

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 8th DAY OF SEPTEMBER IN THE YEAR TWO THOUSAND EIGHT OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 6:01 P.M.

IN RE: CALL TO ORDER

Chairman Burrell called the meeting to order.

IN RE: INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Evelyn gave the invocation and led the Pledge of Allegiance.

IN RE: ROLL CALL

Thomas W. Evelyn	Present
David M. Sparks	Present
James H. Burrell	Present
Stran L. Trout	Present
W. R. Davis, Jr.	Present

IN RE: CONSENT AGENDA

County Administrator John Budesky presented the Consent Agenda as follows:

1. Approval of Minutes
 - a. August 11, 2008 regular meeting
2. Miscellaneous
 - a. Resolution R-16-08 approving annual Community Services Board contract
 - b. Resolution R-28-08 authorizing modifications of the EDA series 2005 revenue note
 - c. Resolution R-29-08 recognizing Norma C. Holmes
 - d. Resolution R-30-08 authorization execution of agreement with VDOT for grant for installation of bicycle signage
 - e. Compensation in the amount of \$125 to Danielle Clark for livestock killed in November 2007
 - f. Acceptance of Deed of Dedication for a water utility line easement
 - g. Approval of proposed changes to page 7 of the Financial Policy Guidelines regarding method of calculating Reserve Balance
 - h. Resolution R-33-08 requesting that New Kent be declared a crop disaster area
3. Refunds
 - a. \$90 to Kentland Investments, LLC for duplicate recordation review fee
 - b. \$250 to Windmill Building Corp. for fire prevention application fee
4. FY09 Supplemental Appropriations
 - a. Funds for Fire-Rescue coverage at Colonial Downs Aug 4 – 6, \$3,038.00
 - b. Funds for Sheriff security coverage at Colonial Downs for Aug, \$3,575.00
 - c. Funds for extra Sheriff security at Jul and Aug events, \$2,304.00
 - d. Funds donated to the New Kent Animal Shelter, \$220.00

- e. Funds received from various builders for reimbursement of 2006 Code books purchased by the Building Development Office, \$371.00
- f. Funds received for Fire-Rescue sale of surplus equipment, \$3,480.00
- g. Various gifts and donations received from private clubs and individuals, \$1,373.00
- h. Additional litter prevention and recycling program grant revenue received for FY09, \$1,037.00
- i. Additional Social Services funds for increased demand for services for the Independent Living Program, \$1,775.00

Total Supplemental Appropriation:
\$ (17173.00) Total
\$ 17,173.00 Money-in/Money-out

- 5. FY09 Carry-forward Appropriations
 - a. Sheriff's grants not completed in FY09, \$9,271.58
 - b. Local share of Fire-Rescue VA Dept. of Health grant for emergency response trailer, \$2,100.00
 - c. Capital projects not completed in FY08, \$170,730.29

Total Supplemental Appropriation:
\$ (182,101.87) Total
\$ 45,376.04 Money-in/Money-out
\$ 2,292.00 From Fund 1 – General Fnd Bal
\$ 134,433.83 From Fund 7 – Capital Fnd Bal

- 6. FY08 Inter-Departmental Budget Transfers
 - a. *Treasurer*: \$5,426.51 from various salary and other line items to Data Processing, Postal Services, Mileage, Travel, Credit Card Fees and Office Supplies
 - b. *Economic Development*: \$2,150 from Furniture & Fixtures to Visitor Center Upgrades
- 7. FY09 Inter-Departmental Budget Transfers
 - a. *Fire-Rescue*: \$11,128 from Pager Service and M&E to Vehicles
- 8. Treasurer's Report: Cash in Bank as of July 2008, \$24,036,507.19

Mr. Davis moved to approve the Consent Agenda as presented, and that it be made a part of the record. The members were polled:

Thomas W. Evelyn	Aye
D. M. Sparks	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
James H. Burrell	Aye

The motion carried.

IN RE: CITIZENS COMMENT PERIOD

Chairman Burrell opened the Citizens Comment Period.

Alease Christian expressed concerns stemming from a recent newspaper article about a barge study involving a possible port in New Kent County and she asked who would bear the cost of such a facility.

There being no one else signed up to speak, the Citizens Comment Period was closed.

IN RE: RESIDENCY ADMINISTRATOR'S REPORT

Mike Cade, Assistant Residency Administrator with the Sandston Residency of the Virginia Department of Transportation, reported on road issues in New Kent.

He advised that the Rural Rustic Roads project on Homestead Road/Route 620 was complete. He indicated that he understood that there was some confusion as to the separate projects involving Mt. Pleasant Road and stated that the Rural Rustic portion would move forward as soon as weather permitted.

He reported that maintenance during the past month had included pipe installations, ditch repairs, mowing completed along Route 60 and Route 33 and still underway on secondary roads, brush cutting, inmate work details along Mt. Pleasant Road and Waterside Drive, litter pickup, grading, pavement repairs, and sweeping of the completed Rural Rustic Roads projects.

Mr. Davis commended VDOT for the work performed on the Rural Rustic Roads projects. He also spoke about the confusion about the work being done on Mt. Pleasant Road and asked about the status of the gutter-cleaning in Eltham. Mr. Cade indicated that once the Mt. Pleasant Road project was completed, the crews would again be working on maintenance to include addressing the grass growing in the gutters in Eltham and they were also aware of some potholes in the area.

