

THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 26<sup>th</sup> DAY OF MAY IN THE YEAR TWO THOUSAND TEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 4:00 P.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: WATER/WASTEWATER MUTUAL AID PROGRAM

Before the Board for consideration was Resolution R-20-10 authorizing New Kent's participation in the VA WARN Water/Wastewater Mutual Aid Program.

Assistant Director of Public Utilities Mike Lang explained that the program, administered through the Virginia Division of the American Water Works Association, was similar to mutual aid programs for fire-rescue and law enforcement, wherein New Kent would be able to obtain assistance with water and sewer problems resulting from emergency situations where County resources might be insufficient. He indicated that members of the program included the City of Richmond, Hampton Roads Sanitation District, James City County Service Authority, and Newport News Waterworks, and it would also streamline the process whereby the entity rendering assistance would receive payment. Staff predicted that the program would likely become statewide.

Mr. Trout moved to adopt Resolution R-20-10 as presented. 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: HISTORIC SCHOOL FIELD OPERATIONS AND UPDATES

Before the Board for consideration was a request for approval of a budget transfer from electrical service savings in the General Services budget to the Capital fund to replace bleachers at the Historic School ball fields.

Parks & Recreation Manager Kim Turner explained that there had been two separate incidents involving injuries on the bleachers reported within the past two months. She indicated that temporary repairs had been made and that new bleachers, including

installation, would be less expensive than retrofitting the existing ones. She reported that the new bleachers would meet the safety guidelines recommended by the U. S. Consumer Product Safety Commission and would have the same seating capacity as the existing bleachers. She noted that there were some funds in the FY11 CIP for field improvements but staff was asking to use some existing operating savings to purchase the bleachers as soon as possible.

There was discussion regarding the potential for liability on the part of the County and consensus that the bleachers should be replaced as soon as possible.

Mrs. Turner advised that it would take four weeks for the bleachers to be delivered. She confirmed that she had received three bids for the project, and that the new bleachers would meet current needs but could be expanded if needed in the future.

She pointed out that this did not include replacement of the big set of bleachers, which was in the CIP for FY12/13, and reported that the Building Official had inspected and approved the use of those bleachers in the interim.

There was discussion regarding disposal and value of the old bleachers. Mrs. Turner indicated that those pieces that were still in good shape and compatible with the new bleachers would be retained and there was speculation that the remainder might have some recycling value.

Mr. Burrell moved to move forward with the budget transfer for the bleachers as requested. The members were polled:

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

The motion carried.

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IN RE: COOKS MILL LLC/HENRY PURCHASE OF DEVELOPMENT RIGHTS APPLICATION

Planner Kelli Le Duc asked the Board for formal action on the application for purchase of development rights filed by Mr. Michael Henry. She referred the Board to a memo included in their packet that outlined what had taken place since the Board last considered this application in February. She confirmed that State matching funds were no longer available and indicated that there was no recommendation from staff. She advised that staff was interested in what the Board thought about the application and the PDR program itself.

County Administrator Cabell Lawton reported that the applicant had reduced the amount of the acreage to be included, as well as the proposed purchase price. He reminded that there were still some concerns with the language in the proposed agreement and changes would need to be negotiated if the Board opted to move forward with the application. He indicated that the future of the program was in question as Mr. Henry had been the only one to apply, and staff wanted some direction from the Board as to whether it wanted to continue with the program or redirect the funds to some other use.

Mr. Davis commented that he felt there would be more applications if people were familiar with the program.

Mr. Trout asked about the number of homes that could be built on the subject property. Ms. Le Duc advised that should the applicant be able to construct the road to the standard required for a parent tract subdivision, then approximately twelve home sites could be obtained; otherwise, there could be five 25-acre lots.

Mr. Trout noted that at a cost of \$265,000, the County would be paying \$53,000 per lot to prevent five homes from being built. He added that he felt the program had some merit as it was designed to preserve property that was under the threat of development or was unique in nature, such as those identified in the recent Green Infrastructures Project, but at the same time the Board would have to justify that spending \$265,000 to prevent five homes from being built was in the best interest of the County.

Both Mr. Davis and Mr. Sparks advised that they had not changed their minds since the last time the application was discussed. Mr. Sparks added that just because Mr. Henry's was the only application, it did not mean it was the "right one".

There was discussion regarding the value of the property as well as state and federal tax credits that would be available to Mr. Henry if he chose to put the property into a conservation easement.

Mr. Lawton suggested that staff work on some recommendations for other ways to reach the same goals as this program.

There was inquiry about a Transfer of Development Rights program. Ms. Gowdy advised that Frederick County had adopted the first program in the State, which staff was looking at as a model.

Mr. Davis moved to decline Mr. Henry's application. 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.

