained that the architectural renderings were very clearly labeled as to brick and what parts of the building would be brick and what parts would be vinyl.

Chairman Shepperd asked Mr. Carter his opinion regarding the Planning Commission's support of mixed use development and its denial of this mixed use application.

Mr. Carter stated in his opinion the Planning Commissioners were supportive of mixed use, but they had concurred with many of the residents' opinions that the project was too dense for the 12 acres.

Chairman Shepperd questioned if it was an issue of whether mixed use should not be in County or just this particular project.

Mr. Carter stated he did not recall any of the commissioners suggesting the Board sponsor an amendment to the Comprehensive Plan to remove the mixed use designation from the intersection.

Mr. Hrichak stated the proposal did not seem to be a very child friendly development. He added he did not see any pools or playground, and he asked what the target audience was on this project.

Ms. White stated that federal and state fair housing acts prohibit the development from discriminating against families with children, unless it was development that qualified as a housing development for older persons, which this one was not. She indicated this type of housing product would only appeal to certain individuals; and more than likely, because of the lack of the amenities that were just mentioned, it would be less attractive for families.

Discussion followed on the details of the development, to include numbers of bedrooms, amenities, exterior finishes, retail office space, density, and height.

Mr. Wiggins stated he had met with the citizens and he had meet with Mid-Atlantic several times on this project. He stated the feeling he had from the citizens was that they were originally in favor of the project, but as the size of it grew, the acceptance of the citizens decreased. He then spoke of the impact the project would have on the schools and the possible need for a new elementary school. Mr. Wiggins stated there was no way he could support this project.

Meeting Recessed. At 9:58 p.m. Chairman Shepperd declared a short recess.

Meeting Reconvened. At 10:11 p.m. the meeting was reconvened in open session by order of the Chair.

Mr. Hrichak stated he could see the need for this project, and there are citizens in the County who want to sell their houses and move someplace where they do not have to maintain the yards and still make a residence in the County. He added he could see that the commercial developments which come along with this development would help boost the sales in the adjacent shopping center and also benefit the residents in the area. He stated the only downside he could see was that the view from the back yards of current residents might be changed from trees to four story buildings. He indicated he did not think there would be much of a traffic

impact, and the net gain or net loss of the seats in the schools should be taken care of by the students that are lost with the boundary adjustment with Newport News.

Mrs. Noll expressed her appreciation for all the emails and the dialogue with the citizens. She explained how she has to look beyond just today and think of the future and the vision for York County, and one of the visions for York County was a need to have a variety of housing stock. She stated she had always been a proponent of mixed use because of the walkability of mixed use and getting cars off the road. She said the County needs to offer people a variety and at the same time keep people in York County, and to do this she was going to support this mixed use development.

Mr. Zaremba stated he personally thought the comments both for and against the project were outstanding. He spoke of all the information that had been provided by the staff and the developer, and the decision would be difficult. He spoke about the mixed use concept, stating he commended this developer because they are the first to utilize the concept, and they identified this piece of property and spent money to develop something they felt met the County's guidelines. Mr. Zaremba stated for him it boiled down to location, and he felt this development was in the wrong location and was the wrong size. He indicated he was excited about mixed use for York County, but not at the subject location.

Chairman Shepperd stated he looked at the project in light of the culture of the County's citizenry in this area, and the Board has to address these cultures when making these kinds of decisions. He agreed that the County needed different types of housing, but questioned whether or not the County needed this project to have that different type of housing. He stated he did not like feeling coerced through threats of bad ideas, and he saw that argument this evening during the discussion of what could be built on the property under current zoning. Mr. Shepperd stated the that question came down to him was whether or not it was a great project, with a great design, and did it fit the culture of people in terms of location size, and density. He stated he felt it was too tight, with too many people per square foot, and he felt the local citizenry would be fairly upset with a four-story project around established subdivisions.