Mr. Davis advised as to some potholes in other areas in his district.

Mr. Trout stated that it was his understanding that part of the work on Mt. Pleasant Road was being done under the Rural Rustic Roads program and the improvements on another portion was still awaiting funding. Mr. Cade confirmed that was the case, noting that Mt. Pleasant Road was on the Secondary System Six-Year Plan (SSSYP) and needed \$1.8 million in funding to move forward. He explained that the improvements planned under the SSSYP were more in depth than permitted under the Rural Rustic Roads program and he confirmed that funds had already been expended to complete the right-of-way acquisitions and engineering. He indicated that the time schedule for the project was dependant upon the General Assembly's funding secondary improvements.

Mr. Trout asked about mowing on Terminal Road and Mr. Cade indicated that he was not certain when that was scheduled.

Mr. Sparks remarked that he was out during the storm on the previous weekend and was pleased that Route 60 was draining better since the pipes had been cleaned out, and asked that it continue to be monitored.

Mr. Evelyn asked about the ditch clearing requested for St. Peters Road, noting that during the weekend storm, water again covered the roadway. Mr. Cade advised that the road had been bladed but he would check on getting some inmates there to work on the ditches, but was uncertain as to the status of the environmental clearances required before extensive ditch cleaning work could be performed.

Mr. Burrell asked about survey crews working along Route 33. Mr. Cade indicated he did not think that had been ordered by VDOT and might be connected to a recent private property transaction in the area.

Mr. Burrell asked about traffic counts being taken on the entrances and exits to Interstate 64 at Route 33. Mr. Cade advised that was standard procedure and routinely performed every two years.

Mr. Burrell thanked Mr. Cade for the Residency's consistent attention to matters brought to its attention by the Board.

IN RE: INTRODUCTION OF NEW EMPLOYEES

Parks and Recreation Manager Kim Turner introduced her Division's new Youth Coordinator, Jason Baldwin.

Commissioner of the Revenue Laura Ecimovic introduced Real Estate Inspectors Sara Murphy and Shannon McLaughlin. She noted that her new Office Service Specialist Devin Caldwell had been unable to be present. Mr. Budesky noted that these three new positions were part of the change in County operations wherein the Commissioner's Office would be assuming responsibility for bi-annual real estate assessments, and would improve a process that had been very frustrating to many of the residents in the past.

The new employees were welcomed by the Board.

IN RE: RIDEFINDERS

Von Tisdale, Executive Director of RideFinders, addressed the Board on commuting, travel alternatives, and "greener" transportation choices. She thanked Community Development Director George Homewood for his assistance in coordinating the presentation.

Ms. Tisdale explained that RideFinders was a division of the Greater Richmond Transit Company (GRTC), and had been promoting environmentally-friendly programs for over 30 years. She indicated that their efforts had always been targeted to help people breathe easier by promoting carpooling, vanpooling and telecommuting, as well as providing various support services and encouraging citizens to leave smaller carbon footprints. She advised that RideFinders had funding for private sector programs and provided information to commuters to use to make smarter transportation choices. She reported that RideFinders had received a Creative Excellence Award at a recent international conference and, for the first time, would be participating in the upcoming New Kent County Fair and submitting articles for inclusion in the County's quarterly newsletters.

She indicated that RideFinders had experienced a 33% growth in the last year and had over 11,000 regular clients in its database, compared to 5,000 three years ago. She reported that they currently supported 76 van pools, assisted commuters with information, and supported bicycle and pedestrian programs. She advised that RideFinders was involved in commuter programs in every community in Central Virginia and would continue to add in accessibility and commuter options for New Kent residents.

Ms. Tisdale explained that RideFinders would continue to solicit support and direction from elected officials and hoped that New Kent would be a champion in promoting smart growth and smart transportation choices.

Mr. Burrell congratulated Ms. Tisdale on their recent award.

Mr. Sparks asked how many New Kent residents were enrolled in their programs. Ms. Tisdale reported that around 110 residents from New Kent were either in carpools or looking for carpool options.

Mr. Sparks indicated that he felt there was a lot of interest in carpooling in his district and suggested that RideFinders set up a booth in the parking lot in front of the Quinton Food Lion on an upcoming Saturday. Ms. Tisdale welcomed the suggestion and agreed to let Mr. Sparks know so that he could be involved in the event.

Mr. Davis asked if RideFinders helped finance vans used in vanpooling. Ms. Tisdale explained that they had a "van start program" where a van was leased through a third party and RideFinders subsidized the program for a short period while riders were recruited. She explained that riders in the van pool bore the costs of the van lease, and the driver usually rode for free. She indicated that the vans carried between nine and twelve passengers, and it normally costs a rider about \$80 per month. She reported that they had van pools serving areas from Williamsburg to Washington D.C. and were increasing exponentially.

Mr. Budesky thanked Mr. Homewood for his assistance in contacting RideFinders after carpooling assistance was brought up by Mr. Sparks at an earlier meeting. He also reported that VDOT had agreed to improve the parking space markings in the commuter lot in Bottoms Bridge in order to increase the number of vehicles accommodated by that lot.