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IN RE: SCHOOL BOARD/CLEAR SIGNAL CONDITIONAL USE PERMIT APPLICATION  
FOR A CELL TOWER

Planner Matthew Ebinger reviewed a conditional use permit (CUP) application filed by the School Board and Clear Signal to erect a cell tower on School Board-owned property behind Watkins Elementary School, tentatively scheduled for public hearing on June 14, 2010.

Mr. Ebinger advised that the applicants had demonstrated a need for service and a gap in coverage that a tower at the proposed site would fill. He confirmed that the applicant had a letter of intent from one carrier to date. He reported that the site did not meet the required minimum 750-foot setback from all residential structures, with the closest house being 711 feet away. He noted that the tower was originally proposed to be an unlighted 195-foot tower but had been increased to a lighted 250-foot tower in order to accommodate the County's public safety needs.

Mr. Trout spoke about how the County's ordinance addressed the distance of a tower from residences but not from schools and he expected concerns from parents, even though the proposed lattice tower was designed to collapse in on itself. He spoke about light pollution and how he understood that the extra height was needed for public safety purposes, but anticipated that a lighted tower might be a problem for some. He suggested that perhaps the tower could be moved farther back from the school but remain on property owned by the School Board. Mr. Ebinger indicated that because of the topography of the site, moving the tower to a site farther behind the school would require that the height of the tower be increased.

There was discussion regarding how weather events might affect the tower and its design. Fire Chief Tommy Hicks explained that some towers in other localities were around 300 feet and that the proposed 250-foot height was a compromise.

Mr. Davis asked about a recent rezoning of the property. Mr. Homewood advised that only school property in the Courthouse area had been rezoned.

There were questions about lighting. Mr. Homewood advised that the Federal Aviation Administration (FAA) mandated that that towers with lights have flashing ones during the day and constant ones at night.

Mr. Evelyn asked about recommendations from staff and the Planning Commission. Mr. Ebinger reported that staff had recommended denial because of the proximity of the site to the school and, although the Planning Commission had some of the same concerns, it had voted to forward the application to the Board with a favorable recommendation because of the design of the tower. He indicated that there had been no concerns expressed by parents at the Planning Commission's public hearing.

Ms. Gowdy reported that she was in the process of reviewing a draft lease between the School Board and the applicant.

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IN RE: CHRISTIAN/CLEAR SIGNAL CONDITIONAL USE PERMIT APPLICATION FOR A  
CELL TOWER

Planner Matthew Ebinger reviewed a conditional use permit (CUP) application filed by Lawrence E. Christian and Clear Signal to erect a cell tower on property located at 3361 Quaker Road, tentatively scheduled for public hearing on June 14, 2010.

He reported that the applicants had demonstrated a need for coverage in the area, but that the proposed site did not meet the 750-foot residential setback requirement. He indicated that the distance to two existing residential structures was close to 750 feet, and the third house, owned by Mr. Christian, was 330 feet away. He advised that the property owner would need to have a boundary line adjustment or lot consolidation in order to meet the setback from the property line. He confirmed that both parcels were on the same side of the railroad tracks and that the proposed site was within 750 feet from the railroad tracks but was beyond the 120% tower height setback.

Mr. Ebinger advised that one couple, who were not adjacent property owners but would have a view of the tower from their backyard, did speak against the application at the Planning Commission public hearing. He added that another neighbor had voiced objections during the balloon test but had not conveyed those objections to the County.

It was noted that this was proposed to be a monopole tower, and not a lattice tower as proposed for the Watkins School site, because lattice towers were more stable for heights over 200 feet.

Mr. Ebinger reported that the Planning Commission had voted 5:4 to forward a favorable recommendation, attributing the opposing votes to the neighbors' objections.

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IN RE: CELL TOWERS IN GENERAL

Mr. Ebinger reported that the application for a cell tower on Quaker Road had been deferred by the Planning Commission because of a question about access, and may be brought to the Board for public hearing in July. He indicated that with that tower in place, there should be continuous cell coverage along Route 249/New Kent Highway. He noted that there was a distance of about two miles between all of the towers, which was the industry standard.

Mr. Evelyn commented that the Board was told that the last two towers approved would fill the coverage needed for New Kent Highway, and wondered why there were more tower applications.

Ms. Gowdy confirmed that the Federal Communications Commission (FCC) regulations provided that the County had only six months to take action on cell tower requests, or they would be automatically approved.

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IN RE: ZONING ORDINANCE AMENDMENT REGARDING CELL TOWERS

Community Development Director George Homewood reviewed proposed amendments to the Zoning Ordinance that would permit cell tower applications to be approved administratively if they met all of the requirements in the ordinance. Mr. Burrell explained that these changes were of interest to him in light of the time spent by the Board and staff on these applications.