Mr. Hrichak then moved the adoption of proposed Ordinance No. 08-10(R) that reads:

AN ORDINANCE TO APPROVE A 12.5-ACRE MIXED-USE PLANNED DEVELOPMENT WITH 189 APARTMENT UNITS AND APPROXIMATELY 29,400 SQUARE FEET OF RETAIL/OFFICE SPACE ON 12.5 ACRES OF LAND LOCATED ON THE EAST SIDE OF ROUTE 17 SOUTH OF BATTLE ROAD (ROUTE 718)

WHEREAS, Mid-Atlantic Communities LLC has submitted Application No. PD-22-08, which seeks to amend the York County Zoning Map by reclassifying from GB (General Business) and R20 (Medium-density Single-family Residential) to PDMU (Planned Development Mixed Use) approximately 12.46 acres of a 24.2-acre site for the purpose of establishing a mixed-use development located at the southeast quadrant of the intersection of George Washington Memorial Highway (Route 17) and Battle Road (Route 718) and further identified as Assessor's Parcel No. 24-56-B (GPIN Q09d-4122-0113) and a portion of Assessor's Parcel No. 24-81B (GPIN Q09d-3894-0486); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends denial of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the 15th day of July, 2008, that Application No. PD-22-08 be, and it is hereby, approved to amend the York County Zoning Map by reclassifying from GB (General Business) and R20

(Medium-density Single-family Residential) to PDMU (Planned Development Mixed Use) approximately 12.5 acres of a 24.5-acre site, more fully described below, for the purpose of establishing a mixed-use development located at the southeast quadrant of the intersection of George Washington Memorial Highway (Route 17) and Battle Road (Route 718), further identified as Assessor's Parcel No. 24-56-B (GPIN Q09d-4122-0113) and a portion of Assessor's Parcel No. 24-81B (GPIN Q09d-3894-0486), and more fully described as follows:

> Beginning at a point on the eastern right-of-way of US Route 17, George Washington Memorial Highway; said point being S 21°-49'-25" E 132.55 feet, S 27°-01'-05" E 233.03 feet of the southeast intersection of US Route 17 and Battle Road, and leaving said right-of-way and running the following courses and distances: N 50°-37'-17" E 540.31 feet to a point; thence S 70°-18'-31" E 239.24 feet to a point; thence N 62°-57'-59" E 107.83 feet to a pipe; thence S 27°-02'-01" E 458.75 feet to a pin; thence S 45°-35'-47" W 838.07 feet to a point on the eastern right-of-way of US Route 17; thence running along said right-of-way N 27°-01'-05" W 767.61 feet to a point, the point of beginning. The parcel is further described as Parcel A-1 and Parcel B on a plat titled "Exhibit Plat of Parcel A-1 & Parcel B, Property to be Zoned PD Containing 542,659 sq. ft. or 12.458 Acres," prepared by C.E. Newbaker Surveying & Planning, Inc., and dated November 8, 2007.

BE IT FURTHER ORDAINED that approval of this application shall be subject to the following conditions:

1. General Layout, Design, and Density

   a) A site plan, prepared in accordance with the provisions of Article V of the Zoning Ordinance, shall be submitted to and approved by the Department of Environmental and Development Services, Division of Development and Compliance prior to the commencement of any land clearing or construction activities on the site. Except as modified herein, said site plan shall be in substantial conformance with the conceptual plan titled "Master Plan, Yorktown Green, 'A Mixed Use Community'," prepared by C. E. Newbaker Surveying & Planning Inc., dated February 14, 2008, and the streetscape plan titled "Yorktown Green," prepared by Hopke & Associates, Inc., dated April 28, 2008.

   b) Except as modified herein, architectural design of all buildings shall be in substantial conformance with the building elevations submitted by the applicant and titled "Yorktown Green," prepared by Hopke & Associates, Inc., dated March 2, 2008, copies of which shall be kept on file in the York County Planning Division.

   c) Architectural design of buildings shall be in conformance with the standards set forth in Zoning Ordinance Sections 24.1-378(d), Route 17 Corridor Overlay District, and 24.1-361.1(f), Planned Development Mixed Use district.

   d) The maximum number of apartment units shall be 189. Buildings A, B, I, and J as depicted on the referenced conceptual plan shall be developed with ground-floor commercial, office, or civic space only and residential use on the upper floors.

   e) Residential units shall be limited to one- and two-bedroom units only.

