

THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 28TH DAY OF JANUARY IN THE YEAR TWO THOUSAND NINE OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 3:00 P.M.

IN RE: CALL TO ORDER

Chairman Davis called the meeting to order.

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.

IN RE: AFFORDABLE HOUSING ADVISORY COMMITTEE

Before the Board for consideration was Resolution R-05-09 to charter the Affordable Housing Advisory Committee (AHAC).

County Attorney Jeff Summers advised that the proposed charter represented ideas from staff to re-invigorate this committee, and to outline its duties and timelines. He reviewed that the proposed duties included defining what "affordable housing" meant for New Kent and once that term was established and accepted by the Board of Supervisors, then the AHAC was to determine the existing need, make recommendations as to what needed to be changed in County ordinances and policies, and develop both a restrained and unrestrained financial plan for the program.

Mr. Budesky reminded that this issue resurfaced when Habitat for Humanity had requested funds that the County had budgeted for an affordable housing program.

The Board was reminded that the AHAC had previously brought a recommendation that was geared more to an urban program and when it was rejected, the AHAC had stopped meeting. There was discussion that this group needed some guidance and be provided with resources. It was also noted that if the Board adopted the Charter, then the members would need to be either re-appointed or replaced. Planning Manager Rodney Hathaway reported that both the Richmond and Williamsburg Realtors Associations had expressed interest in being a part of the process. Mr. Sparks suggested that the Workforce Investment Board should also be involved.

There was discussion regarding the proper term, and whether "work force housing" might be more appropriate, and what group of citizens the program would be targeting. It was noted that those were issues that the AHAC should address as well.

Mr. Burrell moved to adopt Resolution R-05-09 as presented. The members were polled:

Thomas W. Evelyn	Aye
D. M. Sparks	Aye
James H. Burrell	Aye

Stran L. Trout
W. R. Davis, Jr.

Aye
Aye

The motion carried.

IN RE: AGRICULTURAL AND FORESTAL DISTRICTS (AFD)

Planning Manager Rodney Hathaway reviewed some proposed changes to the County's AFD ordinance to address concerns raised by the Board last year, which included allowing parcels that were part of residential subdivisions, size requirements, and regular follow-up inspections to ensure compliance. He indicated that the proposed changes would set a size limit of 50 acres for properties that were part of a major subdivision; set a minimum size of 30 acres for all other AFD properties but consider smaller parcels if the owner submitted a copy of IRS Schedule 1040 F that would document that the property was being used for agricultural or forestry purposes; and would require evaluation by one of the State agencies when the term of the district was 50% complete, and if the property was found to be no longer in conformance with the AFD program, then it could be removed.

Mr. Davis indicated that many agricultural parcels were not farmed by their owners and that IRS Schedule 1040 F did not list specific parcels, and he would not recommend that as a method of proof of use. Following discussion about what could be used as documentation, there was consensus that a sworn affidavit by the landowner would be acceptable.

There was discussion regarding the lack of follow-up by various State agencies to confirm that the parcels in the AFDs were being used for agriculture or forestry. Mr. Hathaway reported that all of the Forestry Management Plans had finally been received for those parcels that were added in 2008.

Mr. Hathaway reported that five applications for addition had been received for 2009 and advertising had not yet taken place.

It was confirmed that if the ordinance were to be changed, then parcels currently in AFDs could remain until the end of the AFD term, at which time they would be subject to the new regulations.

Mr. Evelyn commented that the AFD program helped landowners keep their large parcels by providing a lower tax. Mr. Davis agreed, but reminded that the existing ordinance "opened the door" for parcels that should not be included and that hurt all of the taxpayers.

Mr. Hathaway indicated that a size limit of 30 acres would exclude many of the parcels that should not be a part of an AFD and there was consensus that was a good limit.

Mr. Burrell noted that the purpose of the AFD program was to help slow down development but that some of the parcels were so remote that they would never be developed and he did not think it was fair that they were getting a tax break when there was no development potential.