Mr. Homewood advised that towers 75 feet or less in height, which covered the needs of amateur and ham radio operators, did not need a permit. He indicated that any tower above 199 feet required lights, and in some cases, shorter towers were required to have lights because of their proximity to airports. He confirmed that all tower applications were reviewed by the FAA.

Mr. Trout commented that having the applications approved by the Board provided more notice to the residents. He also noted inconsistencies in some of the proposed language regarding tower height and staff suggested some changes to correct those inconsistencies.

Mr. Trout also asked about the proposal to eliminate the requirement for a surety to cover the cost of tower removal. Mr. Homewood indicated that the County had not been uniformly collecting those sureties and suggested that it was a problem to collect them at the time of the issuance of the building permit and then maintain them over the 20-30 year tower life span. Mr. Lawton added that it was also difficult to project what the removal cost would be and it might be perceived that it was a County responsibility to remove a tower when that responsibility should properly fall to the property owner.

The Board discussed existing towers in the County, the likely consolidation of wireless carriers, and tower life expectancies. They also discussed the failure by staff to collect sureties in the past, as well as the County's current Surety Policy, which no longer included bonds. It was reported that the Surety Policy would be brought back to the Board in the

near future with proposed changes that would allow bonds under certain conditions, but it was recommended that in the case of surety for a tower removal, cash or a letter of credit would be more appropriate than a bond.

Mr. Davis expressed his concern that changing technology might result in abandoned towers throughout the County.

Mr. Sparks asked if the County could be sued if an application that met all of the ordinance requirements were to be denied. Ms. Gowdy explained the different justifications for approving and denying the applications, and reminded that an applicant had to show need for the tower and if there was available space on an existing tower that would fill that need, then that was a justification for denial.

Mr. Homewood explained the different needs for the technologies of the various carriers and surmised that the recent rash of cell tower applications resulted from the popularity of iPhones and he expected all of the carriers would soon be looking for the same density in coverage. He commented that a tower owner could not recoup the cost of a tower if it had only one antenna.

Mr. Davis asked how many towers were in New Kent. Mr. Homewood responded that there were 27 towers approved, with 25 of those having been constructed. He admitted that no one knew how many towers were needed, adding that with the rapid change in technology, the number of towers needed was expected to increase.

It was noted that any appeal of an administrative decision would be heard by the Board of Zoning Appeals and not the Board of Supervisors. Mr. Homewood confirmed that a balloon test would still be required.

Mr. Burrell stated that his intent for suggesting these changes was not to make it easier for the applicants but to reduce the time spent on applications that met all of the criteria.

Mr. Sparks stated that he felt it had been a very productive conversation but he was not convinced that these applications should be approved by staff and suggested that additional time be taken to consider the changes.

Mr. Trout repeated his concern about towers being too close to schools and whether that should be addressed in the ordinance. Mr. Homewood noted that during recent weather events, cell towers were often the only structures that remained standing and he could not recall any instance where one had fallen.

Following further discussion, there was consensus not to move forward with the proposed amendments.

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IN RE: ZONING ORDINANCE AMENDMENT REGARDING SETBACKS FOR A-1 ZONED PARCELS

Community Development Director George Homewood reviewed proposed amendments to the Zoning Ordinance that would reduce the setbacks for A-1 zoned property from 75 feet, as suggested by Mr. Burrell.

He indicated that a recommended new setback of 40 feet had been selected because it was more than the 35-foot setback for residentially zoned parcels. He referred to previous discussions about maintaining a 75-foot setback for structures along roads that contributed

to the County's rural character, and noted that a list of suggested roads had been compiled, the first four of which were roads already designated as scenic byways by the Virginia Department of Transportation (VDOT). He explained that designation did not confer any protection – merely resulted in signs and designations on maps. He added that some of the roads had been identified through the Comprehensive Plan process and the Green Infrastructure Project but clarified that the final decision as to what roads would be on the list was up to the Board. The setbacks for structures on those roads would remain at 75 feet and setbacks for all other A-1 parcels would be reduced.

He indicated that the remainder of the suggested changes was an attempt to move two sections in Ch. 90 Legacy Subdivisions (large lot and parent tract) out of the Subdivision Ordinance and into the Zoning Ordinance. He noted that this resulted from a recent Virginia Supreme Court opinion on a case in Chesterfield where the Court stated that there was nothing in the Code that allowed a locality to regulate lot sizes in its subdivision ordinance, and moving the sections into the Zoning Ordinance would allow New Kent to keep its provisions in place; otherwise, if the County lost a challenge to the ordinance, minimum lot size in A-1 districts could become 1.5 acre, which would be a significant risk to current County policy. He emphasized that this would not materially change anything in the current policy but merely move the provisions to the Zoning Ordinance.

