

THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 28<sup>TH</sup> DAY OF APRIL IN THE YEAR TWO THOUSAND TEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 8: 30 A.M.

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IN RE: CALL TO ORDER

Chairman Sparks called the meeting to order.

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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

All members were present.

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IN RE: COMPREHENSIVE PLAN AMENDMENT

Planner Kelli Le Duc explained that a public hearing was scheduled with the Board at its May 10 meeting to consider an amendment to the Comprehensive Plan in the form of an update to the Public Facilities map. She distributed a copy of the resolution adopted by the Planning Commission as well as an amended map, which contained more highway road labels as requested by the Planning Commission.

There was a review and discussion of the map and an explanation by Ms. Le Duc that future park facilities would be reflected on the Parks & Recreation map.

The Board was in consensus to move forward as proposed.

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IN RE: AFFORDABLE HOUSING ADVISORY COMMITTEE

Affordable Housing Advisory Committee (AHAC) Chair Karen Cameron and member Chuck Emmons, as well as staff support Planner Matthew Ebinger, were present to review several items with the Board.

Ms. Cameron explained that the AHAC was in the process of gathering information on supply and demand for affordable housing and had developed a housing survey that was proposed to be distributed through County government, the Chamber of Commerce, local businesses, civic groups, churches, and the Library to "get a feel for the type of housing and who might need housing" in New Kent. She indicated that both written and electronic responses would be accepted and the data would be consolidated into a report. She indicated that if the Board was in agreement, the AHAC would probably move forward with distribution of the survey within two to three weeks after its May meeting. She added that her committee had been collecting information on housing supply which would also be contained in the report. Mr. Ebinger pointed out that there was a June 30 deadline for AHAC's report to the Board, which might need to be adjusted.

Ms. Cameron reported that she felt they would need to receive at least 100 – 200 responses in order to have a legitimate survey. She referred to a prior survey that had been directed at County and School System employees only, and noted that she would hope that current

residents might complete the survey on behalf of younger, single family members who would like to live in New Kent.

Mr. Trout asked what data the survey was intended to gather. Ms. Cameron explained that they were trying to determine how many people would like to live in New Kent but couldn't because it was not affordable and, for those individuals, what kind of price levels and types of housing were needed.

Mr. Emmons advised that one of the local newspapers had provided copies of classified ads for the past few years that reflected an average of three homes advertised for rent per publication at an average cost of \$1,000 per month.

Mr. Sparks brought up the many problems with the recent Census process and how many people in New Kent had not received the forms.

Ms. Cameron asked the Board for input as to changes or additions to the survey. She added that the AHAC realized that the results would be "just an estimate" but it would give them a base to work from.

There were no objections from any of the Board members to proceeding with the survey as presented, or to using the County website and cable channel to promote participation.

The next item was a suggestion for a change of name for the AHAC "to something a little less loaded than affordable housing", perhaps "Work Force Housing Advisory Committee" or the "Housing Affordability Committee". There was discussion as to what name was used in other localities and the fact that changes would be needed to the committee's charter. Interim County Attorney Michele Gowdy cautioned against any change of name at the present time, in light of some current litigation. Ms. Cameron indicated that the AHAC would continue to research the matter and would have some further suggestions at such time as a change would be appropriate.

Regarding a vacancy on the AHAC, Mr. Trout advised that he had only recently learned of the resignation of his appointee and he would work on filling that vacancy.

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IN RE: CELL TOWERS

Planner Matthew Ebinger reviewed an application filed by James and Verline Moody and National Communication Towers for a conditional use permit to construct a tower on a parcel near the intersection of New Kent Highway and Paige Road. He indicated that the tower would not be very visible from New Kent Highway.

Mr. Trout reported that there had been few comments or questions when the application was considered by the Planning Commission, and that propagation maps showed a "real hole" in coverage that this site would help to fill. Mr. Ebinger confirmed that the tower would provide coverage between existing towers at the Courthouse and in Eltham, as well as the fact that there were no comments from anyone regarding the balloon test.

