

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 9<sup>th</sup> DAY OF AUGUST IN THE YEAR TWO THOUSAND TEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 6:00 P.M.

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IN RE: CALL TO ORDER

Chairman Sparks called the meeting to order and announced that Mr. Trout was experiencing car trouble and would be late. It was also noted that this meeting would be broadcast live for the first time on the County's cable channel.

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IN RE: INVOCATION AND PLEDGE OF ALLEGIANCE

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

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IN RE: ROLL CALL

Thomas W. Evelyn	Present
David M. Sparks	Present
James H. Burrell	Present
Stran L. Trout	Absent (Arrived at 6:08 p.m.)
W. R. Davis, Jr.	Present

All members were present after Mr. Trout's late arrival.

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IN RE: CONSENT AGENDA

The Consent Agenda was presented as follows:

1. Approval of Minutes
  - a. May 26, 2010 work session
  - b. June 30, 2010 work session
  - c. July 12, 2010 business meeting
2. Miscellaneous
  - a. Proposed FY12 Budget Calendar
  - b. Resolution R-31-10 in tribute to Thelma Crump Wilson, deceased
  - c. Resolution R-33-10 implementing Chapters 549 and 613 of the Virginia Acts of Assembly – 2010 Session, regarding the timing for acceptance of cash proffer payments
  - d. Resolution R-34-10 in recognition of Jill Cruz
  - e. Resolution R-45-10 approving the FY2011 Community Services Board performance contract between the Virginia Department of Behavioral Health & Developmental Services and Henrico Area Mental Health & Developmental Services Board
  - f. Resolution R-46-10 updating the County's PPEA guidelines and policy
  - g. Resolution R-47-10 requesting that New Kent County be declared a crop drought disaster area
  - h. Contract with Michele Gowdy, County Attorney
3. FY10 Appropriations
  - a. Funds for supplemental security from the Sheriff's Office and Fire Rescue for June, \$10,125.00

- b. School capital funds for renovations at George Watkins Elementary School which include widening the bus loop, \$75,000.00
- c. Funds received by Extension from outside sources for sponsorship of programs, \$79.00

Total Supplemental Appropriation:

\$(85,204.00)	Total
\$ 75,000.00	From Fund 3 – School Capital Fund Balance
\$ 10,204.00	Money In/Money Out

- 4. FY11 Appropriations
  - a. Funds for supplemental security from the Sheriff's Office and Fire Rescue for July, \$3,254.00
  - b. Funds donated to the New Kent Animal Shelter, \$645.00

Total Supplemental Appropriation:

\$(3,899.00)	Total
\$ 3,899.00	Money In/Money Out

- 5. FY11 Carry Forward Appropriations
  - a. FY10 capital funds to FY11 for the new Planning/Building Development software, \$69,000
  - b. FY10 Purchase of Development Rights capital funds to be used in FY11, \$310,050.13
  - c. Capital funds for the Transportation Office radio equipment project to be completed in FY11, \$1,286.40
  - d. School capital funds for the high school and expansion of the bus loop at George Watkins Elementary School, \$210,472.62
  - e. FY10 capital funds for various General Services projects to be completed in FY11, \$936,452.98
  - f. FY10 Utility funds for various public utility projects to be completed in FY11, \$14,897,960.60
  - g. FY10 capital funds for various Community Development projects to be completed in FY11, \$141,492.32
  - h. Additional FY10 capital funds appropriate at the July 2010 work session for a Community Development Environmental Department vehicle, \$1,359.00
  - i. General funds for maintenance for the new folder/sealer, \$933.00
  - j. Federal grant funds for Fire-Rescue to be completed in FY11, \$33,220.07
  - k. Computer funds for Fire-Rescue for two CUPs in the Training Room at the Human Services building, \$4,000.00
  - l. Capital funds for the Real Estate reserve set aside not used in FY10, \$716,001.00
  - m. FY10 capital funds for various Airport projects to be completed in FY11, \$207,394.91

Total Supplemental Appropriation:

\$(17,529,623.03)	Total
\$ 3,490,856.20	Money In/Money Out
\$ 9,639.07	From Fund 1 – General Fund Balance
\$ 2,220,969.83	From Fund 7 – Capital Fund Balance
\$ 210,472.62	From Fund 3 – School Capital Fund Balance
\$ 11,593,686.32	From Fund 98 – Utilities Fund Balance

\$ 4,000.00 From Fund 800 – Computer Fund Balance

6. FY10 Inter-Departmental Budget Transfers
  - a. *Schools*: \$56,329.94 from Prior Year Lottery/Construction to Architect Fees
  - b. *General Services*: \$57,594 from Rt. 619 Electric Upgrades and Emergency Complex Generators to Admin Building HVAC
  - c. *Utilities*: \$26,000 from WWTP Expansion Land Acquisition to Easements/Land Acquisition-non grant (reclaimed water line)
  
7. Treasurer's Report: Cash in Bank as of June 2010: \$46,759,433.34

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

The motion carried.

Mr. Burrell noted that the Consent Agenda had contained a resolution recognizing Jill Cruz, a New Kent resident recently installed as President of LaSertoma International, and he read the resolution aloud for the benefit of those in attendance.