Mr. Burrell commended Ms. Tisdale for her efforts in helping residents in New Kent to "go green".

IN RE: RECYCLING

Kim Hynes, Executive Director of the Central Virginia Waste Management Authority (CVWMA), addressed the Board on recycling in New Kent.

Ms. Hynes explained that CVWMA was a regional public service authority formed in 1990 by thirteen localities in Central Virginia to coordinate recycling and waste management facilities, in response to State mandates that communities reduce their waste by 25% by 1995. She noted that Mr. Burrell had served as a member of the CVWMA Board since its inception, and reported that their service area covered thirteen member localities containing 1,000,000 in population and covering 2,500 square miles, with a 20-member Board.

She indicated CVWMA took the burden off of individual localities by compiling annual regional recycling reports; preparing solid waste management plans; procuring, negotiating and administering cost-effective contracts with better pricing; monitoring relevant solid waste legislation; and collectively meeting the 25% reduction mandate when individual localities may not have qualified on their own. She reported that CVWMA not only reached the 25% recycling goal, but in 2007 topped it at 50%.

Ms. Hynes spoke about the benefits of recycling, which included reduction in the need for land-filling; pollution prevention; energy savings; decreased emissions of greenhouse gases; conservation of natural resources; and helping to sustain the environment. She noted that the energy it took to recycle one aluminum can saved 95% of the energy it took to manufacture it.

She reviewed the menu of CVWMA's services from which localities could pick and choose, which included managing sites; providing drop-off and curbside recycling, and the recycling of electronics, paint, used oil, oil filters, antifreeze, scrap metals and appliances, batteries, propane tanks, tires, and textiles; residential trash collection; solid waste convenience centers; and disaster recovery, which included contracts for use by localities in cleaning up storm debris.

She indicated that drop-off recycling was its signature program in New Kent, where last year CVWMA updated containers with larger openings, and updated signage. She reported on the rates of increases in recycling of the various materials, pointing out that New Kent had held its first electronics recycling event during the past year. She spoke about growing community awareness of the importance of recycling and reported that they were working with the schools, businesses and multi-family housing units as well.

Mr. Burrell spoke about the negative environmental effect of methane gas emissions from landfills as well as the amount of foreign oil used to make plastic water bottles. He indicated that he had spoken with the School Superintendent who had agreed to promote recycling with the School Board and in the schools.

There was discussion regarding the recycling of used oil filters, batteries, electronics and plastics. Ms. Hynes reported that recycled plastics were becoming more valuable because of the oil situation, and that all of the markets were strong except for glass. She commented that the numbering system used by the plastics industries made it hard to educate the public on what plastics were recyclable. She reported that paper, cardboard and yard debris took up the most space in landfills. There was discussion regarding the market for corrugated cardboard, as well as the decreasing volume of newspapers due to the cutbacks by the newspaper industry.

Mr. Budesky recognized General Services Director Jim Tacosa and Maintenance Supervisor David Bednarczyk for their efforts to improve recycling at the convenience centers. He noted that recycling in New Kent generated \$1.90 per resident, more than many of the other localities, and he encouraged the citizens to continue working to increase recycling. Board members joined in commending staff and citizens for their hard work and continued vigilance.

IN RE: ELECTED OFFICIALS' REPORTS

Mr. Sparks spoke about how the County was fortunate not to have been impacted by storms that had recently affected other parts of the country, and acknowledged emergency operations center staff who had remained on duty during the event.

Mr. Burrell thanked the Fire Chief and County Administrator for their continuous updates during recent bad weather threats.

Mr. Trout reminded everyone of the upcoming County Fair as well as a September 11 observance to be hosted by the Sheriff's Office.

Mr. Davis called attention to the fact that school buses were on the road again and urged everyone to be on alert. He spoke about persistent problems in Eltham with vehicles not stopping for loading or unloading buses.

Mr. Burrell announced that he would be attending an upcoming climate summit and would report when he returned.

IN RE: STAFF REPORTS

Mr. Burrell spoke about the County's fire and emergency preparedness, reassuring the public that the County had been preparing for the possibility of impacts from the recent tropical storms and had monitored the situation throughout the event.

He also reminded the Board of its special work session on September 10, and invited Board members to participate in a visit by a World War II veterans group who would be visiting County locations later in the week.

IN RE: DISTRICT APPOINTMENTS

Mr. Evelyn moved to appoint Marion Shackford as District One's representative to the Clean County Commission to complete a term ending December 31, 2010.

The members were polled:

David M. Sparks	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
James H. Burrell	Aye

The motion carried.

IN RE: NON-DISTRICT APPOINTMENTS

Mr. Evelyn appointed William Wallace III as at-large member of the Purchase of Development Rights Committee to complete a term ending June 30, 2010.

The members were polled:

Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
David M. Sparks	Aye
James H. Burrell	Aye

The motion carried.

The meeting was recessed and resumed at 7 p.m.

IN RE: CENTRAL VIRGINIA WASTE MANAGEMENT AUTHORITY

Before the Board for consideration was Resolution R-17-08 approving amendments to the articles of incorporation and bylaws for the Central Virginia Waste Management Authority (CVWMA).