2. A single freestanding development identification sign located along the Route 17 frontage shall be permitted. Said sign shall be monument-style and shall not exceed forty (40) square feet in area and six feet (6') in height. Materials and colors shall be compatible with overall development architecture. Not more than four (4) individual commercial tenants shall be identified on the development identification sign and the area devoted to individual tenant identification shall not exceed 40% of the total sign face. Two additional freestanding development identification signs shall be permitted at the internal access connections at the northern and southern property boundaries, both of which shall be limited to 32 square feet in area and shall be of a monument type. Installation

of the sign at the circulation drive entering the parcel from the adjoining convalescent center parcel to the north shall not be permitted until such time as there is an actual connection to the vehicular circulation system on that parcel or such other parcel as may be created on the Route 17/Battle Road intersection.

Pursuant to Section 24.1-707(r) of the Zoning Ordinance, identification and directional boards no larger than 32 square feet in area shall be permitted internal to the development provided that there shall be no more than one such sign for each major sub-area of the development.

In accordance with the Zoning Ordinance standards applicable to development in the LB (Limited Business) district, wall signage having a maximum cumulative area of 1.25 square feet for each linear foot of principal building width shall be permitted.

All signage illumination shall be internal or, if external, by full cut-off fixtures that are shielded and directed downward at a 90-degree angle to the ground to prevent off-site illumination.

3. Free standing and building-mounted lighting illumination levels shall not exceed 0.5 foot candle at the right-of-way line for Route 17 and at the northern and southern property borders. Illumination levels at the eastern property border shall not exceed 0.1 foot candle. All lighting schemes and lighting fixtures shall be consistent with the lighting recommended by the Illumination Engineering Society of North America (IESNA). A lighting plan indicating manufacturer's specifications for all fixtures and illumination levels for the development site shall be submitted for review and approval by the Department of Environmental and Development Services at time of application for site plan approval.

4. All commercial parking areas shall be screened from view of Route 17 with evergreen plantings having a minimum mature height of three (3) feet. Landforms, supplemented with appropriate landscaping, may be used to achieve the required screening effect.

5. Landscaping along the Route 17 frontage of the development shall meet minimum planting standards for a 45-foot greenbelt pursuant to Zoning Ordinance Section 24.1-245(c).

6. A landscape buffer at least thirty feet (30') in width shall be established along the eastern property boundary. Plantings within the buffer shall meet minimum planting standards of a Type 35 transitional buffer. Any new plantings required to meet said standard shall be a long-living evergreen species of a type, such as Eastern red cedar or Arborvitae "Green Giant," that maintains branching to ground level and shall be spaced no less than 15 feet on center. Landscaping within required transitional buffer areas located on the applicant's property along the northern and southern property boundaries shall meet minimum planting standards of a Type 35 transitional buffer.

7. The developer shall install a right-turn lane and taper on George Washington Memorial Highway at the main entrance right-turn in/right-turn out driveway, as shown on the development plan. Design, including length and width of the taper, shall meet all applicable standards of Virginia Department of Transportation (VDOT).

8. In accordance with Section 24.1-252(b)(4) of the Zoning Ordinance, a second vehicular access to the proposed development from Route 17 shall be permitted provided that it is designed as a right-turn in-only driveway, or right-turn in/right-turn out if approved by VDOT, and provided further that it is designed to serve as a joint entrance for the mixed-use development and the adjoining parcel to the north.

9. The private street system within the development shall be designed and constructed in conformance with Section 24.1-361.1(h) of the Zoning Ordinance, PDMU–Planned development mixed use district, Special design requirements.