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IN RE: CITIZENS COMMENT PERIOD

Chairman Sparks opened the Citizens Comment Period.

Bill O'Keefe of 5450 Brickshire Drive encouraged the Board to accept the unsolicited PPEA proposal submitted by Marengo Management Corporation to renovate the historic school buildings. He spoke about the difficult economic climate and how PPEA offered a quicker way to undertake projects, as well as the builder's good reputation and commitment to excellence. He indicated that the Library hoped to relocate to the Historic School when its lease expired in 2013 and had a strong interest in seeing the historic school renovation project get underway. He suggested that if the Board did vote to accept the proposal, the minutes should be clear as to the Board's commitment that the Library would occupy space in the historic school so that the Library Foundation could move forward with its capital campaign in the fall.

Steve Miles of 13580 Stage Road requested that the Board give serious consideration to the Library's request to locate in the Historic School and stated that without the Board's clear commitment, it would be difficult for the Library Foundation to begin its capital campaign.

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

Mr. Trout arrived at 6:08 p.m. and apologized for his late arrival.

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IN RE:            *TAKING ROOTS FARM TOUR 2010*

Horticulture Agent Patty Townsend thanked the Board for its continuing support of the Cooperative Extension Service and presented a photo slide show of the 2010 *Taking Roots* Farm Tour.

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IN RE:            HISTORIC SCHOOL

The Board resumed its consideration of a request to accept the unsolicited Public-Private Education Act (PPEA) proposal to renovate the Historic School submitted by Marengo Management Corporation, which had been deferred from the July 28 work session.

County Administrator Cabell Lawton advised that other than the information on PPEAs that had been provided by Mr. Trout, there was nothing new to add. He reminded that the Board had updated its PPEA Guidelines as a part of the Consent Agenda earlier in the meeting, and should the Board decide to move forward, there would be the required advertising period (45 day minimum) to solicit other proposals. He confirmed that the Board could "opt out" of the process at any time without any harm and that there were fees paid by the proposers that would cover administration and review costs. He indicated that this was the first unsolicited PPEA proposal received by New Kent and staff was making sure to perform due diligence. Mr. Trout confirmed that according to the information he recently provided, there was no obligation on the part of the County until a comprehensive agreement was approved.

Mr. Davis expressed some concerns about the required fees and whether they would be refunded to those whose proposals were not accepted. Mr. Lawton explained that any funds over and above the County's costs to review the proposals would be automatically refunded. There was discussion regarding the recordkeeping and schedule for such refunds.

Mr. Evelyn asked about the cost of staff time to review the proposals. Mr. Lawton explained that depending on the number of proposals, it may be necessary to hire a consultant to review the proposals, but that the fees collected would cover those costs.

Mr. Evelyn asked about the timeline to respond to the proposals. Mr. Lawton indicated that he did not think there was a timeline in place but he felt an obligation to respond as quickly as possible.

Mr. Davis moved to accept the unsolicited proposal by Marengo Management Corporation for publication and conceptual phase consideration. 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 then responded to the comments made during Citizens Comment. Mr. Davis stated that it was the Board's intention for the Library to be located in the 1930s Historic School, but he did not know how the Board could make any commitment beyond that. Mr. Evelyn indicated that the Board had talked about this on several occasions but had never

actually taken a vote, and it had not been addressed in the Space Allocation Agreement entered into with the School Board. Mr. Trout suggested that the space for the Library would be the entire main floor of the 1930s building. Mr. Sparks added that the Board did not know yet if it could move forward, although its goal was to try to proceed over a period of time. Mr. Davis commented that he felt that accepting the PPEA proposal was the first step towards the use of those buildings.

There was discussion regarding the next steps, which included suggestions for committee work, obtaining community input, determining affordability, and whether uses should be determined before or after the PPEA process. It was suggested that the Board could further discuss this at its semi-annual meeting with Senior Staff on September 10.

Following discussion, there was consensus that at its September 10 meeting, the Board would review information to be compiled by the County Administrator and would solicit staff input on other possible uses; be prepared to take public comment at the September 13 meeting; and review input and any competing proposals at the September 29 work session.

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IN RE: PARHAM LANDING WASTEWATER TREATMENT PLANT UPGRADE

Public Utilities Director Larry Dame reviewed with the Board a request for a change order in the amount of \$133,981.00, to the contract to upgrade the Parham Landing Wastewater Treatment Plant. He explained that the change order involved some deletions and additions, was a small percentage of the overall project, and could be covered by using part of the funds that had been set aside to cover costs of borrowing, which borrowing had not been necessary. He also advised that the County had received grant money for the project through the Water Quality Improvement Fund (WQIF) totaling \$1.3 million and was in line to receive another \$1.5 million, and maybe more.

The schedule for completion of the project was discussed. Mr. Dame advised that the contractor had asked for additional time, mostly because of weather delays, but that "everyone was pushing hard" to meet the deadlines.

Mr. Sparks asked if there was a contingency for the project. Mr. Dame explained his reasons for choosing not to have a contingency and that he felt comfortable because of the funds that were available if needed. He confirmed that there would likely be one or more change orders before the project was completed.