Kim Hynes, Executive Director of CVWMA, reported that the articles of incorporation and bylaws were 18 years old and the proposed amendments would make some administrative changes and population updates that were needed, but would not change the Board membership. She noted that the changes would also strengthen some of the language to

encourage localities to appoint alternate members, which she indicated had never been a problem for New Kent but was with some of the other localities.

The Chairman opened the Public Hearing.

There being no one signed up to speak, the Public Hearing was closed.

Mr. Trout moved to adopt Resolution R-17-08 approving the amendments to the Central Virginia Waste Management Authority's articles of incorporation and bylaws, as presented. The members were polled:

W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
David M. Sparks	Aye
Stran L. Trout	Aye
James H. Burrell	Aye

The motion carried.

IN RE: VEHICLE DECALS

Before the Board for consideration was Ordinance O-10-08 clarifying language in the County Code regarding the date that vehicle decals were to be displayed.

Herbert Jones, Jr., County Treasurer, advised that the changes to the ordinance would provide for vehicle decals to be displayed by January 1 instead of December 5. He explained that this was a common sense change that would give his office time to process the payments and get decals mailed back out to the residents before the deadline, and that the Sheriff had been in agreement with the change.

Board members agreed that the change made sense.

The Chairman opened the Public Hearing.

There being no one signed up to speak, the Public Hearing was closed.

Mr. Sparks moved to adopt Ordinance O-10-08 as presented. The members were polled:

Thomas W. Evelyn	Aye
David M. Sparks	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
James H. Burrell	Aye

The motion carried.

IN RE: MARTIN CONDITIONAL USE PERMIT

Before the Board for consideration was Resolution R-31-08 approving the application for a conditional use permit (CUP) filed by Randy P. Martin to continue to operate Martin Vending Products as a home occupation at 3570 Vaidens Pond Road, in Lanexa.

Planner Kelli Le Duc explained that an application had been filed by Mr. Martin for a CUP for a home occupation, which would allow him to continue to operate Martin Vending Products at a higher intensity than what was authorized in the ordinance. She noted that the subject property was five acres that contained one structure used for both home and business and a 400 square foot area for parking of delivery trucks. She indicated that the subject property and the surrounding parcels were zoned A-1, Agricultural, and designed as Rural Lands in the Comprehensive Plan.

She reported that Mr. Martin had operated his business for ten years in James City County before moving to New Kent in 2007, and he was currently operating without a business license or permit for a home occupation. She stated that staff had taken into consideration the existing ordinances for conditional use permits and home occupations and had suggested conditions addressing both sections.

Ms. Le Duc indicated that Mr. Martin's business employed three individuals who were not residents of the home. She noted that Vaidens Pond Road was a graveled road maintained by an informal maintenance agreement among the residents. She reported that one of the concerns had been the impact of the applicant's business on the road as the residents felt that the road was not constructed to handle tractor trailer traffic. She pointed out that there were at least nine other residents on Vaidens Pond Road who were operating home occupations of various kinds, some requiring trailers and large trucks. She acknowledged receipt of a petition and other communications from some of the neighbors regarding concerns about the road as well as the noise caused by deliveries, copies of which had been provided to the Board members. She indicated that staff felt that Mr. Martin's business could be permitted to continue to operate for a period of time, subject to certain conditions. She advised that one of those conditions would be that the business would be expected to relocate to a properly zoned parcel elsewhere in the County within two years, and another would be that Mr. Martin would be required to pay \$20 per month, an amount mutually agreed upon, to help maintain the road. She reported that the Planning Commission had considered the application and voted 7:0:1 to recommend approval, and staff was also recommending approval, subject to the proposed conditions.

Mr. Davis asked about the other home occupations. Ms. Le Duc indicated that the Commissioner of Revenue had business licenses for nine other home occupations operating along that road, which included home offices, electricians, heating and air conditioning services, landscaping services, builders, and others.

The Chairman opened the Public Hearing.

James Mahady, a resident of Vaidens Pond Road, said that the other home businesses operating along his road did not involve deliveries by tractor trailers and in fact many of them met their workers at sites other than their homes, and drove small vans that made one trip a day down the road. He spoke about the traffic generated by the trucks making deliveries to Mr. Martin as well as the applicant's own delivery trucks and the truck that came to empty the Martin's dumpster. He stated that the truck traffic was creating a daily hazard for the other residents. He spoke about Mr. Corwin's efforts and personal financial investment in the maintenance of the road. He complained that only one of the Planning Commission members had visited the neighborhood, and that individual had failed to speak with any of the residents. He maintained that 98% of the residents had signed the petition and they did not want the business operating from their neighborhood. He complained that no one had consulted the residents when crafting the conditions being proposed and that the County had disregarded their petition. He also spoke about the noise that was generated by the cooling units used by Mr. Martin.

Al Beaman, also a resident of Vaidens Pond Road, spoke about the problems caused by trucks making deliveries to the applicant's business and the impact it had upon the neighborhood. He commented that this was not the type of business needed on that road.

There being no one else signed up to speak, the Public Hearing was closed.