10. The location and arrangement of open space shall be generally as depicted on the plan titled "Master Plan, Yorktown Green" prepared by C.E. Newbaker Surveying and Plan-

ning Inc., dated February 14, 2008.

11. Indoor recreational amenities shall consist of, at a minimum, a 900-square foot ground-floor fitness center. Said facility shall be available without additional charges or fees (i.e., in addition to normal property owners' association dues) to all residents of the development and their guests. Said facility shall be completed and available to residents prior to the issuance of Certificates of Occupancy for more than 50% of the residential units in Phase 1 of the development.

12. The reclassification shall be subject to the conditions listed in the proffer statement titled "Proffers, Yorktown Green," dated April 28, 2008, and signed by Cowles M. Spencer, Sr., Hal D. Bourque, and C. L. Parrish.

BE IT STILL FURTHER ORDAINED that in accordance with Section 24.1-114(e)(1) of the York County Zoning Ordinance, a certified copy of this Ordinance, together with a duly signed copy of the proffer statement, shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court prior to application for site plan approval.
On roll call the vote was:

Yea: (2) Noll, Hrichak
Nay: (3) Wiggins, Zaremba, Shepperd

APPLICATION NO. UP-743-08, BURGER KING

Mr. Carter made a presentation on proposed Resolution R08-89 to approve a use permit authorizing the establishment of a fast-food restaurant with drive-through windows on a one-acre parcel located at 759 East Rochambeau Drive approximately 815 feet north of the intersection of East Rochambeau Drive and Mooretown Road. The Planning Commission considered the application and forwarded it to the Board of Supervisors with a recommendation of approval, and staff recommended approval of the application through the adoption of proposed Resolution R08-89.

Discussion followed on the current status of Burger King franchises.

Chairman Shepperd called to order a public hearing on Application No. UP-743-08 that was duly advertised as required by law. Proposed Resolution R08-89 is entitled:

> A RESOLUTION TO APPROVE AN APPLICATION FOR A SPECIAL USE PERMIT TO ESTABLISH A FAST-FOOD RESTAURANT WITH DRIVE-THROUGH WINDOWS AT 759 EAST ROCHAMBEAU DRIVE (ROUTE F-137)

Mr. Sean Marsden, Hoggard/Eure Associates, representing the applicant, appeared to answer any questions the Board might have.

There being no one else present who wished to speak concerning the subject application, Chairman Shepperd closed the public hearing.

Mr. Zaremba then moved the adoption of proposed Resolution R08-89 that reads:

> A RESOLUTION TO APPROVE AN APPLICATION FOR A SPECIAL USE PERMIT TO ESTABLISH A FAST-FOOD RESTAURANT WITH DRIVE-THROUGH WINDOWS AT 759 EAST ROCHAMBEAU DRIVE (ROUTE F-137)

WHEREAS, Burger King has submitted Application No. UP-743-08, which requests a Special Use Permit, pursuant to Section 24.1-306 (Category 11, No. 14) of the York County Zoning Ordinance, to authorize the establishment of a fast-food restaurant with drive-through windows on a one-acre parcel located at 759 East Rochambeau Drive (Route F-137) approximately 815 feet north of the intersection of East Rochambeau Drive and Mooretown Road

(Route 603) and further identified as Assessor's Parcel No. 2-17-A2 (GPIN# B19b-4579-3774); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends approval of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 15th day of July, 2008, that Application No. UP-743-08 be, and it is hereby, approved to authorize the establishment of a fast-food restaurant with drive-through windows on a one-acre parcel located at 759 East Rochambeau Drive (Route F-137) approximately 815 feet north of the intersection of East Rochambeau Drive and Mooretown Road (Route 603) and further identified as Assessor's Parcel No. 2-17-A2 (GPIN# B19b-4579-3774), subject to the following conditions:

1. This Special Use Permit shall authorize the establishment of a fast-food restaurant with drive-through windows on a one-acre parcel located at 759 East Rochambeau Drive (Route F-137) approximately 815 feet north of the intersection of East Rochambeau Drive and Mooretown Road (Route 603) and further identified as Assessor's Parcel No. 2-17-A2 (GPIN# B19b-4579-3774).