Mr. Sparks asked about carriers anticipated as users of the proposed tower. Mr. Ebinger reported that there was interest from the same carriers who filed letters of intent on the Williams tower application recently approved by the Board.

Ms. Gowdy advised the Board that there were three other pending tower applications that would likely make their way to the Board and it would be equitable to hear all three at the same meeting rather than deferring one of them to a subsequent meeting.

Mr. Ebinger advised that if the necessary information was received on all three applications by the end of the week, then all three would be considered by the Planning Commission at its May meeting. He also indicated that should all be approved and constructed, there would then be continuous coverage for the full length of New Kent Highway, and any future cell tower requests would likely be for the Route 60 corridor.

There was discussion regarding the need for some of the requested towers.

Mr. Davis asked about surety posted for tower removals, and whether that amount should be increased. Community Development Director George Homewood advised that he thought that the surety required was in the range of \$8,500 to \$10,000, noting that the County only required surety in the amount of 50% of what the costs were estimated to be, based on "a policy decision made years ago". He added that the Board could decide that surety should be 100% of the cost but cautioned that maintaining a bond in that amount for up to 25 years would be very costly.

There was discussion regarding eliminating the requirement for a CUP for towers shorter than 200 feet, and allowing that decision to be made administratively. Mr. Homewood explained that the current suggestion from Mr. Burrell was if a proposed tower was a distance of at least 120% of its height from the property line, was at least 750 feet from any existing residential structure, and was less than 200 feet in height, then it could be approved administratively; however, if it didn't meet one of those three requirements, then it would have to be approved by the Board of Supervisors.

There was discussion regarding the amount of time spent by staff, Planning Commission, and the Board of Supervisors on tower applications. Mr. Sparks expressed his concern that all of the tower spaces would not be used. Mr. Ebinger confirmed that although all tower applications had to include documentation of the need for coverage and that there was no space on existing towers to meet the needs, as well as be constructed to provide enough space for at least four carriers, there was no requirement to actually have four carriers on the tower.

There was inquiry regarding whether there were any towers in the County owned by the carriers themselves. Ms. Gowdy reported that Verizon owned a tower located at the Route 618 main refuse site which it was interested in giving to the County, along with the revenue from the one user on that tower.

Board members asked how other localities handled cell tower requests. Mr. Homewood described the situation as a "mixed bag", with some localities requiring CUPs for everything and others handling those requests administratively, with many jurisdictions "in the middle". He confirmed that any tower under 50 feet did not need a CUP in New Kent. He explained that Federal law provided that localities could not discriminate when considering tower requests but New Kent did require applicants to demonstrate that there were no co-location opportunities that would solve their service requirements.

Ms. Gowdy concurred, noting that the FCC rules were very clear regarding cell tower requests and reminded that localities only had six months to consider the applications or they were automatically approved.

Mr. Burrell commented that he did not think cell tower companies would invest in sites that were not needed and he anticipated that with the new technology, there would be even more demand.

Ms. Gowdy noted that the County would receive revenue in the way of taxes on the new equipment. She also commented that she had compared New Kent's process to those in other localities and felt that it was a "good procedure".

Discussion continued regarding administrative approval of tower requests. Mr. Sparks expressed his concern that administrative approval would not allow citizen input and the change would require amending the County ordinance. Ms. Gowdy concurred that an ordinance change would be needed. There was Board consensus that staff develop some proposals for the Board's consideration at its May work session. Ms. Gowdy advised that, in the meantime, the Board needed to proceed with consideration of the three pending applications that were anticipated to be reviewed by the Planning Commission at its May meeting.

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IN RE: UTILITIES PAYMENT AGREEMENT WITH NEW KENT CROSSING SHOPPING CENTER

Before the Board for consideration was a request for approval of a proposed Utilities Payment Agreement with New Kent Crossing Shopping Center.

Assistant County Administrator Bill Whitley reviewed that the Bottoms Bridge Service District ordinance, adopted in 2004 and amended in 2007, required all parcels within the District to connect to the public utilities systems and the shopping center had not yet done so. He explained some of the negotiations that had taken place with the customer, and he emphasized that it was important to have them connected not only to comply with directives from the Department of Environmental Quality that they be connected and their existing well abandoned, but also to collect the fees and add them to the customer base. He pointed out that the County would not be receiving any less money from them than it would if the fees were paid all at one time.

