



City of Chesapeake

Office of the City Attorney
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Chesapeake, Virginia 23322
(757) 382-6586
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September 5, 2008


Ms. Dolores A. Moore
City Clerk
Municipal Center
Chesapeake, Virginia 23322

Re: RESOLUTION REQUESTING THE PLANNING COMMISSION TO CONSIDER AND MAKE RECOMMENDATIONS CONCERNING PROPOSED AMENDMENTS TO THE POLICIES AND MAPS OF THE 2026 COMPREHENSIVE PLAN TO EXTEND THE PUBLIC UTILITY FRANCHISE AREA TO INCLUDE PROPERTY FRONTING WHITTAMORE ROAD, CENTERVILLE TURNPIKE, AND MURRAY DRIVE IN THE BUTTS ROAD BOROUGH OF THE CITY OF CHESAPEAKE AND TO INCLUDE SUCH OTHER PROPERTIES AS MAY BE DEEMED NECESSARY TO AVOID POTENTIAL HEALTH RISKS.

Dear Ms. Moore:

Please place the above-referenced resolution on the agenda for the City Council meeting on September 23, 2008, under the City Attorney portion, and include the attached letter as backup material.

Very truly yours,



Ronald S. Hallman
City Attorney

RSH:fmh

cc: Mr. William E. Harrell, City Manager
Ms. Anna M. D'Antonio, Assistant to the City Manager
Mr. Amar Dwarkanath, Deputy City Manager
Mr. Jim Walski, Public Utilities Director
Mr. Brent R. Nielson, Planning Director



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To the Honorable Mayor, Vice-Mayor,
and City Council Members

Re: RESOLUTION REQUESTING THE PLANNING COMMISSION TO CONSIDER AND MAKE RECOMMENDATIONS CONCERNING PROPOSED AMENDMENTS TO THE POLICIES AND MAPS OF THE 2026 COMPREHENSIVE PLAN TO EXTEND THE PUBLIC UTILITY FRANCHISE AREA TO INCLUDE PROPERTY FRONTING WHITTAMORE ROAD, CENTERVILLE TURNPIKE, AND MURRAY DRIVE IN THE BUTTS ROAD BOROUGH OF THE CITY OF CHESAPEAKE AND TO INCLUDE SUCH OTHER PROPERTIES AS MAY BE DEEMED NECESSARY TO AVOID POTENTIAL HEALTH RISKS.

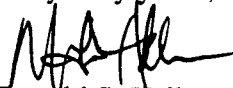
The purpose of this resolution is to initiate an amendment to the Comprehensive Plan to extend the 2026 Public Utility Franchise Area ("Franchise Area") to certain residential and agricultural properties on Whittamore Road, Centerville Turnpike and Murray Drive. The expansion of the Franchise Area will allow the extension of public water facilities to these properties in order to protect citizens and landowners from the potential health risks associated with fly ash deposited at the Battlefield Golf Club. The resolution also allows the City Manager to identify other properties that should be included in the expansion of the Franchise Area due to the presence of the fly ash, provided the properties are added to the recommended area of expansion prior to Planning Commission consideration of the proposed amendment. This resolution is in response to Mayor Krasnoff's request at the August 12, 2008, City Council meeting to initiate plans for the extension of water service to this area. City staff has already requested proposals for the design of this extension and is reviewing proposals submitted by eight private firms.

In 2001, Combustible Products Management proposed the construction of a golf course on Centerville Turnpike using fly ash provided by Dominion Virginia Power. The City was assured that the use of fly ash was safe for certain beneficial uses and in fact, permitted by state regulation. In 2007 the owner of the golf course certified to the Department of Environmental Quality (DEQ) that the golf course was completed in compliance with the state fly ash regulations. DEQ "closed" the site by letter dated October 4, 2007.

In early 2008, residents and property owners in the vicinity of the golf course began to voice concerns relating to potential groundwater contamination by the fly ash. The properties are currently located outside the Franchise Area and are therefore, served by wells and septic systems. The residents and property owners began to fear that their well water was not safe. The City reacted immediately to conduct well tests and commence an on-site environmental assessment. In the course of the environmental studies on-site, the City received test results indicating possible leaching of certain metal components of fly ash into the on-site groundwater. The City promptly notified the U.S. Environmental Protection Agency, which is currently conducting well tests and other studies. In addition, the City requested Dominion Virginia Power to assume the costs of extending public water to the properties adjacent to the golf course or which could be affected by downgradient groundwater flows. Dominion Virginia Power has agreed.

In order to extend public water to the properties in question, the Franchise Area must be expanded to include these properties by amendment of the Comprehensive Plan. The subject initiating resolution is the first step in the planning process. If the resolution is approved, the Department of Planning will prepare the amendment and present same to the Planning Commission. Acting in an advisory capacity, the Planning Commission will hold a public hearing and make recommendations to City Council. After hearing public comments, City Council take final action on the proposed amendment. This process generally takes four months or longer; however, the initiating resolution requests that the process be expedited and the agenda item be advertised concurrently for the Planning Commission and the City Council public hearings.