2. A site plan prepared in accordance with the provisions of Article V of the York County Zoning Ordinance shall be submitted to and approved by the County prior to the commencement of any land clearing or development activities on the site. Said site plan shall be in substantial conformance with the sketch plan titled "Conceptual Site Plan for Burger King, East Rochambeau Drive, York County, Virginia," prepared by Hoggard/Eure Associates, P.C. and dated May 29, 2008, supplemented by the building elevations submitted by the applicant, copies of which shall remain on file in the office of the Planning Division.

3. Development and operation of the fast-food restaurant shall be in accordance with the performance standards set forth in Sections 24.1-470, Standards for all business and professional service uses, and 24.1-473, Standards for drive-in, fast food and carry-out delivery restaurants, of the Zoning Ordinance.

4. Freestanding signage shall be limited to a single monument-type sign measuring no more than 64 square feet in area and ten feet (10') in height.

5. Pursuant to Section 24.1-245(c) of the Zoning Ordinance, the unvegetated twenty foot (20') greenbelt along the front property boundary adjacent to East Rochambeau Drive shall be landscaped in accordance with the planting requirements for a front landscape yard. A minimum of fifty percent (50%) of the required landscape credits shall be earned from trees.

6. Trash dumpsters shall be screened from both on-site and off-site views by wooden or masonry fencing, supplemented by landscaping designed specifically to screen views from East Rochambeau Drive and the adjacent parcel to the north.

7. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of this resolution shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court prior to application for a building permit.

BE IT FURTHER RESOLVED that this Special Use Permit is severable and invalidation of any word, phrase, clause, sentence, or paragraph shall not invalidate the remainder.

On roll call the vote was:

Yea: (5) Wiggins, Hrichak, Zaremba, Noll, Shepperd
Nay: (0)

UTILITY EASEMENT—SPORTS COMPLEX PROJECT

Mr. Barnett made a presentation on proposed Resolution R08-94 declaring the necessity to enter upon and take a permanent utility easement on property located at 4301 George Washington Memorial Highway in connection with the Oriana Road sports complex project.

Chairman Shepperd stated the last time the County obtained an easement on the road, it increased the property value, and he asked if this proposal would do that again.

Mr. Barnett stated the County appraiser had looked at it and said it should have no additional impact.

Chairman Shepperd then called to order a public hearing on proposed Resolution R08-94 that was duly advertised as required by law and is entitled:

> A RESOLUTION DECLARING THE NECESSITY TO ENTER UPON AND TAKE A PERMANENT UTILITY EASEMENT CONSISTING OF 0.831 ACRES, ON PROPERTY LOCATED AT 4301 GEORGE WASHINGTON MEMORIAL HIGHWAY, PROPERTY OF THE ESTATE OF HENRY S. OAKLEY IN CONNECTION WITH THE ORIANA ROAD SPORTS COMPLEX PROJECT

There being no one present who wished to speak concerning the subject ordinance, Chairman Shepperd closed the public hearing.

Mrs. Noll then moved the adoption of proposed Resolution R08-94 that reads:

> A RESOLUTION DECLARING THE NECESSITY TO ENTER UPON AND TAKE A PERMANENT UTILITY EASEMENT CONSISTING OF 0.831 ACRES, ON PROPERTY LOCATED AT 4301 GEORGE WASH-INGTON MEMORIAL HIGHWAY, PROPERTY OF THE ESTATE OF HENRY S. OAKLEY IN CONNECTION WITH THE ORIANA ROAD SPORTS COMPLEX PROJECT

WHEREAS, it is necessary to obtain an additional permanent utility easement in connection with the Oriana Road sports complex project; and

WHEREAS, for various reasons, the County is not able to obtain from the owners of such property clear title to the interests in real estate necessary, or no agreement has been reached as to the consideration to be paid for the said interests; and