Mr. Burrell moved to accept Change Order No. 1 for the Parham Landing Wastewater Treatment Plant Upgrade. 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: ELECTED OFFICIALS' REPORTS

Mr. Davis spoke about the recent hot temperatures and reminded residents that cooling stations were opened as needed at Fire Station One.

Mr. Trout announced that according to recent reports from the Virginia Department of Transportation, a project to raise the pavement on South Waterside Drive in the area of Fannies Creek to deal with the impact of tidal flooding, was in the permitting stage and moving forward.

He also addressed problems resulting from the disconnection of the water line to the Historic Jail, which was leased to the Historical Society, and indicated that it needed to be reconnected. Mr. Lawton advised that there was some question about who would pay for the cost of reconnection and monthly usage charges. Mr. Trout stated that the County should pay for those costs as it was a County-owned building.

Mr. Burrell encouraged fire safety, especially in light of the dry areas in some parts of the County.

Mr. Evelyn spoke about a recent tour he took with the Colonial Soil and Water Conservation District and how impressed visiting officials were with some of the local practices.

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IN RE: STAFF REPORTS

Mr. Lawton reviewed the proposed agenda for the September 10 meeting with Senior Staff.

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IN RE: APPOINTMENTS

There were none.

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

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IN RE: WHITMORE REZONINGS

Before the Board for consideration was Ordinance O-06-10 approving application ZM-01-10 filed by Tommy Whitmore, on behalf of Whitmore Chevrolet, to rezone approximately 1.10 acres (tax map parcels 28A1-1-4 and 28A1-1-4A), and Ordinance O-07-10 approving application ZM-02-10 filed by Tommy Whitmore, on behalf of TJW Enterprises, to rezone approximately 1.2 acres (tax map parcel 28A1-1-3), from *R-1, Single Family Residential* to *Business*.

Planner Kelli Le Duc explained that two separate public hearings were required because the parcels were titled in different names, but that there was only one staff report and would be only one presentation because the issues were the same for both applications.

She reported that the 2.3 acres were made up of three separate parcels located to the left of Whitmore Chevrolet and fronting on Route 33, and were designated as *Village* in the future land use map. She explained that since *Village* zoning does not yet exist, the majority of the parcels along Route 33 were zoned *Business*. She advised that the proposed rezonings were consistent with the Comprehensive Plan's intention for this area. She indicated that there had been no specific development plans submitted, which made it difficult to evaluate any impact on transportation but that a traffic impact study would be required if the use of the property generated more than 100 peak hour trips or more than 1,000 daily trips, and that any required road improvements would be addressed at the site plan stage. She advised that no comments had been received from either the Sheriff's Office or Fire-Rescue.

She referred to recent letters received by the Board, one from an adjacent property owner opposed to the rezoning and one from the applicant (who was unable to attend) that provided some idea of his future plans for the property. She indicated that the proposed rezonings did follow the recommendations of the Comprehensive Plan for this area and would create a variety of opportunities for economic development in the Route 33 corridor, and that staff was recommending approval of both applications. She noted that the Planning Commission had considered the applications and voted 8:1:1 to forward them with favorable recommendations.

There was discussion regarding buffers. Ms. Le Duc explained that a transitional buffer would be required where the parcels abutted property of a different zoning classification, but not where it was adjacent to a street, and that in this case, buffers would be required along the rear of the parcels where there were adjoining residentially-zoned parcels.

The Chairman opened the Public Hearing on application ZM-01-10. There being no one signed up to speak, the Public Hearing was closed.

Mr. Davis advised that in the past he had encouraged Mr. Whitmore to rezone these parcels because he did not think the uses were appropriate for residentially-zoned property, and General Motors had tightened its requirements and did not want other businesses on dealership property. He spoke about how Mr. Whitmore was a good citizen, paid his taxes, supported local organizations, and allowed his business to serve as a polling place. He then moved to adopt Ordinance O-06-10, as presented. The members were polled:

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

The motion carried.

The Chairman opened the Public Hearing on application ZM-02-10. There being no one signed up to speak, the Public Hearing was closed.

Mr. Davis moved to adopt Ordinance O-07-10, 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: MOORE/NATIONAL COMMUNICATIONS CONDITIONAL USE PERMIT  
APPLICATION TO CONSTRUCT A CELL TOWER

Before the Board for consideration was Resolution R-35-10 approving application CUP-06-10 filed by R. Wade and Kathleen Moore, property owners, and National Communication Towers LLC, agent, for the purpose of installing a cell tower on property located on Topeka Road.

Planner Matthew Ebinger explained that the tower was proposed to be built on a leased .36 acre area located on a 25-acre parcel identified as tax map parcel 20-14-12, that was zoned *A-1, Agricultural*, with all adjacent parcels having like zoning. He indicated that the current use of the parcel was residential, and its designation in the future land use map was *Rural Lands*. He referred to maps received from the applicant showing lack of coverage in the area and the increased coverage to be provided by the tower. He pointed out that balloon tests showed that the tower would not be visible from New Kent Highway but would be visible from areas along Tunstall Road. He summarized that there was a documented need for wireless service, the proposed site would have minimal impact on the scenic beauty in the area, and all conditions had been or would be met during the site plan process. He reported that the Planning Commission voted 9:0:1 to forward the application with a favorable recommendation, and that staff recommended approval subject to the conditions in Resolution R-35-10.