Mr. Trout noted that the suggested changes would require inspections halfway through the term by certain State agencies and he asked if that was sufficient to ensure that there was agricultural or forestal use. There was discussion regarding that issue and how many State agencies were under-staffed. It was pointed out that the Board of Supervisors could not task State agencies to file reports and it was suggested that the language be changed to require the property owners to forward the agency reports to the Planning Department.

Mr. Hathaway advised that the proposed changes had not been reviewed with the AFD Advisory Committee.

Mr. Budesky reminded the Board that the application deadline to join an AFD was March 1 and it would be impossible to make the suggested changes before that deadline. After discussion of the various options and consultation with the Commissioner of the Revenue, there was consensus to hold a public hearing at the February 18 work session to change the deadline from March 1 to May 1, which would give staff time to fine-tune the proposed amendments and review them with the AFD Advisory Committee.

Commissioner of Revenue Laura Ecimovic advised that the deadline did not matter to her office because any additions would be for the 2010 tax year and not for 2009. However, she did request that language be added to the application to emphasize to the landowner that should a portion of an AFD parcel be removed or sold, the property owner was required to notify her office as to the use of that removed or sold portion so that she could properly document her records, and that if notification was not made, then the Code required her to remove the whole parcel from the district.

Mr. Davis suggested that language also be added to spell out that should the property be removed from the AFD before the end of the term, then back taxes, penalties and interest would be assessed.

There was discussion regarding the applications already filed or those that might be filed before March 1. Mr. Summers predicted that those applicants might feel that they were "grandfathered" under the existing regulations but he did not feel that they were; however, the County could minimize that risk by providing notice that the guidelines were going to change, or could make the changes to become effective in 2010. Board members agreed that the changes needed to be made for 2009 and suggested that with a May 1 application deadline, there could be a joint public hearing on the applications before the AFD Advisory Committee and the Planning Commission in May, and a public hearing with the Board in June. Mr. Trout suggested that notices be sent to those who had already applied, to advise them of the new guidelines. Mr. Evelyn added a suggestion that the members of those AFDs set to expire in 2009 also be notified of the pending changes so that they could be prepared.

There was consensus that the change in deadline from March 1 to May 1 would be a permanent change, and it was noted that it would likely save some advertising expenses as the deadline to file withdrawal applications was also May 1 and the notices could be combined in a single ad.

It was agreed that staff would make the recommended changes and provide the Board with a clean revised draft of the proposed amendments to the ordinance, and to proceed with a public hearing on February 18 only on the change in the deadline date.

IN RE: PUBLIC UTILITIES EQUIPMENT PURCHASE

Public Utilities Director Larry Dame reviewed a request to use existing funds in the utilities CIP budget to purchase a backhoe and a tractor with a front bucket and a bush hog. He indicated that the existing funds in the budget were for the purchase of a backhoe, trailer and dump truck in FY08; however, only the trailer was purchased and the remaining funds were carried forward. He advised that after looking at the needs of their department, it was their recommendation to use the remaining funds to purchase a backhoe which would

enable staff to perform about 90% of any needed repairs to the utility lines, and a tractor with a front bucket and bush hog with which staff could maintain the rights-of-way instead of hiring a contractor. He added that a CIP request had been submitted in next year's budget for the purchase of a tandem dump truck to be procured through a five-year lease purchase.

In support of his request, Mr. Dame exhibited photographs of a severely overgrown right-of-way near Henrico Jail East, which had not been cut for about eight years. He reported that he had received a quote for clearing the right-of-way for 4 cents per square foot, which he felt was a good price, but that if the 12 miles of rights-of-way along I-64 were to get in a similar state, it would cost about \$120,000 for clearing. He indicated that there were some similar situations in the Brickshire subdivision, and that it was important to keep the vegetation down not only to keep tree roots from out of the lines but also because should there be a problem with the lines, the County would have to pay to clear the property before repairs could be made. He advised that the proposed equipment would be sufficient to keep the easements cut and prevent such a situation from occurring.

There was discussion regarding the purchase of new versus used equipment, with Board members suggesting that with the current condition of the economy, there were probably some good deals on used equipment. Mr. Dame advised that he had experience with both and he felt that the cost of repairs to used equipment could equal or exceed the cost of new equipment and if his request were approved, the department should not need replacement equipment for at least fifteen years.