WHEREAS, a plat of the interest in real property to be acquired has been pre-pared by Vanasse Hangen Brustlin, Inc., and appraisals of such interests have been prepared; and

WHEREAS, § 15.2-1905 (C), Code of Virginia, authorizes the Board to adopt a resolution following a public hearing on the matter declaring its intent to enter and take specified properties, rights-of-way or easements for such purposes as providing water to the County's recreation facility under construction;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Super-visors this 15th day of July, 2008, that the Board finds that it is necessary for the protection and preservation of the public health, safety and welfare, for the County to acquire the interests in property described below by condemnation or otherwise for the purpose of providing a waterline to the Oriana Road sports complex project, and for the County, its officers, employees and agents to enter upon and take the interests in real property described below prior to the initiation of condemnation proceedings.

BE IT FURTHER RESOLVED that the interests to be taken are as follows, and the compensation and damages, if any, offered by the County, which easements are more particularly described on the plat attached to the memorandum of the County Attorney dated June 30, 2008, and incorporated herein by this reference:

Tax Map Parcel 29-17-00-000A, GPIN Parcel s05b-2656-2960

A permanent utility easement coextensive with a variable width access easement previously obtained, as shown on a plat entitled "PLAT SHOW-ING ACCESS EASEMENT AND LANDSCAPE BUFFER EASE-MENTS ACROSS PROPERTY OF HENRY S. OAKLEY, YORK COUNTY, VIRGINIA," dated October 12, 2006 prepared Vanasse Han-gen Brustlin, Inc. All utility improvements placed within the easement shall be constructed at or below ground level. Value offered to owner: $100.00.

BE IT STILL FURTHER RESOLVED that the Chairman of the Board of Super-visors, the County Treasurer and the County Attorney are hereby authorized and directed, for and on behalf of the County, to execute a certificate of deposit to be recorded in the Office of the Clerk of the Circuit Court for York County, certifying the amount set forth above as the fair value, and damages if any, of the interests to be taken, will be paid the owners in accordance with the provisions of State law and upon order of the Court.

BE IT STILL FURTHER RESOLVED that the County Attorney be, and he is hereby, authorized, if necessary and appropriate, at any time following the date of this Resolution, to institute condemnation proceedings in the name of the Board of Supervisors to acquire title to the interests in the property described above, including, if necessary, any other easements or restrictions that may affect the easements sought to be acquired, and to do all things necessary as a prerequisite thereto.

On roll call the vote was:

Yea: (5) Hrichak, Zaremba, Noll, Wiggins, Shepperd
Nay: (0)

NEW BUSINESS

APPLICATION NO. YVA-28-08, WATERMEN'S MUSEUM

Mr. Carter made a presentation on proposed Resolution R08-91 to approve a proposed new building, the Boat Shop, to be located on the Watermen's Museum property located at 308 Water Street in Yorktown.

Mr. Shepperd asked if this was in a resource protection area.

Mr. Carter stated the Museum was exempt from the normal 100-foot buffer because it was in an Intensely Developed Area.

Mr. Zaremba then moved the adoption of proposed Resolution R08-91 that reads:

A RESOLUTION TO APPROVE A PROPOSED NEW BUILDING – THE BOAT SHOP – TO BE LOCATED ON THE WATERMEN'S MUSEUM PROPERTY LOCATED AT 309 WATER STREET IN YORKTOWN

WHEREAS, the Watermen's Museum has submitted an application requesting permission to construct a new building to house boat building demonstrations and exhibits on its property located at 309 Water Street in Yorktown (Parcel Nos. 18A-1-12C and 12D); and

WHEREAS, pursuant to Section 24.1-327(b)(3) of the York County Zoning Ordinance, such requests may be approved by the Board of Supervisors by resolution when they involve less than a 25% increase in total site floor area; and

WHEREAS, the proposed building has been reviewed and approved by the Historic Yorktown Design Committee for consistency with the Yorktown Design Guidelines; and