The Chairman opened the Public Hearing.

Debbie Gingras of 8121 Airport Road, one of the owners of Topeka Road and representing the four co-executors of the Gooden Estate, insisted that the tower company did not have the right to use Topeka Road and that the Moores did not have the authority to grant access by virtue of their deed or the road maintenance agreement. She contested County staff's position that all conditions had been met by the applicant when there was no way to access the site other than Topeka Road, and the owners of that private road had not been asked nor did they have any intention of granting that access. She asked that the application be denied.

Karen Clendenen of Sandston, also one of the owners of Topeka Road, contested the purported right of access and spoke about the County's "wall of reluctance" to address the issue. She also questioned why, as owners of Topeka Road, they had not received notices of the public hearings from the County. She described the application as "fatally flawed" and the "application to nowhere", and confirmed that the owners of the road would never grant a right of ingress or egress to access the tower site. She questioned staff's support of the application and their position that all conditions had been met. She advised that should the Board approve the application, then there should be language added to the resolution acknowledging that there was no current right of access. She warned that approval would "set a very dangerous legal precedent" and that every landowner should be "placed on high alert" that County government had the authority to ignore the U. S. Constitution and the State Code.

Tim Young of Yorktown, owner of property abutting the Moore parcel, spoke about how the road maintenance agreement was clear that access was for residential use only and he did not understand how the application had progressed to this stage. He advised that he bought his property to build a house on and not to look at a cell tower. He indicated that a majority of the parties to the road maintenance agreement were opposed to the application. He also pointed out that the Moore parcel had been timbered and that the buffer referred to in the report was provided by trees on his property. He disputed the need for more cell towers and the reported lack of coverage, and asked the Board not to approve the application.

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

Mr. Evelyn asked about the lack of notice to the owners of Topeka Road. Mr. Ebinger advised that the State Code required the County to provide notice to property owners within 100 feet of the property, and the agents were required to send out notices of the application to landowners within 750 feet. It was established that a letter had been sent by the agent

to the Gooden Estate in care of Brenda Donner on March 18, 2010, by regular mail and it had never been returned as undeliverable.

A copy of the road maintenance agreement was distributed to the Board members. Mr. Ebinger confirmed that the County Attorney had reviewed what had been submitted by the applicant and found that sufficient evidence of access had been submitted, and that it was not the County's place to mediate between private parties.

Mr. Evelyn asked about the commercial construction entrance that was required by the Code. Mr. Ebinger advised that entrance would be located at the intersection of New Kent Highway and Topeka Road and the full site plan would show all of that information.

Mr. Trout commented that the County could not guarantee the right of any party or make a legal determination as to whether there was access, and that any conflict would be between the applicant and the owners of the road. However, he did note that there was a nearby tower site approved in 2002 (Shifflett property) that was never built and asked if that was a site that could be used.

Elliot Harrigan, President of National Communication Towers LLC, advised that it was their information that the Shifflett CUP had expired, and also that the Shifflett site was too far south and would not be a good location for signal "hand off" along Route 249.

He reported that a lease had been signed the previous week with AT&T for the tower at Tallevsille and they were hoping to start construction in September. He added that he expected AT&T to sign a lease for the subject tower in 2011 in order to complete its coverage along Route 249.

Regarding access, Mr. Harrigan explained the careful document review by his staff, himself, and the attorneys for his prospective tenant carriers and he confirmed that they believed that they had access.

There was further discussion regarding the Shifflett site. Mr. Ebinger advised that the Shifflett CUP did not specify a five-year expiration date but since no tower had been built in the eight years since its approval, it was assumed that it was no longer active. Mr. Harrigan added that Sprint, who was to be the carrier on the Shifflett tower, had expressed interest in locating on the subject tower, another indication that the Shifflett site was no longer under consideration. He tried to explain the process whereby wireless engineers determined the sites that would best provide coverage and how the Shifflett site was too far away from the area they were trying to cover.

Mr. Ebinger indicated that should the subject tower be approved, then no tower could be built on the Shifflett site because there would already be a tower within two miles.

Mr. Burrell acknowledged that there was opposition to the tower and a debate as to whether coverage was needed, but added that he did not think the tower company would spend money on a site unless the need was there.

Mr. Davis commented that he did not think that the Shifflett site had been considered and he did not think that the Board should approve sites that were within a mile of each other.

Mr. Evelyn stated that he felt that a tower on the Shifflett site made more sense.

Mr. Harrigan requested that the Board defer its vote until the next meeting to give him time to look into the Shifflett site, determine its legal status and whether the applicant had any intent to build a tower.

Mr. Trout stated that he felt a deferral would be appropriate and noted that no further public hearing would be needed. He then moved to defer the matter until the September business meeting. The members were polled:

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

The motion failed.