Mr. Evelyn suggested that a five-foot bush hog might be too small for its intended purpose, and that a ten-foot bush hog might be better. Mr. Dame advised that they would look at that carefully and make the best decision for the County.

Mr. Budesky explained that if the Board gave its approval, the purchases would still have to go through the bidding process, which he suggested should include options that would provide some flexibility, and that the Board would have to approve the final purchase. He reminded that the dump truck would still be needed in the future and it was being recommended that it be obtained through a lease purchase which would spread out the cost over five years. It was again suggested that used equipment be considered.

Mr. Dame clarified that with the requested backhoe, the utility staff would be able to repair pipes that were 6", 8" or 12", but that problems with 24" pipes would need to be contracted out. He confirmed that they could have used this equipment to repair the last four utility line breaks which ended up costing about \$15,000 for backhoe services.

There was consensus to move forward with the requests as presented.

IN RE: UPDATE ON GROUNDWATER WITHDRAWAL PERMIT APPLICATIONS

Assistant County Administrator Bill Whitley reviewed developments regarding the renewal of the groundwater withdrawal permit for the Route 33 corridor. He recounted that staff had been working with the Department of Environmental Quality (DEQ) on the permits for the various water systems as they came up for renewals, and everyone was having to meet much more stringent requirements than in the past and being required to spend a lot of time and effort justifying the amounts in the current permits. He predicted that these more stringent requirements would be the "norm for the future".

He reviewed that the previous permit for Route 33 allowed a withdrawal of 841 million gallons per year, and the County had sent in the renewal permit requesting a reduction to just under 226 million gallons per year. He indicated that DEQ had responded to that request with a letter asking for a further reduction but, in consideration of the County's investment in the area and its efforts to attract economic development in this industrially-designated corridor, it had provided two options that were outside of DEQ's normal methodology.

Mr. Whitley attributed DEQ's willingness to work with the County to the time and effort New Kent had invested in its recent Water Conservation and Management Plan and the activities involving a proposed re-use line, all of which demonstrated a commitment to reduce the County's dependence on ground water. He also described more positive attitudes from DEQ staff over the past year which he felt could be the result of new leadership as well as the County's efforts to be proactive and willing to work with them.

He indicated that, after careful consideration, staff was recommending that the County select the second option offered by DEQ which would permit withdrawal of 83 million gallons per year, with a 10% annual increase (greater than the historical rate of 6.6%) over ten years, but wanted to make sure that the Board was comfortable with that choice since it was a policy issue. It was reported that the first option would permit the withdrawal of the requested 225 million gallons, but would provide that the permit be reopened on its fifth anniversary if 60% of the permitted amount had not been reached or if there was a lack of solid water conservation principles, at which time the withdrawal amount could be cut.

Mr. Sparks asked about the risks of accepting the second option. Mr. Whitley explained that the risk of either option was that the County might never get permitted for the requested amount as it would be based on actual use. He predicted that the County would never again be permitted for 841 million gallons and maybe not for the 226 million gallons. He confirmed that Economic Development Director Mark Kilduff had been involved in the discussions with DEQ, but he was not willing to speak for Mr. Kilduff regarding his comfort with the numbers.

Mr. Davis asked what would happen if a new business came in and needed water. Staff advised that situation would trigger a permit modification and that all along the State had advised that "if something big came in" they would look at it, but would not commit water resources based upon speculation only.

Staff confirmed that the proposed numbers would meet the needs of DragonsRidge.

Mr. Whitley advised that he did not feel that DEQ preferred one option over the other, but was trying to show some flexibility because of the County's investment, plans, and efforts in the Route 33 area.

Following further discussion, the Board members expressed their comfort with staff's recommendation to select the second option. Staff indicated that they would continue to keep the Board updated on the situation.

Mr. Budesky added that DEQ was using the existing permit for Route 33 as the "poster child" of how not to issue a water permit in Virginia.

IN RE: STATE BUDGET SHORTFALL

Before the Board for consideration was Resolution R-07-09 requested by the Virginia Association of Counties regarding the State budget shortfall.