Mr. Evelyn commented that should the County move forward with a public hearing on this, then every owner of A-1 zoned property in the County would receive a notice. Mr. Homewood confirmed that was true, but suggested that staff could try to explain in an accompanying letter as to what was and was not occurring. He admitted that in the past a number of landowners had contested the 25-acre/15-acre minimum lot size and he suspected that those same residents would appear to make that argument.

Mr. Trout noted that if the Board decided not to change the setback, it would still need to make the changes regarding the Legacy Subdivisions. Ms. Gowdy advised that there was an argument that the Court's ruling set forth that the Zoning Ordinance was where the provision should be; however, part of the case had been remanded and she felt that it might be best to wait to see what happened before making those changes.

Mr. Trout reiterated that the scenic corridors designated by VDOT had no effect other than signage and that changing the setback requirements would be a change that would leave those roads with restricted setbacks. Mr. Homewood reminded that the setbacks would remain the same as they were for the roads listed, but would become less restrictive for the other roads. Mr. Trout asked what would happen if a road was not on the list but was later designated as a scenic byway. Mr. Lawton suggested that, in that event, the list would have to be amended to include the newly-designated road.

Mr. Sparks commented that he felt that the proposed changes would "open a can of worms" and asked if there was any other way to address Mr. Burrell's concerns. Mr. Burrell explained that his thoughts had been that a smaller setback would reduce the amount of clearing needed and would help the environment as well as assist the County in complying with the Chesapeake Bay regulations which were expected to tighten.

There was consensus to wait on the issue until a final ruling was received from the courts.

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IN RE: PILOT TRAVEL CENTER TRAFFIC STUDY

Community Development Director George Homewood reported on the traffic impact study required as part of the Conditional Use Permit (CUP) approved by the Board in December

2008 for the Pilot Travel Center. He confirmed that the traffic study had been prepared and submitted by Pilot and had been reviewed by County staff, VDOT, and a consultant. He indicated that everyone's conclusion was that there would always be traffic problems on Route 106 if the problem of insufficient parking spaces at the Pilot was not solved.

Mr. Sparks commented that he felt that the Pilot was not controlling vehicles on the site like they were supposed to and he did not think that giving it more spaces would improve that problem.

Mr. Trout stated that the CUP permitting the Pilot to operate as a truck stop would expire in 2014, and the Route 33 interchange would be a more appropriate location for it. He indicated that he did not think that the parking problem was the County's to solve and he felt that the more spaces the Pilot had, the more "stacking" there would be.

Mr. Evelyn remarked that safety was the main issue and he felt the only way to alleviate the traffic problems was to either let it buy more land to expand parking, or to have a sign on the interstate that would signal to truckers that the site was full.

Mr. Burrell agreed that safety should be the issue and not the number of spaces. He asked if the Pilot was given more spaces, would it be required to widen the road, adding that allowing it to expand its parking might be the only resolution of the problem.

Mr. Davis commented that should VDOT enforce the two-hour limit for trucks to park at the interstate rest areas, then the parking problems at the Pilot would likely worsen.

Mr. Lawton agreed that the obvious solution was to have more parking spaces. He reported that staff had met with Pilot's attorney and it appeared unlikely that its operation would relocate to Route 133, as had been anticipated, because of the change in the economy and the fact that the port at Parham Landing had not materialized. He indicated that it seemed that the Pilot was in compliance with the traffic study and, although it was necessary to continue a dialogue with Pilot, he felt the only way to address the parking problems was through law enforcement.

Ms. Gowdy indicated that she had asked Deputy Mears, who was familiar with the problems at the Pilot, to attend the meeting but he had been delayed. She advised that when the CUP expired in 2014, the only operation that would cease would be the use of the showers and thereafter the County would no longer have any control over the remote parking. She reported that Pilot representatives had indicated that they felt that they could better manage the parking problems if they had more space. She advised that having Pilot widen the road in exchange for more parking could be negotiated in any future discussions. She agreed that the problems with illegal parking was a law enforcement issue and noted that deputies regularly patrolled the facility.

Mr. Homewood confirmed that there was no room for any more parking spaces on the land currently owned by the Pilot, and that the problem continued to be trucks parking in areas other than designated parking spaces which caused maneuvering difficulties for everyone. He suggested that the lack of parking enforcement was an operational one at the site and he recommended discussions continue with the Pilot corporate office.

Mr. Lawton indicated that staff would follow up with the Sheriff's Office to make sure that Pilot had complied with the safety and security plan requirement in the CUP.

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

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IN RE: INDUSTRIAL ACCESS ROAD GRANT

Economic Development and Tourism Director Rodney Hathaway reviewed the current status of a request made of the Board in January by Chester Alvis for the County to apply for an Industrial Access Road grant to construct Business Park Road. Mr. Alvis was also present to participate in the discussions.