Mr. Martin, the applicant, stated that his business was not the only one on the road that involved tractor trailer traffic and reported that he would have his dumpster regularly emptied even if his business did not operate from there. He insisted that the trucks making deliveries to his business were not damaging the road and that the road was in the same condition that it was prior to his moving there. He indicated that he had offered to help maintain the road and had filled in potholes in front of his property. He contended that he did not send his trucks out when snow or ice was on the road and he was doing what he could to protect the road. He said that the noise from his cooling unit could only be heard from his yard. He indicated that he had tried to talk with his neighbors and was just trying to maintain a living and operate his business. He advised that he hoped he would soon be in a position to move his business to another location.

Mr. Sparks asked why the applicant did not have a County business license. Mr. Martin explained that in the activity of relocating to New Kent in August of 2007, he overlooked it and was reminded when he received a notice from James City County that his license there was expiring. When he applied for a New Kent license in February 2008, he learned that it would be necessary to apply for a CUP and be approved before being issued a license.

Mr. Evelyn stated that he had visited Vaidens Pond Road earlier in the day and commented on the well-maintained road. He noted that the residents had expressed concerns about access by fire-rescue vehicles during the time that a delivery was being made to the applicant, and he had asked the Fire Chief to look at the situation. Fire Chief Tommy Hicks reported that based upon concerns about delivery trucks blocking access for fire and EMT equipment, he had visited the area at a time when a delivery was being made, and he found no blockage of access. Mr. Evelyn agreed, stating that the delivery truck had been there when he visited as well. He noted that the weight of the delivery truck that was there was about 38,000 pounds, or 11 – 12 tons, distributed over five axles, which would do about the same damage to a muddy road as a pickup truck. He noted that the road sloped well and he felt that two deliveries a week would have no impact on it.

Mr. Davis asked if the residents were aware of the ten conditions that had been recommended by staff. Mr. Martin commented that he felt many of the neighbors didn't understand the petition they were signing, other than they did not want the CUP approved.

Mr. Davis asked about the requirement to contribute to the maintenance of the road. Mr. Martin indicated that he had agreed to pay \$20 per month, which was the amount that Mr. Corwin suggested to him when he first moved to the neighborhood. He said that he had contacted the Treasurer for the maintenance fund and had confirmed his participation and was paid up for last year and had prepaid for the upcoming year in a lump sum.

Mr. Davis commented that he had talked with some of the residents who signed the petition and noted that the road was in pretty good shape. He acknowledged that informal road maintenance agreements were difficult to enforce and that it was usually someone like Mr. Corwin who did all the work and "had all the headaches". Mr. Davis went on to say that the Board was trying to keep businesses in the County, including those like Mr. Martin and others who operated from their homes.

There was discussion regarding the truck traffic to the applicant's business. Mr. Martin explained that on Mondays there was delivery of sodas by a ten-wheeler as well as a delivery of other products by one 18-wheeler, which was the last stop of the day for both vehicles and they were empty when they left his place. He advised that on Tuesdays another ten-wheeler made delivery of sodas, and that was also the last stop for that vehicle and it left empty. He said that maybe once a year a special-order machine was delivered by a six-wheeler to his house, but most of the time those were delivered directly to the site.

There was continued discussion regarding the road. It was reported that Mr. Martin's driveway was located 0.2 mile from the intersection with North Waterside Drive, with a steep hill in between. Mr. Martin advised that he had lived on a graveled road when he was in James City County, which he maintained by himself, and he understood what a task it was; however, he pointed out that he did not use the entire road and that normally the delivery trucks pulled up into his driveway to make deliveries, and were not on the road for any extended length of time.

Mr. Trout asked about the cooling unit used for his products. Mr. Martin explained that he had to maintain a constant temperature for some of his chocolate products and he used an RV air conditioning unit on his box truck which operated on 120 volts by an extension cord that was attached to his home, and was not as loud as the AC unit on his home. He indicated that he could not hear the unit from his own bedroom and that the truck was parked in an area that was between 150 and 200 feet from the nearest neighbor's house.

Mr. Trout asked about his plans to relocate his business. Mr. Martin explained that if his business grew as anticipated, he would need more employees as well as another delivery truck, and would not have sufficient room at his current location. He reported that he had a physical disability that would affect his ability to walk in a few years, and he had built his home to be handicapped accessible. He said that he would like for his warehousing location to be in New Kent and close to his home where he intended to maintain his office, but admitted that if someone offered to buy his business, he'd consider that as well. He indicated that he had not yet actively looked for a business site, except for on the internet, but that he did intend to contact the County's Economic Development Department for help.

Mr. Trout expressed his concern that the two-year time limit might be too long. Mr. Martin advised that he could not afford to move his operation at the present time but hoped to increase his client base over the next year or two. Mr. Trout suggested that one year might be better than two.

Mr. Sparks commented as to what should be allowed as a home occupation, noting that Mr. Martin's business was "way outside" of the ordinance. He stated that he wanted Mr. Martin to have an opportunity to grow his business, but he could not see any way that he was in compliance with the ordinance. He indicated that he wanted to be able to help the applicant, but questioned whether the Board should compromise its ordinance.

Mr. Evelyn stated that he didn't see the difference between Mr. Martin's business and an excavating business with three pieces of equipment, or a heating and air conditioning business that had units delivered.

Mr. Martin stated that the only provision of the ordinance he felt that his business was violating was the one regarding the number of non-resident employees.