Ms. Gowdy advised that it was her understanding that New Kent Crossing Shopping Center had some proposed changes to the agreement but she had not yet received them. Mr. Whitley suggested that the Board consider the agreement as presented, noting that it had been under negotiation for several months and prepared for the benefit of the shopping center. He added that the shopping center principals had had plenty of opportunity to communicate their changes and were well aware that the Board would be considering the agreement at this work session. Public Utilities Director Larry Dame indicated that he had been working with the shopping center on the agreement for about two years.

Mr. Evelyn commented that he felt it looked bad to others who had paid their hookup fees. Mr. Whitley explained that, although he understood Mr. Evelyn's comment, the agreement was a recognition of the state of the economy and the County would be receiving the connection fees over a five-year period, and he felt it was fair to the shopping center and to the County. Mr. Sparks reminded that the County had worked with other businesses in a similar fashion.

There was discussion by the Board about how the agreement might set a precedent, as well as about some smaller businesses on Route 60 near the Henrico County line who had not yet connected and would likely have some financial difficulty in doing so.

Mr. Davis moved to approve the proposed Utility Connection Payment Agreement with Rebkee Partners New Kent LLC. The members were polled:

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

The motion carried.

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IN RE: ADMINISTRATION BUILDING RENOVATIONS

Before the Board for consideration was a request to enter into a contract with the lowest bidder on a project to perform some renovations to the County Administration building.

General Services Director Jim Tacosa provided the Board with a copy of the Bid Tabulation Sheet for the project, which reflected the details of the four bids that were received. Chairman Sparks asked that, in the future, this information be provided to the Board in advance.

Mr. Tacosa reviewed that the project would include reconfiguration of the space previously occupied by the Health Department to provide a central area for Permitting, Planning and Environmental; a central climate-controlled space for all electrical and IT equipment; reconfiguration of the Financial Services office to include installation of a transaction window; upgrading lighting fixtures to reduce energy consumption; changing some flooring materials; upgrading the rear entrance to the building to improve accessibility; and some modifications to the Administration Office suite. Mr. Lawton suggested that it might be a good time to look into reconfiguring and updating the dais in the Boardroom, to which the Board agreed and asked for some estimates.

Mr. Davis commented that the Administration Building was 34 years old and had served the County well, and asked about its remaining life. Mr. Tacosa stated that the building was strong and well-built and, once the back-up generator was installed and the HVAC system upgraded, it should serve the County for a long time.

There was discussion regarding the need for parking spaces in the rear of the building, HVAC improvements, and the fact that the low bidder employed familiar local sub-contractors.

Mr. Trout moved to authorize staff to enter into a contract with Charles E. Moss Inc., the low bidder on the Administration Building Renovations project. The members were polled:

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

The motion carried. Mr. Burrell explained that he had abstained because of a family relationship with the bidder.

The Board took a short break and then resumed its meeting.

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IN RE:           SETBACK REQUIREMENTS FOR A-1, AGRICULTURAL ZONED PARCELS

Mr. Burrell requested discussion relative to reducing the 75' front setback requirement for property zoned *A-1, Agricultural*. He noted that this requirement resulted in landowners having to clear more land and he felt that it was best to disturb as little land as possible. He agreed that reducing the front setback might not be appropriate for parcels located along some of the designated scenic byways.

Mr. Homewood explained that the front setback was measured from the edge of the right-of-way (any road public or private) and that the side setback for *A-1* zoned parcels was 25 feet and rear setback was 50 feet.

Mr. Evelyn asked about variances. Mr. Homewood advised that the Supreme Court had ruled that a variance could not be issued unless the situation was tantamount to approaching confiscation and the standard for granting a variance was that there was no viable use of the property under current zoning.

He added that any setbacks shown on a recorded plat were vested, but in instances where setbacks were not shown on recorded plats, setbacks would have to comply with the current ordinance. He indicated that posed problems in areas such as Plum Point where one needed between eight and sixteen lots to build.