Mr. Hathaway reported that since the previous meeting, several discussions had taken place with both Mr. Alvis and David Horsley, who owned property between Mr. Alvis' property and the Fisher tract owned by the New Kent County Economic Development Authority (EDA), and there were three issues that had not been resolved. He indicated that the first issue involved an easement through Mr. Horsley's property to the Fisher tract. He advised that estimates received from VDOT for construction of Business Park Road from Route 106 to the end of Mr. Horsley's property were between \$600,000 and \$750,000. He reminded that up to \$500,000 was available through the grant, although another \$250,000 would be available on a dollar-for-dollar match. He advised that Mr. Horsley continued to maintain that the only way he would grant the County an easement through his property was if the County constructed the road. He advised that a price quote of \$50,000 had been obtained for installing a box culvert for the crossing onto the Fisher property, with Mr. Alvis clarifying that the price did not include "moving any dirt".

Mr. Evelyn pointed out that any construction in the wetlands area would have to be pre-approved by the Department of Environmental Quality (DEQ).

Mr. Hathaway reported that a new condition for the easement from Mr. Horsley was that the County set up a system or process whereby he would be reimbursed for the cost of extending public utilities to his property. Mr. Hathaway noted that there was no such program in place and would require amendment of the Utility regulations, and staff felt that such a program would be difficult to implement and manage and was not recommending it.

There was discussion regarding the easement agreement previously signed by Mr. Horsley. Ms. Gowdy reported that the agreement provided for the transfer of ownership of the easement at such time as the County constructed a road and was very clear that Mr. Horsley was not responsible for constructing the road. It was confirmed that extending utilities was a new condition and not a part of that prior agreement. Ms. Gowdy reminded that the agreement also gave Mr. Horsley the right of first refusal in the event that the Fisher tract was put up for sale.

It was confirmed that the subject property was not in the public utilities service district at the time that the utility project was designed.

Mr. Alvis advised that there was "something in the wind" and that it was "highly possible" that another industry would be locating on the proposed road within the next several months that would justify the cost of the first section of the road. He reminded that if the road was built through his property, it would be the "closest you'd ever get" to the Fisher tract and he asked if it was possible to get a grant for the road through his property this year and apply for a second grant next year to complete the road to the Fisher tract.

Mr. Trout remarked that "what Mr. Alvis said sounded good" but reminded that the grant required that a certain amount of business be developed on the road. Mr. Alvis stated that he felt that the potential business would cover that requirement.

Mr. Hathaway reported that another issue pertained to the surety required by the grant. He indicated that Mr. Alvis had asked that the County contribute to the surety. It was noted that the County would not be bonding the construction of the road but the ability to attract business investment of \$5 for every \$1 of the grant, which would be \$2.5 million in investment on a \$500,000 grant, and that Mr. Alvis felt he could reach that level if he had the road. He explained that investment was measured on the value of real property and tangible personal property, to include buildings and equipment. Mr. Alvis interjected that the value of the existing business, Cobb Lumber, was in the neighborhood of \$800,000 and with the potential business would easily reach that level. He went on to talk about how the area was centrally located and easily accessible.

Mr. Hathaway shared that staff had concerns about using public money as surety for proposed private investment and the County would have no control over how the property was developed. He noted that if Mr. Alvis was not in a position to build out the lots on the road, then it would be public money that would be called for the surety. He confirmed that should the required investment level not be reached within the time period, then a proportionate share of the grant money would have to be repaid. When asked if the EDA was in a position to help with the surety, he advised that the EDA was aware of the situation and shared the same concerns as staff. Mr. Trout added that EDA helped businesses by reimbursing certain costs and providing incentive grants, not awarding up front money like this.

Mr. Hathaway pointed out that in order for Mr. Alvis to develop his property, public water would need to be extended about 1,500 feet to the site, at an estimated cost of \$67,000. He indicated that electricity would also need to be extended, and that Cobb Lumber had an estimate of \$70,000 to bring 3-phase underground power to its property. He stated that staff believed that in order to apply for the grant, the County should have some comfort level that property would be developed with public utilities, and that the property owner could bring water and electrical service to the property. He indicated that a pump station would be required but since that might not be feasible at the present time, it could be worked out; however, DEQ would not allow any new business to be on a private well and water would need to be brought to the property. Mr. Lawton added that any new business would also need to be on the sewer system, and explained that Cobb Lumber was there before and was allowed to be on a septic system.

Mr. Hathaway reminded that the County's Zoning Ordinance required that all new and relocated utility lines be placed below ground, but there was an exception that allowed above ground lines in special circumstances.

Mr. Alvis reported that he had an estimate for constructing the road through his property for \$253,000. Mr. Hathaway indicated that although he did not dispute Mr. Alvis' estimate, the preliminary estimates he had received from VDOT that covered construction of the road all the way to the end, were above the \$500,000 amount of the grant.