Mr. Evelyn moved to deny CUP-06-10. The members were polled:

Stran L. Trout	Nay
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: 2010 AGRICULTURAL AND FORESTAL (AFD) PROCESS

Environmental Planning Manager Amy Walker provided a brief background summary of the AFD program. She advised that the AFD program was designed to protect and encourage the development and improvement of the agricultural and forestal lands in the County for the production of food and other agricultural and forestal products. She explained that the AFD program developed a mutual understanding between landowners and the locality to protect and enhance agricultural and forestal land as a viable segment of the County's economy and as an economic resource of major importance. She advised that it was also a method to conserve and protect those lands as valued natural and ecological resources which provided essential functions such as open space, watershed protection, and wildlife habitat, as well as protecting New Kent's rural character.

She pointed out that the AFD program provided landowners with certain tax benefits and restrictions on government actions to protect the agricultural and forestal use of their land. She explained that landowners enrolled in the program must agree to not develop their land to a more intensive non-agricultural or forestal use during the term of the district (four to ten years), and in return, the property's value was assessed at a lower rate and the government agreed to provide various protections from non-agricultural interference and development pressure.

She noted that there were two sections of State Code that governed the AFD program -- Section 15.2 regarding the local administration of the program (the section her office administered) and Section 58.1 of the Tax Code regarding the assessment of real estate. She indicated that pursuant to Section 15.2 there were several criteria that must be met for a parcel to be eligible for enrollment: the parcel must be in active agricultural or forestal

production (or forestally significant); must be within one mile of a district core or consist of 200 plus acres; and must have a compatible zoning classification.

She pointed out that there were minimum acreages outlined in the Tax Code in order to be eligible for the tax benefit -- 5 acres for agriculture and horticulture and 20 acres for forestry. She indicated that the minimum acreage requirements could be determined by adding together the total area of contiguous real estate titled in the same ownership (excluding subdivision lots recorded after July 1, 1983).

She reported that during the 2010 application process, all applications were reviewed for eligibility and all met the requirements; however, there was one application that included a parcel in question, but that would be discussed during the public hearing for that particular application.

She advised that the 2010 AFD application process was in its final stage. She recounted that the deadline for application submittal had been May 1; on May 10, the Board of Supervisors forwarded the 2010 AFD applications to the Planning Commission; on May 17 the Planning Commission forwarded the applications to the AFD Advisory Committee; on June 1 the AFD Advisory Committee conducted an in-depth review of each application and forwarded recommendations to the Planning Commission and Board of Supervisors; and the Planning Commission held a public hearing on each of the applications on July 19 and forwarded recommendations to the Board of Supervisors. She noted that the District creations and acreage additions applied for totaled 1,772.68 acres.

She confirmed that each of the applications would require an individual public hearing and that many of the applicants were present.

Mr. Burrell asked about the tax impact of adding so much acreage to the AFD Program, noting that some of the land could not be developed anyway because of topography. Ms. Walker advised that any questions on tax impacts should be directed to the Commissioner of the Revenue.

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IN RE: GILMAN ADDITION TO THE WAHRANI AGRICULTURAL & FORESTAL DISTRICT

Before the Board for consideration was Resolution R-36-10 approving an application filed by Gilman Land & Timber to add tax map parcel 37-50 (307.78 acres) to the Wahrani Agricultural and Forestal District (AFD).

Mr. Evelyn removed himself from discussion and voting since the applicant was a family member.

Ms. Walker explained that parcel 37-50 was completely forested with 277.78 acres currently being managed for timber and 30 acres devoted to wetlands; the parcel was zoned *A-1, Agriculture*; and that forestry appeared to be a predominant land use in the area, with large timber tracts directly adjacent to as well as in the general vicinity of the subject parcel. She indicated that the future land use designation for the majority of the property was *Suburban Housing Detached*, with a small portion in the southeast corner designated as *Village*. She added that by placing this property into the AFD program, the property could not be developed into a more intense use and would retain its rural character. She advised that should the district realignments be approved, then inclusion of this parcel would allow an extension of the core of the new Wahrani Swamp AFD, thereby permitting an outlying parcel to remain in the AFD program.

She reported that the AFD Advisory Board had voted 7:0:1 to forward the application with a favorable recommendation, and the Planning Commission had likewise forwarded a favorable recommendation on a vote of 9:0:1. She indicated that the request appeared to comply with the requirements of the State Code regulating AFDs and that staff found that adding the property into the AFD program would conserve and protect commercially-viable forestal lands and had also recommended approval.

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

There was discussion regarding a recommendation from the Virginia Department of Forestry for an understory burn.

Mr. Davis moved to adopt Resolution R-36-10 accepting the addition of tax parcel 37-50, GPIN # G29-2578-3576, containing approximately 307.78 acres to the Wahrani Agricultural and Forestal District. The members were polled:

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

The motion carried.

Mr. Evelyn rejoined the Board.

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IN RE:            ABBITT REALTY CREATION OF THE HOLTS CREEK AFD AND ADDITIONS TO  
                      THE WAHRANI AND YORK RIVER AFDS

Before the Board for consideration was Resolution R-37-10 approving an application filed by Abbitt Realty Co. NK Abbitt LLC to create the Holts Creek AFD with tax map parcel 24-37 (783.31 acres); to add tax map parcels 37-41 (141 acres), 37-45B (1 acre), and 37-46 (0.5 acres) totaling 142.5 acres to the Wahrani AFD; and to add tax map parcel 37-72 (65 acres) to the York River AFD.