He advised that the smallest permitted *A-1* zoned parcel was 1.5 acres, and the current setbacks would work on a parcel of that size, unless the septic drain fields were required to be in the middle of the parcel. He noted that the only way to get a 1.5 acre *A-1* zoned lot was through family subdivision or boundary line adjustment. Mr. Evelyn suggested that the Board also needed to look at possible changes to the boundary line adjustment process.

Mr. Burrell suggested that staff study the issue and develop some recommendations, adding that he felt there might be some advantages beyond environmental ones.

Mr. Davis asked about the appeal process through the Board of Zoning Appeals. Mr. Homewood explained that the first step was a request for administrative modification, which required that the situation meet the same general standards required for a variance, one of which was that it was not a condition of general application across the locality. For example, if there was a neighborhood-wide 75-foot setback and one property owner was asking for a variance, there would have to be some physical, topographical or wetland issue for it to be granted.

It was noted that one of the advantages of reducing the front setback requirement was that most Resource Protection Areas (RPAs) were on the back sides of parcels and requiring a 75-foot setback often forced homes to be built closer to the RPAs and promoted encroachment, with owners sometimes ending up building homes that were not what they wanted.

No one was able to provide information as to when or why the 75-foot setback was enacted. Mr. Homewood indicated that he felt it might have been a part of the original zoning in the County, which applied only to residential and business/industrial, with the remainder of the land being "unzoned" and eventually becoming the *A-1* and *C-1* districts at some time in the 1970s.

He suggested that it might be best to agree on a map of roads of rural character where it was important to preserve the larger setbacks, and then reduce setback requirements of other A-1 zoned parcels. He indicated that there was no "magic number" of what might be best, but noted that the setback for R-1 zoned parcels was 35 feet.

There was discussion regarding structure orientation. Mr. Homewood advised that orientation was up to the owner and was not a platting or zoning issue – as long as the structure fit into the building envelope created by the setbacks.

Mr. Evelyn indicated he supported reducing the setback requirements but noted that there were a lot of scenic byways in his district and he did not think it was fair to require those property owners to have the larger setbacks. Mr. Trout disagreed, stated that "if you throw that away, you lose it forever".

Mr. Burrell asked Fire Chief Tommy Hicks if the setback distance affected firefighting capability. Chief Hicks indicated that it did not.

Mr. Homewood advised that he would also like the Board's consideration of moving two legacy subdivision proposals from the subdivision ordinance to the zoning ordinance. He reported that a recent ruling by the Virginia Supreme Court has made staff question if these provisions wouldn't be better suited for the zoning ordinance.

He indicated that even if the Board chose not to change the setback requirements, a map showing rural character roads was needed for the Comprehensive Plan.

The Board asked that staff develop proposals for the Board's consideration at its next work session.

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IN RE: PROPOSED FY11 BUDGET

The Board continued to be briefed on changes to the proposed FY11 budget.

County Administrator Cabell Lawton advised that he did not feel that Board of Equalization actions would change the tax base.

Mr. Trout spoke about some additional issues for consideration. He expressed that he felt it was important to bring his suggestions out into the open so that the public would be aware of potential changes. Mr. Sparks agreed that it was appropriate but asked that any discussions at this meeting should be brief and save the detailed discussions for the public hearing.

Mr. Trout first spoke about his recommendation that the trash transfer stations not be closed one day per week because the \$29,000 in savings might not be worth the inconvenience to the citizens or the impact on the site workers who were some of the lowest paid employees. Mr. Burrell commented that few localities kept all of their centers open every day and there had been few if any complaints when hours were reduced a few years earlier. Mr. Trout stated that convenience centers were the only service that some County residents used.

Mr. Sparks reminded his fellow Board members that these discussions should be reserved for the public hearing. Mr. Trout responded that he felt that the Board had been rushing through the budget and it was important to take its time.