Mr. Lawton commented that there might be other similar requests made of the County and the Board had to be careful not to set a precedent. He added if the landowner would agree to cover the surety, then staff would feel more comfortable working with him on the other items.

There was no Board action taken.

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IN RE: INDOOR PLUMBING REHABILITATION PROGRAM

County Administrator Cabell Lawton reviewed with the Board that, as of July 1, 2010, Quin Rivers Agency would no longer be able to manage the County's Indoor Plumbing Rehabilitation Program and that Housing Partnerships, Inc. had been recommended to take over the program. Chuck Emmons, Executive Director of Quin Rivers Agency was present, along with J. Abbitt Woodall, Executive Director of Housing Partnerships, Inc.

Mr. Lawton advised that the Board's only obligation was to notify the State who it wanted to manage the program. He indicated that he had done research on Housing Partnerships, Inc. and found that they provided these services in other localities and were highly recommended. He noted that Mr. Woodall was a New Kent resident and related to Mr. Evelyn.

Mr. Davis moved to assign the management of New Kent County's Indoor Plumbing Rehabilitation Program to Housing Partnerships, Inc., effective July 1, 2010. The members were polled:

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

The motion carried.

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IN RE: POLICY FOR WAIVER OF PERMIT FEES

Mr. Trout spoke about a request he had made of staff to develop a proposed policy whereby permit fees were waived for work performed by non-profit and similar groups. He noted that in the past, fees had been waived for the homes built by Habitat for Humanity and other similar groups and he felt it was best to have a policy in place.

Mr. Lawton advised that staff would work on something for the Board's consideration.

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IN RE: HISTORIC SCHOOL CAFETERIA USE

Mr. Lawton reviewed recommendations regarding use of the historic school cafeteria area. He reminded that the Board had previously considered a request from the Brown Bag program to use the space and reported that since that time staff and Mr. Davis had met with representatives from some of the other local feeding programs to discuss a less exclusive use of the facility. He reported that FeedMore, the parent organization of the Central Virginia Food Bank, had been approached to see if it would be interested in managing the site but they had declined. He reported that more interest was being expressed for using the facility.

He indicated that if it was the Board's intent to make the space available to as many groups as possible, then it was his recommendation that an advisory group be formed to manage it. He indicated that the idea of an advisory group had been well-received by those who attended the recent meeting, proposed to be made up of a representative from each of ten different organizations in order "to keep everybody invested".

There was discussion regarding whether a ten-member group might be too large and might result in quorum problems.

Mr. Davis moved to direct staff to do the following: 1) create a set of bylaws for a committee, to consist of representatives from all willing organizations that would like to utilize the facility, to oversee the facility's management; 2) begin preparing the site for use by this committee including cleaning, necessary maintenance, and utility connections; 3) convene a meeting of the organization representatives to review the proposed bylaws; and 4) submit the proposed bylaws for final approval by the Board of Supervisors. 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: CLOSED SESSION

Mr. Davis moved to go into Closed Session to discuss a personnel matter pursuant to Section 2.2-3711A.1 of the Code of Virginia involving candidate for employment and for discussions relating to real property pursuant to Section 2.2-3711A.3 of the Code of Virginia involving acquisition of real property for public purpose where public discussion would jeopardize the County's bargaining or negotiating position. The members were polled:

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

The motion carried. The Board went into closed session.

Mr. Davis moved to return to open session. 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.

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:

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

The motion carried.

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IN RE:            PROPOSED FEES

Before the Board for public hearing was Ordinance O-03-10 changing certain fees charged for County services and updating the content of Appendix A (Fee Schedule) in the New Kent County Code.

Chairman Sparks explained that the Board would not be voting on any of the items relating to the FY11 budget until its meeting on June 14.

Mr. Lawton reported that the proposed increases were in Airport fees and utility fees, the latter being the 8% annual increases recommended in the Utilities *pro forma* to keep the Public Utility System a self-supporting enterprise fund that did not receive any monies from the General Fund. He added that the increase in Airport fees was also a step towards having that operation be self-sufficient as well.

Mr. Evelyn recommended that the existing County Attorney Review Fee of \$1,500 be eliminated. He indicated that he agreed in some instances the County Attorney needed to review certain documents, such as homeowners' association documents, but he did not feel that there should be a charge. Mr. Trout expressed concern about eliminating the fee, stating that if the County Attorney was required to review such documents, then there should be a charge.

Mr. Lawton suggested that was something that could be reviewed and considered at a later date.

Ms. Gowdy offered to bring back a recommendation to the Board that would include information on what other localities did.

Chairman Sparks asked that the focus return to the fees that were advertised for public hearing, and then opened the Public Hearing.

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

There was no further discussion.

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IN RE:            PROPOSED TAX LEVIES

Before the Board for public hearing was Ordinance O-04-10 to impose tax levies on real and personal property for the FY10/11 tax year.