Mr. Homewood reminded that deliveries were not a component of the home occupations ordinance, which addressed the activities taking place on the property, storage, and the number of employees.

Mr. Davis commented that over the years there had been CUP applications for everything from HVAC businesses, dog kennels and people with excavators, but he thought this was the first one for a confectionary. He noted that there was a larger demand for this kind of business than most people thought, noting that Mr. Martin was not the only vending products operator in the County.

Mr. Martin advised that he once had machines in the Courthouse and Sheriff's Office but was not the winning bidder when the County put all locations out for bid.

Mr. Sparks remarked that Mr. Martin was out of compliance and that he would prefer to permit him to operate for one year and then come back to the Board in good faith and report on his progress on increasing his business and relocating and then the Board could take another look at the application.

Mr. Martin said that the two years he had estimated he would need to relocate was based upon his "track record", noting that he had a lot of competition. Mr. Sparks stated that a one-year period would give the County a little more control and an opportunity to see how he was doing.

Mr. Trout stated that he was thinking along the same line, but not so much giving Mr. Martin an opportunity to report back in one year, but allowing him just one year to operate at his present location, no matter what.

Mr. Evelyn commented that he did not feel two years was a long time in which to relocate. He asked what would happen if Mr. Martin sold his business to someone who opened up a business in the same location. Mr. Trout pointed out that the CUP would run with the land, and noted that if he ran the business himself and he was the only employee, then he would be in compliance with the home occupations ordinance.

Mr. Burrell commented that a year passed pretty quickly. He acknowledged that the County had an ordinance in place, but spoke about small businesses being the "backbone of America" and he felt that Mr. Martin had made an effort to work with the County and his neighbors, and he felt the conditions would address the concerns and help maintain the short distance of the road impacted by the business. He said he would have to respectfully disagree with Mr. Sparks and Mr. Trout's suggestion to reduce the time period to one year. He noted that Mr. Martin was not manufacturing or selling anything from his home. In response to neighbors' complaints about traffic, he reminded that both Mr. Evelyn and Chief Hicks had visited the neighborhood during a delivery time and did not see any conditions that would pose hazards to emergency services. He urged the Board to accept the conditions and recommendations made by staff, and he agreed that Mr. Martin would need two years to "get it together".

Mr. Sparks brought up that Mr. Martin mentioned at a previous work session that if his business did not grow as anticipated in two years, that he would be able to ask for an extension. Mr. Homewood advised that anyone could request an extension, but the request would have to go through the same process and review by the Planning Commission and the Board of Supervisors.

Mr. Burrell clarified that by granting the two-year period, the Board was not implying that the CUP would be extended.

Mr. Martin commented that it was not his opinion that the County was "against small business" and he felt that New Kent had been more than supportive of him and he was sure, with the right guidance, he would be able to reach the point where he would be able to relocate within the time allowed.

Mr. Sparks advised that the last thing he wanted to do was to vote against the request and he felt that the County had "bent over backwards" to help small businesses. He indicated that if the County granted Mr. Martin two years, could there be some "teeth" in the permit that would give the Board some assurance that he was working towards relocating.

Mr. Summers encouraged the Board against trying to merge zoning with economic development in the same document. He noted that it would be clear that Mr. Martin would have two years and would come back to the Board for an extension at his own peril.

Mr. Trout advised that he wanted to make sure that the language would provide that should Mr. Martin relocate to somewhere outside of the County, then the CUP would be voided automatically. Mr. Summers advised that if the applicant relocated anywhere other than in New Kent, then it would be a zoning violation which would end the CUP. He indicated that if Mr. Martin's corporate headquarters remained in New Kent, then he could have warehousing in another location, but Mr. Summers assured the Board that a very narrow list had been crafted of what Mr. Martin could do. The applicant advised that it was his understanding that if he found another location for his business, then he could continue to operate the office out of his home without a CUP, and Mr. Summers confirmed that he could.

Mr. Sparks asked if Mr. Martin's neighbors were consulted about the conditions. Ms. Le Duc advised that the residents were advised where the Staff Report could be reviewed but did not send out Staff Reports, just made them available. She did indicate that some of the residents had input into what those conditions were, including Mr. and Mrs. Corwin. Mr. Summers advised that it was the County's obligation to provide the opportunity to inspect, not to send the ordinance to every resident who could be affected.

Mr. Evelyn moved to adopt Resolution R-31-08 as presented. The members were polled:

David M. Sparks	Nay
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
James H. Burrell	Aye

The motion carried.

Mr. Davis asked that residents of Vaidens Pond Road make sure that Mr. Martin lived up to his commitment. He warned Mr. Martin that his neighbors would contact the Board if the truck traffic increased and again encouraged him to help with maintenance of the road.

Mr. Trout suggested that Mr. Martin meet with the County's Economic Development Director for assistance in his efforts to find a suitable location within the County.

Mr. Sparks wished Mr. Martin the best with his business and repeated his concerns about how far the Board was stretching the home occupations ordinance.