Ms. Walker explained that all of the parcels were completely forested with a total of 900.81 acres being currently managed for timber and that all of the parcels were zoned *A-1, Agriculture*. Regarding the Holts Creek AFD parcel, she reported that forestry and residential were the land uses, with large timber tracts in the vicinity; the future land use designation for the property was *Rural Lands*; and by placing this property into the AFD program, the property could not be developed into a more intense use and would promote consistency with the intent of the future land use designation. Regarding the remainder of the parcels, she reported that they were also forested tracts, with two of the parcels being small but contiguous to the larger parcel and managed as one timber tract and titled in the same name; the future land use designation was *Suburban Housing Detached*; and by placing this property into the AFD program, the property could not be developed into a more intense use and would retain its rural character. She advised that should the district realignments be approved, then inclusion of these parcels would allow an extension of the core of the new Wahrani Swamp AFD, thereby permitting an outlying parcel to remain in the AFD program.

She reported that the AFD Advisory Board had voted 7:0:1 to forward the application with a favorable recommendation, and the Planning Commission had likewise forwarded a favorable recommendation on a vote of 9:0:1. She indicated that the request appeared to comply with the requirements of the State Code regulating AFDs and that staff found that adding the property into the AFD program would conserve and protect commercially-viable forestal lands and had also recommended approval.

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

Mr. Burrell moved to adopt Resolution R-37-10 accepting the creation the Holts Creek Agricultural and Forestal District with tax map parcel 24-37, GPIN # K21-3303-4095, consisting of approximately 783.31 acres; the addition of tax map parcels 37-41, GPIN # H29-2327-1979; 37-45B, GPIN # H29-3916-2514; and 37-46, GPIN # H29-3870-2604 totaling 142.5 acres to the Wahrani Agricultural and Forestal District; and the addition of tax map parcel 37-72, GPIN # G29-3502-1045, consisting of approximately 65 acres, to the York River Agricultural and Forestal District. 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: HAWTHORNE ADDITION TO THE PAMUNKEY FARMS AFD

Before the Board for consideration was Resolution R-38-10 approving an application filed by Walter and Patricia Hawthorne to add tax map parcels 25-18A (65 acres), 25-18 (99.82 acres), 25-12 (92 acres), and 25-19 (36.31 acres) totaling 293.13 acres, to the Pamunkey Farms AFD.

Ms. Walker explained that all of the parcels were forested tracts, with 272.13 acres being currently managed for timber and 17 acres devoted to wetlands; the parcels were zoned *A-1, Agriculture*; and that forestry appeared to be a predominant land use in the area, with large timber tracts directly adjacent to as well as in the general vicinity of the subject parcels. She indicated that the future land use designation for all of the property was *Rural Lands*, and by placing this property into the AFD program, the property could not be developed into a more intense use and would promote consistency with the intent of the *Rural Lands* designation. She indicated that if the proposed district realignments were approved, these parcels would be included in the Cooks Mill AFD.

She reported that the AFD Advisory Board had voted 7:0:1 to forward the application with a favorable recommendation, and the Planning Commission had likewise forwarded a favorable recommendation on a vote of 9:0:1. She indicated that the request appeared to comply with the requirements of the State Code regulating AFDs and that staff found that adding the property into the AFD program would conserve and protect commercially-viable forestal lands and had also recommended approval.

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-38-10 accepting the addition of tax map parcels, (GPINs) 25-18A, (K23-3463-3216); 25-18, (K23-2168-3251); 25-12, (K23-0986-4077); and 25-19, (K23-0282-3768), consisting of approximately 293 acres, to the Pamunkey Farms Agricultural and Forestal District. 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: WARREN SMITH ADDITION TO THE EVELYN AFD

Before the Board for consideration was Resolution R-39-10 approving an application filed by Warren and Jean Smith to add tax map parcels 23-41G (5.48 acres) and 23-40E (11.38 acres), totaling 16.86 acres, to the Evelyn AFD.

Ms. Walker explained that these parcels were both actively-managed agricultural tracts and were two parcels of a four-parcel active family farm, zoned *A-1 Agriculture*, and met the five-acre minimum requirement for tax purposes as administered by the Commissioner of Revenue. She indicated that by placing this property into the AFD program, the property could not be developed into a more intense use and would promote consistency with the intent of its *Rural Lands* future land use designation. She added that if the proposed district realignments were approved, these parcels would be included in the Pelham Swamp AFD.

She reported that the AFD Advisory Board had voted 7:0:1 to forward the application with a favorable recommendation, and the Planning Commission had likewise forwarded a favorable recommendation on a vote of 9:0:1. She indicated that the request appeared to comply with the requirements of the State Code regulating AFDs and that staff found that adding the property into the AFD program would conserve and protect commercially-viable agricultural lands and had also recommended approval.

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

Mr. Davis commented that this farm was very well managed and one of the most publicly-visible farms in the County.