The next item addressed by Mr. Trout was the need for a brush recycling site in the western end of the County. He reviewed that until a few years ago, brush was handled at the Route 618 main transfer site, and was subsequently contracted out to the sole bidder at a site in the Route 33/Stage Road area which was quite a distance from the most populated area of the County. He indicated that rather than make the 40-50 mile round trip to the brush recycling center, some residents were disposing of their brush in the woods or burning it, both of which were fire hazards, and he felt that those citizens were not being adequately served and needed some kind of relief. He suggested that one solution would be to re-open brush recycling at the 618 site for two months in the spring and fall, which he felt could be done at minimum cost, which he projected at around \$30,000. Mr. Burrell pointed out that someone would have to be on site at all times to control the brush. Mr. Trout suggested that those details could be worked out and might be able to be done under the current contract with the brush recycler.

Mr. Burrell asked about complaints from residents in Quinton. Mr. Sparks indicated that he had received some complaints but not an overwhelming number. Mr. Trout reported that he had received many complaints. He went on to say that when brush recycling was stopped at the 618 site, it took a service away from a larger portion of the County. He indicated that if brush recycling was reinstated at the 618 site and no one showed up to use it, it would cost nothing. He admitted that the \$30,000 was a "pure estimate".

Mr. Sparks commented that it would be preferable to have a better-substantiated estimate.

Mr. Evelyn asked if brush could be burned at the 618 site. Fire Chief Hicks responded that State Code did not permit burning of brush anywhere except where it was cleared.

Staff was asked to develop some recommendations and estimates of what it might cost to provide the services suggested by Mr. Trout.

The next item of concern addressed by Mr. Trout was the renovations of the historic school buildings for use by the School Board and Heritage Public Library. He suggested that the renovations should not be postponed but should be undertaken during the upcoming year in order to take advantage of lower construction costs. He noted that the annual lease payments on the School Board offices was \$55,000 and the County's contribution to the Library lease was \$20,000 per year, but it would be to the benefit of both if they were able to move before the end of their current leases in 2012 and 2013 respectively. He stated that he was not sure what amounts needed to be moved up in the CIP budget but suggested that instead of paying off two loans early, as recommended, the County should pay off only the higher interest VRS loan and use the funds that would have been used to pay off the other loan to help pay for the renovation work, rather than having to borrow funds at a higher interest rate.

Staff was asked to provide more detailed information that would reflect the costs of what Mr. Trout was requesting.

Mr. Trout next addressed lowering the Business-Professional-Occupational License (BPOL) tax by 5%. He noted that it was lowered by 15% last year, which had been helpful to businesses. He indicated that such decrease would not be a part of the May 10 public hearing on the budget because it had not been advertised, but it could be considered at a later date as it would not become effective until January 1. Mr. Lawton pointed out that any decrease in the BPOL rate would result in a loss of revenue for the FY11 budget.

The last item brought up by Mr. Trout was a suggestion to eliminate the Vehicle Registration Fee and make that \$25 a part of the motor vehicle tax. He indicated that the revenues to the County and the cost to taxpayers would remain the same, but it would eliminate a lot of the confusion surrounding the fee, would be less paperwork for staff, and might be deductible for taxpayers who itemized deductions. Ms. Gowdy advised that she had met with the Commissioner of Revenue regarding this suggestion and they both agreed that since the State Code was silent on the issue, the Dillon Rule would not allow the County to convert the fee to a tax. Mr. Trout suggested that Ms. Gowdy ask for an opinion from the Attorney General.

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IN RE: CLOSED SESSION

Mr. Davis moved to go into Closed Session for consultation with legal counsel pursuant to Section 2.2-3711A.7 of the Code of Virginia involving actual or probable litigation and regarding specific legal matters that required advice and to discuss a personnel matter pursuant to Section 2.2-3711A.1. The members were polled:

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

The motion carried. Chairman Sparks announced that the Board did not expect to take any action after the Closed Session.

The Board went into closed session. Chairman Sparks departed at 11 a.m., at which time Vice Chairman Evelyn assumed the Chair.

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

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

The motion carried.

Mr. Burrell 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:

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

The motion carried.

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IN RE:           ADJOURNMENT

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

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

The motion carried.

The meeting was adjourned at 11:35 a.m.