IN RE: WHITE REZONING AND WITHDRAWAL FROM THE ELTHAM AGRICULTURAL
 AND FORESTAL DISTRICT

Before the Board for consideration was Ordinance O-13-08 approving an application filed by Ada Isabel Davis White, property owner, and Mid-Atlantic Communities LLC, to rezone approximately 120 acres north of the intersection of Eltham Road and Johnson Street, from A-1, Agricultural and R-1, Single Family Residential, to R-1 Single Family Residential (Cluster), and to vote on Resolution R-27-08 approving application of Ada Isabel Davis White to withdraw approximately 119 acres from the Eltham Agricultural and Forestal District that was deferred from August 11, 2008, after public hearing.

Mr. Davis announced that he would remove himself from discussion and vote because of financial dealings he had with the applicant.

Planner Kelli Le Duc reported that Ms. White and Lamont Myers of Mid-Atlantic Communities had applied to rezone the property for the purpose of creating a 24-lot cluster subdivision around a 21-acre lake with lots sizes ranging from 1.009 acres to 2.389 acres, with over one-half of the property preserved in its natural space as permanent open space. She noted that the property consisted of four parcels, three of which were already zoned R-1, and was designated as Village in the Comprehensive Plan.

She advised that initially staff had concerns that the project appeared to be inconsistent with the Village designation in that there was no mix of uses; however, given the location and existing development pattern in Eltham, she indicated that it was not clear that a mix of uses would be possible or desirable on the subject parcels. She noted that the single family detached dwellings would be on larger lots than those prevailing in Eltham and were therefore less affordable than the existing housing stock; but because there was already a large number of smaller lots providing opportunities for more affordable housing, perhaps having large lots with a waterfront view for larger, more expensive homes was what was needed in Eltham to offer the mixed income options inherent in Village development.

She pointed out that one-half of the property was environmentally sensitive and would likely be negatively impacted if developed at a higher intensity. She indicated that if the property were developed by-right, it could be subdivided into 14 lots of varying sizes, whereas the applicants were proposing to build on the land best suited for development, leaving the rest of the property alone. Ms. Le Duc noted that the applicants proposed to expand and extend Johnston Street into a divided boulevard that would make a loop around the lake, thereby providing two ways in and out of the community in times of emergencies.

Regarding traffic impacts, she reported that it was anticipated that the development would generate 230 vehicle trips per day, which was below the threshold of 100 peak hour trips that would necessitate a traffic study. She noted that there had been no comments received from the Virginia Department of Transportation.

Ms. Le Duc indicated that the applicants had requested that the property be removed from the Eltham utility service area, as the lots would be served by private well and septic systems.

She reported that an historic home site on the property would be preserved and that there would be a homeowners association with covenants in place.

She advised that the impacts on public services would be minimal because of the low number of lots. She confirmed that the applicants had made a \$6,000 cash proffer for each residential dwelling unit constructed, to be used for schools and other public infrastructure.

Ms. Le Duc indicated that the application had been considered on July 21, 2008 by the Planning Commission, whose members voted 7:1:1 to forward with a favorable recommendation. She reminded that the property owner had previously requested a withdrawal from the Eltham AFD, which was also recommended by the Planning Commission.

Ms. Le Duc represented that, as stated throughout the analysis and evidenced by the thorough and complete application, the applicant had submitted plans for an attractive, well-planned community that was sensitive to the environmental constrictions of the property, and that the current need in this area might be met by having housing options that were higher in value in order to provide a mix of incomes in Eltham, and that staff was recommending approval.

Lamont Myers of Mid-Atlantic Communities reported that he and his partners had been working with staff on this project for the last three years. He noted that the property consisted of 120 acres with 95 feet of frontage on Route 33, adjacent to an existing VDOT right-of-way. He indicated that they planned to access the development through a divided median to provide two ways in and out in times of emergencies. He advised that they had met with and sought the input of neighbors, and felt that they had designed a community that respected the environment. He said that the homes would positively impact tax revenues in the County, doubling the revenue that would be generated with a by-right development of the property. He represented that completed studies included a Phase I Environmental; wetlands delineation and confirmation by the Army Corps of Engineers; identification of Chesapeake Bay Act features; assessment of endangered/threatened species (none were found); extensive soil tests and borings (a determination by an AOSC as to what areas were best suited for septic systems and plans redesigned based upon those findings); extensive archeological investigations; utilities assessment; traffic analysis (not required but performed to make sure no improvements were needed to Route 33); and a fiscal impact study, which showed positive revenue generation for the County.

He pointed out that the previous request to withdraw the property from the Eltham AFD met the criteria for removal. He advised that the development would not have an impact on agricultural or forestal operations in the District and reported that it was no longer feasible for the owner's immediate family to farm the land.

Mr. Myers indicated that the application was consistent with the Comprehensive Plan and the Zoning Ordinance, and the property was surrounded by R-1 zoned properties. He represented that it was consistent with the public welfare, and included environmental and archaeological preservation, recreational opportunities, negligible public service demands, and utilization of open space development techniques called for in the Comprehensive Plan.

He noted that their plan was for only 24 estate lots on 120 acres; a 21-acre lake to provide recreational opportunities, storm water protection, visual amenity and fire protection (four dry hydrants with street lights); preservation of over half of the site as common open space; and street trees in open area with 50-foot centers and stately estate trees. He reported that 14 of the lots would be on the lake with the other ten lots backing up to private woods with views across the marsh to the Pamunkey River.