Mr. Burrell moved to adopt Resolution R-39-10 accepting the addition of tax map parcels 23-41G, GPIN # K17-3859-4183 and 23-40E, K18-0195-3859, containing approximately 16.86 acres to the Evelyn Agricultural and Forestal District. 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: JAMES SMITH ADDITION TO THE EVELYN AFD

Before the Board for consideration was Resolution R-40-10 approving an application filed by James and Carolyn Smith to add tax map parcels 23-40F (10.34 acres) and 23-41J (3.61 acres), totaling 13.95 acres, to the Evelyn AFD.

Ms. Walker reported that both parcels were actively-managed agricultural tracts and were the other two parcels of a four-parcel family farm that totaled 30.8 acres (see previous application). She indicated that the Smith family owned all four parcels; however, the two parcels owned by James Smith were not contiguous to each other and therefore parcel 23-41J (3.61 acres) would not meet the five-acre minimum requirement for tax purposes as administered by the Commissioner of Revenue. She advised that the other parcel, which was 10.34 acres, would qualify for the tax benefit.

She explained that the AFD Advisory Committee had forwarded the application, on a vote of 7:0:1, with the recommendation to include both parcels on the basis that they were part of a family-owned, fully-functioning agricultural farm; that the current zoning and future land use designations were *Agriculture* and *Rural Lands*, both of which promoted low levels of development; that the farm was located on a major thoroughfare and was important to the protection of rural character; and that individual parcel size was not indicative of management and the entire family farm should be permitted to enroll in the AFD program. She reported that the Planning Commission had forwarded a favorable recommendation on a vote of 8:1:1.

She noted that the recommendation to forward parcel 23-41J (3.61 acres) might not be consistent with the administration of the tax codes governing the AFD program and that the proposed resolution would approve both parcels based on the recommendation of the AFD Advisory Committee and the Planning Commission, but could be amended to exclude tax map parcel 23-41J due to its failure to meet the minimum acreage requirement outlined in the tax codes governing AFDs.

She summarized that the application appeared to comply with State and local laws governing AFDs as administered by the locality, but may not be consistent with the administration of the tax codes. She added that staff found that adding the property into the AFD program would conserve and protect commercially-viable agricultural lands and had also recommended approval.

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

Mr. Davis moved to adopt Resolution R-40-10, accepting the addition of tax map parcels 23-40F, GPIN # K18-0562-3615 containing approximately 10.34 acres and parcel 23-41J, GPIN # K17-3642-4270 containing approximately 3.61 acres to the Evelyn Agricultural and Forestal District. The members were polled:

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: MIHALCOE ADDITION TO THE ASHLAND FARM AFD

Before the Board for consideration was Resolution R-41-10 approving an application filed by Miron and Dyanne Mihalcoe to add tax map parcel 31-1-E (16.52 acres) to the Ashland Farm AFD.

Ms. Walker explained that the property was currently an actively-managed agricultural tract; was zoned *A-1, Agriculture*; and that agriculture appeared to be a predominant land use in the area, with large agricultural tracts in the general vicinity; however, to the west was the Woodhaven Shores subdivision. She added that the future land use designation for the parcel was *Rural Lands* and that by placing this property into the AFD program, the property could not be developed into a more intense use and would promote consistency with the intent of the *Rural Lands* designation. She noted that if the proposed realignments were approved, this parcel would be included in the Allens Run AFD.

She reported that the AFD Advisory Board had voted 7:0:1 to forward the application with a favorable recommendation, and the Planning Commission had likewise forwarded a favorable recommendation on a vote of 9:0:1. She indicated that the request appeared to comply with the requirements of the State Code regulating AFDs and that staff found that adding the property into the AFD program would conserve and protect commercially-viable agricultural lands and had also recommended approval.

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

Mr. Evelyn moved to adopt Resolution R-41-10 accepting the addition of tax map parcel 31-1-E, GPIN # I10-3559-3189, containing approximately 16.53 acres to the Ashland Farm Agricultural and Forestal District. 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: CLARKE ADDITION TO THE SLATERSVILLE AFD

Before the Board for consideration was Resolution R-42-10 approving an application filed by Milton Clarke to add tax map parcels 35-8-4 (18.3 acres) and 35-19A (2.9 acres), to the Slatersville AFD.

Ms. Walker reported that the parcels were predominantly forested agriculturally-zoned tracts with 16.9 acres being currently managed for timber and a small four-acre agricultural component. She explained that the parcels, although small, were contiguous to a 98-acre parcel previously enrolled in the AFD program, managed as one timber tract and titled in the same name. She indicated that the parcels were also adjacent to numerous other large parcels owned by the Clarke family and currently enrolled in the AFD program, and forestry appeared to be a predominant land use in the area. She advised that by placing this property into the AFD program, the property could not be developed into a more intense

use and would promote consistency with the intent of its *Rural Lands* future land use designation. She noted that if the proposed realignments were approved, these parcels would be included in the Diascund Creek AFD.

She reported that the AFD Advisory Board had voted 7:0:1 to forward the application with a favorable recommendation, and the Planning Commission had likewise forwarded a favorable recommendation on a vote of 9:0:1. She indicated that the request appeared to comply with the requirements of the State Code regulating AFDs and that staff found that adding the property into the AFD program would conserve and protect commercially-viable forestal lands and had also recommended approval.