Mr. Lawton advised that the recommendation included that all tax levies would remain unchanged, with the exception of the real estate tax which had been proposed and advertised at 70 cents, one penny less than the 71-cent equalized rate.

Mr. Trout noted that he had recommended a decrease in the Business-Professional-Occupational License (BPOL) tax, but that was not included in these proceedings and could be considered at a later date.

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

There was no further discussion.

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IN RE:            PROPOSED FY11 BUDGET

Before the Board for public hearing was the proposed FY11 budget.

Mr. Lawton advised that there had been no changes to the budget since the last presentation and that it was available on the County's website or in his office for anyone interested in reviewing it. He summarized that the proposed budget was \$1.3 million less than the FY10 budget, and that a number of items had been adjusted to offset some increased funding for schools, including cuts in expenses and elimination of frozen positions, to arrive at a total budget of \$50,222,538. He confirmed that there would be no County employee layoffs or raises, and that the additional \$1.1 million in funding for the schools would limit the amount of layoffs and salary reductions that had been anticipated by the School Board.

Mr. Trout advised that he had some recommended changes that he would review after the Public Hearing.

The Chairman opened the Public Hearing.

Larry Gallaher of 9491 Crumps Mill Road welcomed both the County Administrator and County Attorney to New Kent, and then expressed his concern about the number of County employees and County vehicles. He asked the Board to adopt the Sheriff's Office motto to "do more with less".

Bill O'Keefe of 5450 Brickshire Drive, the citizen representative to the Finance Committee, stated that he continued to be impressed by the professionalism and diligence of the County staff, and thought that they had done a "tremendous job" with the budget. He commented that he supported the proposal of providing additional funding for the school system and that staff and the Finance Committee had worked hard to find ways to meet the challenges of reduced funding. He talked about debt service and how he agreed with paying down some of the debt to save on interest, and urged the Board to hold the capital budget at its current level because, although the economy might be showing some signs of recovery, he did not think that it was a good time to take on new projects.

Steve Miles of 13580 Stage Road thanked the Board for additional funding for the school system as well as continuing to fund the Meals on Wheels program. He asked that the Board do all it could to preserve the historic school building so that it could be used as a new home for the Heritage Library at some time in the future, clarifying that he was not asking that the project be done all at once, but that the roof be preserved so that "there would be something to work with when the time was right".

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

Mr. Trout distributed a handout with his suggestions for amending the proposed budget. The first was to eliminate the proposal to close three of the refuse sites one day per week for an annual savings of \$28,226. He commented that his concern was that was one of the major benefits for some of the citizens, noting that the employees staffing the sites were some of the lowest paid and that closing the sites would affect their earnings, and he did not think that the advantages outweighed the disadvantages. He advised that he would be making that motion at the next meeting.

The next proposal was to budget (from contingency) the sum of \$30,000 to provide a brush recycling opportunity at the western end of the County. He reminded that brush was previously handled at the Route 618 main refuse site but had been put out for bid and subsequently contracted out and moved to a location on Stage Road near Route 33. He noted that the contract was originally \$52,000 and had increased by \$38,000 over the past three years. He indicated that the site was 20 – 25 miles from the population center of the County (Route 106) and he suggested re-establishing brush recycling at the 618 main refuse site two months in the spring and two months in the fall, noting that those operations might be able to be handled under the current brush recycling contract.

Mr. Davis advised that he had measured the distance to the brush recycling facility from the intersection of Route 249 and Route 618, and found that it was 9.7 miles to the site; however, the distance to the 618 main refuse site from the same intersection was 4.7 miles -- a difference of only 5 miles, or 6.1 miles using the interstate. He suggested that normally residents didn't haul brush that often and felt that the cost of establishing a second site in the western end of the County was not worth it.

Mr. Trout disagreed, noting the large populations in Five Lakes, Woodhaven and along Tunstall Road. He pointed out that burning was restricted and pushing brush into nearby woods added to the fire danger. He admitted that he did not know what it would cost but was asking that the funds be put into the budget to research it.

Mr. Burrell agreed with Mr. Davis, noting that the Stage Road site was not that much farther than the 618 main refuse site for residents in the western end of the County. He reminded that the reasons brush recycling was stopped at the 618 main refuse site and contracted out were because of the cost of staff and the wear-and-tear on equipment. He indicated that according to the brush recycling contractor, only one person had complained about the distance to the site, and he agreed that normally residents did not make frequent trips to haul brush. He stated that it was important to look at the cost and then find a balance between the needs of the citizens and what could be afforded.

Mr. Trout disagreed that residents infrequently hauled brush. Mr. Burrell reported that the brush recycling contractor collected the name, address and license number of every resident using the facility and that it would be simple to determine how often the site was being used. Mr. Trout stated that he would be interested in seeing that information, noting that if the majority were not residents who lived west of Route 106, then the County would know

that the facility was not serving the majority of the public. He again mentioned the increase in the cost of the brush recycling contract, noting that amount might pay for what it cost to provide services in the western end of the County.