WHEREAS, the Board has determined the proposed construction to be consistent with the applicable requirements of the YVA-Yorktown Village Activity District and does not exceed the allowable 25% expansion standard;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 15th day of July, 2008, that the request of the Watermen's Museum for permission to construct a new building, as depicted on plans and other materials submitted in conjunction with Application No. YVA-28-08 be, and it is hereby, approved.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Hrichak, Shepperd
Nay: (0)

CLOSED MEETING. At 10:45 p.m. p.m. Mr. Zaremba moved that the meeting be convened in Closed Meeting pursuant to Section 2.2-3711(a)(1) of the Code of Virginia pertaining to appointments to Boards and Commissions; Section 2.2-3711(a)(3) pertaining to the acquisition of real property for a public purpose

On roll call the vote was:

Yea: (5) Noll, Wiggins, Hrichak, Zaremba, Shepperd
Nay: (0)

Meeting Reconvened. At 11:05 p.m. the meeting was reconvened in open session by order of the Chair.

Mr. Hrichak moved the adoption of proposed Resolution SR-1 that reads:

A RESOLUTION TO CERTIFY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT REGARDING MEETING IN CLOSED MEETING

WHEREAS, the York County Board of Supervisors has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711.1 of the Code of Virginia requires a certification by the York County Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 15th day of July, 2008, hereby certifies that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the York County Board of Supervisors.

On roll call the vote was:

Yea: (5) Wiggins, Hrichak, Zaremba, Noll, Shepperd
Nay: (0)

REAPPOINTMENT TO THE YORK COUNTY WETLANDS AND CHESAPEAKE BAY BOARDS

Mrs. Noll moved adoption of proposed Resolution R08-83 that reads:

A RESOLUTION TO REAPPOINT A MEMBER TO THE YORK COUNTY WETLANDS AND CHESAPEAKE BAY BOARDS

WHEREAS, the term of Alvin K. Russell on the York County Wetlands Board and Chesapeake Bay Board expires on June 30, 2008; and

WHEREAS, Alvin K. Russell has indicated he wishes to be reappointed to the York County Wetlands Board and Chesapeake Bay Board;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 15th day of July, 2008, that Alvin K. Russell be, and he is hereby, reappointed to the York County Wetlands Board and Chesapeake Bay Board for a term of five years, such term to begin on July 1, 2008, and expire on June 30, 2013.

On roll call the vote was:

Yea: (5) Hrichak, Zaremba, Noll, Wiggins, Shepperd
Nay: (0)

APPOINTMENT TO THE MIDDLE PENINSULA JUVENILE DETENTION COMMISSION

Mr. Zaremba moved adoption of proposed Resolution R08-71 that reads:

A RESOLUTION TO APPOINT A YORK COUNTY ALTERNATE TO THE MIDDLE PENINSULA JUVENILE DETENTION COMMISSION

BE IT RESOLVED by the York County Board of Supervisors this 15th day of July, 2008, that Brian T. McCoy be, and he is hereby, appointed to represent York County as an alternate Commissioner on the Middle Peninsula Juvenile Detention Commission.

BE IT FURTHER RESOLVED that this appointment is effective immediately and expires June 30, 2010.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Hrichak, Shepperd
Nay: (0)

REAPPOINTMENT TO THE BOARD OF BUILDING CODE APPEALS

Mr. Zaremba moved adoption of proposed Resolution R08-90 that reads:

A RESOLUTION TO REAPPOINT A MEMBER TO THE YORK COUNTY BOARD OF BUILDING CODE APPEALS

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 15th day of July, 2008 that William M. Hurst be, and is hereby reappointed to the York County Board of Building Code Appeals for a term of three years, such term to begin on July 1, 2008, and expire June 30, 2011.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Hrichak, Zaremba, Shepperd
Nay: (0)

Meeting Adjourned. At 11:09 p.m. Chairman Shepperd declared the meeting adjourned sine die.

James O. McReynolds, Clerk
York County Board of Supervisors

Thomas G. Shepperd, Jr., Chairman
York County Board of Supervisors