Very truly yours,



Ronald S. Hallman
City Attorney

RSH:fmh

cc: Mr. William E. Harrell, City Manager
Ms. Anna M. D'Antonio, Assistant to the City Manager
Mr. Amar Dwarkanath, Deputy City Manager
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Mr. Brent R. Nielson, Planning Director

RESOLUTION REQUESTING THE PLANNING COMMISSION TO CONSIDER AND MAKE RECOMMENDATIONS CONCERNING PROPOSED AMENDMENTS TO THE POLICIES AND MAPS OF THE 2026 COMPREHENSIVE PLAN TO EXTEND THE PUBLIC UTILITY FRANCHISE AREA TO INCLUDE PROPERTY FRONTING WHITTAMORE ROAD, CENTERVILLE TURNPIKE, AND MURRAY DRIVE IN THE BUTTS ROAD BOROUGH OF THE CITY OF CHESAPEAKE AND TO INCLUDE SUCH OTHER PROPERTIES AS MAY BE DEEMED NECESSARY TO AVOID POTENTIAL HEALTH RISKS.

WHEREAS, several properties fronting Whittamore Road, Centerville Turnpike, and Murray Drive in the Butts Road Borough are improved with residential dwellings and/or used for agricultural purposes; and

WHEREAS, these properties are currently dependent on wells for drinking water and septic systems for sewage disposal; and

WHEREAS, the construction of an adjacent golf course ("Battlefield Golf Club") by Combustible Products Management, using fly ash provided by Dominion Virginia Power, has caused residents and property owners in the area to raise questions regarding the safety of the groundwater; and

WHEREAS, well tests were conducted at approximately 90 homes along Whittamore Road, Centerville Turnpike, and Murray Drive to determine whether contamination of the well water occurred; and

WHEREAS, groundwater tests conducted on Battlefield Golf Club indicate that the fly ash may be leaching into the groundwater and could possibly flow downgradient; and

WHEREAS, the City and the United States Environmental Protection Agency are currently conducting additional tests and studying groundwater aquifers and flows

in order to determine the extent of risk, if any, to surrounding and downgradient properties; and

WHEREAS, out of an abundance of caution, the City Council wishes to provide the property owners and residents along Whittamore Road, Centerville Turnpike, and Murray Drive with the most permanent and effective risk protection possible by immediately extending public water services to these properties; and

WHEREAS, Dominion Virginia Power has agreed to fund the extension of public water lines to these residents and property owners in an amount up to Six Million Dollars or more; and

WHEREAS, the City Council also wishes to consider providing public water to other properties in the event test results indicate a likelihood of impact from the fly ash; and

WHEREAS, the 2026 Comprehensive Plan includes the Public Utility Franchise Policy, which delineates by an incorporated map the boundaries of the 2026 Public Utility Franchise Area; and

WHEREAS, the Public Utility Franchise Policy provides that public water and sewer services cannot be extended beyond the 2026 Public Utility Franchise Area without an approved amendment of the 2026 Comprehensive Plan; and

WHEREAS, the properties along Whittamore Road, Centerville Turnpike, and Murray Drive and other properties located downgradient of the Battlefield Golf Club lie outside the 2026 Public Utility Franchise Area and therefore, an amendment to the 2026 Comprehensive Plan is needed to extend public water and/or sewer services to these areas; and

WHEREAS, the interests of public necessity, good zoning practice and public health and safety require that an amendment to the 2026 Comprehensive Plan be considered by the Chesapeake Planning Commission and the City Council to expand the Public Utility Franchise Area to include, at a minimum, the properties along Whittamore Road, Centerville Turnpike and Murray Drive.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Chesapeake, Virginia, that the Chesapeake Planning Commission is requested to consider and make land use recommendations relating to the proposed amendment of the 2026 Comprehensive Plan, including the Public Utility Franchise Area Policy and Map, to expand the Public Utility Franchise Area to include the properties fronting Whittamore Road, Centerville Turnpike, and Murray Drive; and

BE IT FURTHER RESOLVED that that the City Manager shall have the authority to recommend that other properties located downgradient of the Battlefield Golf Club also be added to the 2026 Public Utility Franchise Area, provided that prior to final action by the Chesapeake Planning Commission, the City Manager makes a determination that the extension of public utilities to such additional properties is necessary or advisable to protect the public health and safety; and

BE IT FURTHER RESOLVED by the Council of the City of Chesapeake, Virginia, that the proposed amendment to the 2026 Comprehensive Plan be expedited to the extent permitted by Virginia law, including without limitation, concurrent advertising for the Chesapeake Planning Commission and the City Council public hearings.

ADOPTED by the Council of the City of Chesapeake, Virginia, this ____ day of _____, 2008.

APPROVED:

Mayor

ATTEST:

Clerk of the Council