Mr. Myers advised that the proposal had respect for the environment; afforded protection of environmentally sensitive features; had open swales for bio-retention and minimum pavement; prohibited gas or diesel power units on the lake; and provided retention of wildlife habitat.

He spoke about their respect for the past by having completed three archeological studies which located an historic home site which would be preserved as common open space. He pointed out that the plan showed a canoe dock, but because of concerns raised by Mr. Savage, one of the neighbors, and questions as to whether or not residents would have the right to use the creek, that feature had been removed from the site plan, but if the Homeowners Association was able to come to some agreement with Mr. Savage at a future time, then it would be reconsidered.

Mr. Myers stated that the project had been designed with respect for the neighbors in mind, and talked about the preservation of large wooded buffers, a provision of access (median break) for one adjoining neighbor and a tree buffer for another, and the establishment of protective covenants.

He indicated that the project respected the needs of the County and he spoke about meetings with staff and community leaders, as well as proffered conditions which would promote the interests of the residents and the school system, as well as provide appeal to the motoring public by enhancing the view from Route 33.

The Chairman opened the Public Hearing.

There being no one signed up to speak other than Mr. Myers, the Public Hearing was closed.

Mr. Evelyn asked about VDOT's review of the project. Ms. Le Duc advised that it had been sent to VDOT who had made no comments, but that VDOT would have another opportunity to review and comment during the development stage.

Mr. Sparks asked if the lake would have any effect on groundwater or local private wells. Ms. Le Duc indicated that she was not aware of any and confirmed that the project had been reviewed by the County's Environmental Planning Manager. Mr. Myers explained that the water table was approximately ten feet below the surface and they would be excavating to twenty feet with a 6:1 slope, resulting in a lake that would be filled by about ten feet of groundwater as it flowed towards the Pamunkey River. He predicted that they would likely aerate the lake to make sure the water kept moving, but it was his understanding that the lake would have no negative impact on local wells. He advised that a local geologist with whom they had worked had indicated that, if anything, the lake would enhance the water pressure because the weight of the water in the lake would increase the static pressure on the water table. He also indicated that the lake would be fed by water from a surface aquifer and any impact would be on shallow wells only.

Mr. Sparks asked about the truck traffic to be generated during the two-year excavation of the lake. Mr. Myers advised that the maximum truck trips per day was estimated at 200, less than 10% of the current truck traffic that drove by the site daily, and less daily traffic than would be generated by the subdivision at build-out, which was estimated at 240 vehicles per day, less than 1.5% of existing traffic reported at 15,000 vehicles per day.

Mr. Myers reminded that the owner of the property was not interested in removing her property from the Eltham AFD without approval of the rezoning. County Attorney Jeff

Summers advised that the vote on both items would be taken with one motion, which would address that issue.

Mr. Trout moved to adopt Resolution R-27-08, as presented, approving the application of Ada Isabel Davis White to withdraw approximately 119 acres from the Eltham AFD, and Ordinance O-13-08, as presented, approving the application to rezone approximately 120 acres in Eltham from A-1, Agricultural and R-1, Single Family Residential, to R-1, Single Family, Residential (Cluster). The members were polled:

Stran L. Trout	Aye
W. R. Davis, Jr.	Abstain
Thomas W. Evelyn	Aye
David M. Sparks	Aye
James H. Burrell	Aye

The motion carried.

IN RE: EMERGENCY OPERATIONS CENTER

Fire Chief Tommy Hicks escorted the Board members on a tour of the new Emergency Operations Center (EOC) in the Sheriff's Annex and explained how operations were designed to expand as emergencies escalated.

He described how the Reverse 911 system could relay messages to all County citizens within ten minutes, and there was also some discussion about how to identify and meet the special needs of some of some of the County's citizens.

IN RE: CLOSED SESSION

Mr. Davis moved to go into Closed Session for discussions relating to business and industry development pursuant to Section 2.2-3711A.5 of the Code of Virginia involving prospective or expansion of business or industry and no previous public announcement has been made. The members were polled:

W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
David M. Sparks	Aye
Stran L. Trout	Aye
James H. Burrell	Aye

The motion carried. It was announced that there would be no additional business conducted by the Board after closed session. The Board went into closed session.

Mr. Trout moved to return to open session. The members were polled:

Thomas W. Evelyn	Aye
David M. Sparks	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
James H. Burrell	Aye

The motion carried.

Mr. Sparks made the following certification:

Whereas, the New Kent County Board of Supervisors has convened in a closed session 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 2.2-3712 of the Code of Virginia requires a certification by the Board that such closed session was conducted in conformity with Virginia law;

Now there be it resolved that the Board hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from open session requirements by Virginia law were discussed in closed session to which this certification resolution applies and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Board.

The Chairman inquired whether there was any member who believed that there was a departure from the motion. Hearing none, the members were polled on the certification:

David M. Sparks	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
James H. Burrell	Aye

The motion carried.

IN RE: ADJOURNMENT

Mr. Davis moved to adjourn the meeting. The members were polled:

Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
David M. Sparks	Aye
James H. Burrell	Aye

The motion carried.

The meeting was adjourned at 9:30 p.m.