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-42-10 accepting the addition of tax map parcels 5-8-4, GPIN # 122-1434-2519 and 35-19A, GPIN # 122-3984-0089, totaling approximately 20.93 acres to the Slatersville Agricultural and Forestal District. 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: PHILBATES CREATION OF THE TIMBER SWAMP

Before the Board for consideration was Resolution R-43-10 approving an application filed by Floyd and Betty Philbates to create the Timber Swamp AFD with tax map parcels 35-48, 35-49 and 35-50, consisting of approximately 97.6 acres to join with parcels 35-47 and 36-7B totaling 142.64 acres, to create the Timber Swamp AFD with a total acreage of 240.24.

Ms. Walker advised that all of these agriculturally-zoned parcels were completely forested, and that the 97.6 acres seeking enrollment in the AFD program were currently managed for timber, and the remaining 142.64 acres were previously enrolled and also actively timbered. She noted that forestry appeared to be a predominant land use in the area with large timber tracts directly adjacent to the parcels as well as in the general vicinity, adding that there were some residential sites in the area as well. She indicated that by placing this property into the AFD program, it could not be developed into a more intense use and would promote consistency with the intent of its *Rural Lands* future land use designation.

She pointed out that two of the parcels in the creation of the district were currently outlying parcels, and that creation of the Timber Swamp AFD would allow those parcels to remain in the AFD program.

She reported that the AFD Advisory Board had voted 7:0:1 to forward the application with a favorable recommendation, and the Planning Commission had likewise forwarded a favorable recommendation on a vote of 9:0:1. She indicated that the request appeared to comply with the requirements of the State Code regulating AFDs and that staff found that adding the property into the AFD program would conserve and protect commercially-viable forestal lands and had also recommended approval.

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

Mr. Burrell moved to adopt Resolution R-43-10 accepting the creation of the Timber Swamp Agricultural and Forestal District with tax map parcels, 35-48, GPIN # G24-2167-4116; 35-49; G24-3241-3388; and 35-50, G24-3191-4607 consisting of 97.6 acres; to join with parcels 35-47, H24-3940-1213 and 36-7B, G25-0798-3700 totaling 142.64 (currently enrolled in the AFD program) for a total district acreage of 240.24 acres. 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: REALIGNMENT AND RENAMING OF THE AGRICULTURAL AND FORESTAL DISTRICTS

Before the Board for consideration was Resolution R-44-10 approving realignment and renaming of the agricultural and forestal districts.

Ms. Walker explained that the proposed realignment would result in sixteen districts with new names based on major drainages and swamps found in the immediate vicinity of the district. She indicated that New Kent currently had 25 different AFDs ranging in size from one to 2,443 parcels. She reported that the advertising costs last year totaled \$2,447 and cost of mailings was \$1,944, and that most of those cost could be reduced through a reduction in the number of districts. She indicated that the realignment would also allow for the continued participation of several outlying parcels that would otherwise not qualify for the AFD program because of distance to the core, which could be no more than one mile. She indicated that the realignments greatly increased the size of the cores of all of the districts, bringing almost all of the parcels into compliance. She added that of those parcels not in compliance, several would be brought into compliance because of applications approved by the Board earlier in the meeting. She explained that owners of the other non-complying parcels would be notified after the realignment and given the opportunity to remain in the program if an application was submitted in the spring of 2011 that would bring them into compliance. She indicated that the review dates for each of the districts would be set in August of 2011 and would be no less than four years and no more than ten years from the date of approval of the realignment.

She reported that the AFD Advisory Board had voted 7:0:1 to forward the proposed realignment with a favorable recommendation, and the Planning Commission had likewise forwarded a favorable recommendation on a vote of 9:0:1. She indicated that the request appeared to comply with the requirements of the State Code regulating AFDs and that staff found that consolidating the districts would cut administrative costs and create a more efficient program and had also recommended approval.

Ms. Walker clarified that the new renewal dates would be staggered, ranging from four to ten years, and that she would try to set the new dates as close to the current dates as possible.

She indicated that she did not have information as to who many total parcels were in the AFD program.

She reported that all participants had been notified of the two-year realignment process and that once it was approved by the Board, all would be notified of the new district names and that they had until August of 2011 to either continue or withdraw (without penalty).

Mr. Evelyn commended Ms. Walker for her work on the realignment, stating that she had done a good job with the "mess she had been handed". Other Board members agreed.

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

Mr. Evelyn moved to adopt Resolution R-44-10 accepting the realignment and renaming of the current Agricultural and Forestal Districts with the review dates for each of the Districts to be set in August of 2011. The members were polled:

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: MEETING SCHEDULE

The Chairman announced that the next regular meeting of the Board of Supervisors would be held at 6:00 p.m. on September 13, 2010, in the Boardroom of the County Administration Building, New Kent, Virginia. It was noted that there would be no August work session, but that the Board would meet with Senior Staff on Friday, September 10, 2010, at 12 noon at Fire Station One in Providence Forge.

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IN RE: ADJOURNMENT

Mr. Davis 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 8:39 p.m.