Mr. Evelyn reported that he received a lot of calls about the refuse sites, but no complaints about the brush recycling site.

The next change requested by Mr. Trout was to budget funding to accelerate the renovation of the historic school property buildings. He stated that the County was paying \$55,000 annually in rent for School Board offices that were inadequate and contributing \$20,000 per year towards rent for the New Kent branch of the Heritage Public Library for a space that was too small, as well as \$30,000 per year to maintain the empty buildings. He noted that the Library's lease expired in two years and the School Board's in three. He suggested that it would be better to start the renovation work before construction prices increased and if funds needed to be borrowed, interest rates were as low as they had ever been. He noted that there was no money in the proposed budget for this project and although he had originally suggested that \$1.5 million be budgeted, he would reduce his request to \$400,000 or \$500,000 so that the budget would not have to be re-advertised. He indicated that the work would take a couple of years to complete and if the Board continued to delay starting the project, then the leases might have to be renewed and it made no sense to spend money on rent when the County owned a building that could be used.

Mr. Sparks reminded that a presentation was made to the Board a few months earlier regarding problems with the school buildings and staff was scheduled to report back to the Board before July 1 with some estimates on what it would cost to stabilize the structures. He indicated that there were funds in the capital account to address those needs. Regarding the request for funding to start renovating for the Library and School Board offices, Mr. Sparks asked what the proposed \$1.5 million was to cover. Mr. Trout stated that it would be for initial work, including the building shell, the heating/air conditioning, and putting a plan together. He admitted that it was just an estimate but he was concerned that there was no funding at all for this project in the proposed budget. He indicated that he understood that the Board might not want to re-advertise and hold another public hearing and postpone adoption until the end of June, and that was why he had reduced his request to \$400,000 or \$500,000.

It was confirmed that the budget could be adopted and then amended once estimates were received. Mr. Trout stated that he was "not satisfied putting together a faulty document that had to be fixed later".

Mr. Sparks maintained that the Board needed to wait for the report from staff and then get funding in place. He reminded that staff was working with the Library, School Board and architects in order to bring the Board a recommendation on how to proceed and he did not think it was wise to allocate funding without having more information.

Mr. Trout maintained that without funding for the project, he considered the budget to be a "faulty document that would need to be fixed later and that was not the way the County should operate".

Mr. Davis noted that there were undesignated funds in the Capital fund and asked what the Board would have to do to appropriate those funds. Mr. Lawton advised that the Board would have to amend the FY10 budget and carry those funds forward, or could amend the FY11 budget after July 1. It was confirmed that just because the project was not in the

budget, it did not mean that the Board couldn't or wasn't going to move forward with the project.

Mr. Trout expressed his concern that the project hadn't been in the budget in the first place. Mr. Sparks reminded that data would be forthcoming from staff that would set out what needed to be done to stabilize the building. Mr. Trout reminded those were emergency repairs. Mr. Sparks agreed, noting that was what was needed immediately and thereafter there would be time to get a plan in place. Mr. Trout disagreed, stating that it was time to move forward on the renovation, commenting that the County had the building for two years and had done nothing. It was pointed out that the County had just recently received the title to the building, and suggested it was best to work with all of the stakeholders to come up with the best plan for the buildings.

Mr. Sparks advised that he did support Mr. Trout's suggestion about not closing the refuse sites one day per week. Regarding another brush collection site, he suggested that staff provide the Board with some options, noting that he had received two comments but no complaints about the existing site. He indicated that he would not support re-instituting brush recycling at the 618 main refuse site but did want staff to look for a site in the far western end of the County. Mr. Trout countered that there needed to be money in the budget for that and he had suggested the 618 main refuse site as the best option. Mr. Sparks reminded that there were funds in the contingency account for that.

Mr. Trout commented that the Board was considering a budget and if funds were not included for these three items, it would have to be corrected later. He stated that just because funds were budgeted, it didn't mean that they would be spent, and that these were policy issues and "that was what the Board did".

He reiterated that he was also recommending a decrease in the BPOL but that could be considered at a later date as it was not payable until January 1.

Chairman Sparks reminded that a vote would be taken at the June 14 meeting, and thanked all of the speakers for their comments. Board members joined in thanking those citizens who appeared to comment.

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IN RE: MEETING SCHEDULE

The Chairman announced that the next meeting of the Board of Supervisors would be held at 6:00 p.m. on June 14, 2010, in the Boardroom of the County Administration Building, New Kent, Virginia.

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IN RE: ADJOURNMENT

Mr. Burrell moved to adjourn the meeting. 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.

The meeting was adjourned at 7:45 p.m.