Mr. Budesky advised that the resolution encouraged the General Assembly not to push the State budget shortfalls onto the localities, and requested that counties be given some of the same authorities and powers that cities had.

Following discussion, Mr. Sparks moved to adopt Resolution R-07-09 as presented. The members were polled:

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

The motion carried.

IN RE: FY10 BUDGET UPDATE

Mr. Budesky advised that the Budget Team was continuing to work under the Board's direction that there were to be no tax increases, no new initiatives (unless cost-neutral), no new positions, no planned lay-offs, and that the deficit impacts were to be shared by the Schools. He noted that challenges included the absorption in the County's budget of over \$1 million for debt service as well as a decrease in the value of trucks and sports utility vehicles which would result in a drop in personal property tax revenue estimated to be in the neighborhood of \$600,000. He indicated that there appeared to be modest positive gain in real estate tax revenue.

He advised that of the currently projected shortfall of \$1.7 million, \$1 million was attributed to the County and \$700,000 to the Schools, who was also dealing with a \$1.5 million deficit in education funding. He reported that the Budget Team, working with the various departments and agencies, had identified additional cuts and were also developing options to deal with other potential shortfalls that might occur. He warned that the process was far from over and that they would continue to regularly monitor the situation. He confirmed that the numbers had been shared with the Schools and acknowledged that it would not be easy for the Schools to absorb \$2.2 million in cuts nor for the County to absorb \$1 million.

He welcomed any additional direction from the Board. He noted that the Finance Committee would be reviewing the recommendations at its meeting on February 4 and may make some modifications, after which time it would be brought to the Board at a work session.

Mr. Sparks asked about the projected BPOL reduction. Mr. Budesky explained that those projected reductions were not just license fees but included sales and other factors. He noted that part of the reduction resulted from changes in the housing market and the fact that the products currently being constructed were not at the same level as in previous years. He confirmed that these projections had been developed with the help of the Commissioner of Revenue but reminded that final figures would not be available until after March 1.

There was discussion regarding the reduction in public service corporation tax revenue. It was explained that related to government property and utilities, including lines in the ground, which were assessed and reported by the State.

It was reported that meals tax collections for the current year were meeting projections.

Board members commended staff for their hard work and expressed their thanks for keeping up with developments.

IN RE: GENERAL ASSEMBLY UPDATE

Mr. Trout reported that there were few legislative bills introduced that affected New Kent. He indicated that Senator Norment had again filed a bill that would permit historical horseracing. He explained some of the developments regarding transportation funding, which included a Central Virginia Transportation Authority that would include only Richmond and Chesterfield. He indicated that there was a bill regarding derelict buildings which was similar to the blight and nuisance ordinance presented previously by the County Attorney. Mr. Summers added that the General Assembly bill applied only to derelict buildings and did not address nuisance or health issues.

Mr. Trout reminded everyone about the upcoming Legislative Day.

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 February 9, 2009, in the Boardroom of the County Administration Building, New Kent, Virginia, and that the Board would hold a Retreat on Friday, January 30, 2009, at 9196 Hill Farm Road, Lanexa.

IN RE: CLOSED SESSION

Mr. Evelyn moved to go into Closed Session to discuss a personnel matter pursuant to Section 2.2-3711A.1 of the Code of Virginia involving performance of an employee. The Chairman announced that it was not expected that the Board would have any additional business after the Closed Session. The members were polled:

James H. Burrell	Aye
Stran L. Trout	Aye
Thomas W. Evelyn	Aye
David M. Sparks	Absent (<i>at the time of the motion but joined the Board in Closed Session</i>)
W. R. Davis, Jr.	Aye

The motion carried. The Board went into closed session.

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

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

The motion carried.

Mr. Sparks made the following certification:

Whereas, the New Kent County Board of Supervisors has convened in a closed session on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by the Board that such closed session was conducted in conformity with Virginia law;

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

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

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

The motion carried.

IN RE: ADJOURNMENT

There being no further business, Mr. Burrell moved to adjourn the meeting. The members were polled:

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

The motion carried.

The meeting was adjourned at 6:15 p.m.