

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 THIRTEEN IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 8: 30 A.M.

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IN RE: CALL TO ORDER

Chairman Davis called the meeting to order.

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IN RE: ROLL CALL

Thomas W. Evelyn	Present
C. Thomas Tiller, Jr.	Present
James H. Burrell	Present
Ron Stiers	Present
W. R. Davis, Jr.	Present

All members were present.

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IN RE: LOCK OUT TAG OUT POLICY

Before the Board for consideration was a request to adopt a Lock Out Tag Out Policy for dealing with hazardous energy situations.

Department of Public Utilities Operations Attendant Harold Jones reviewed that the Board had earlier adopted a Confined Space Policy and that the policy under consideration was the second step in moving forward to establish safety policies for employees. He explained that this would apply to employees who performed equipment maintenance and that once the policy was in place, training would be scheduled and it would also help with the County's liability insurance premiums. He confirmed that the County's liability carrier had assisted with the development of the safety policies, which did conform to Occupational Safety and Health Agency (OSHA) guidelines. He indicated that there would be additional safety policies brought to the Board for its consideration in the future.

Mr. Burrell moved to adopt the Lock Out Tag Out Policy, as presented. The members were polled:

Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye
James H. Burrell	Aye
Ron Stiers	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE: FY14 SECONDARY SIX YEAR PLAN

Virginia Department of Transportation (VDOT) staff Mike Cade and Dan Haake were present to review a proposed FY14 Secondary Six Year Plan (SSYP).

Mr. Cade reviewed that the SSYP was an agreement between New Kent and VDOT that listed and described roadway improvements the County would like for VDOT to plan for in the next six years, including design, rights-of-way, or construction, based on funding

availability, and the new plan would supersede any previous plan and would also contain any projects that were incomplete.

He explained that as the decision maker, the Board determined which projects took priority, selected projects to be added to the plan each year, and determined whether to continue funding projects in the plan that might already be underway, and VDOT then implemented the County's plan.

He confirmed that projects in the SSYP had secondary road funds planned and allocated by the Board; were either "in progress" or planned to be "in progress" within six years and had funding sources from other programs but had some matching funds from the secondary system. He admitted that secondary system funds had been very limited in recent years because of the economy.

Mr. Cade asked that the Board agree on priorities at this meeting, and thereafter advertise and conduct a joint public hearing in April and adopt its plan before May of 2013.

He advised that the County could add options for its FY2014 SSYP that included countywide incidentals, preliminary engineering and surveys (for intersection improvements or turn lanes), fertilization and seeding, traffic services (signals, speed studies), right-of-way engineering, and traffic calming.

He reported that the FY14 allocations were projected to be \$65,179 (up from \$59,220 for FY13), and came from only one funding source – tele fees – which were fees charged to telephone companies for the use of VDOT rights-of-way primarily along the interstates, and did not come from wireless customers.

He indicated that two projects on the County's FY13 SSYP had been completed and would be removed as part of the FY14 process - Route 632/Stage Road and Route 628/Mt. Pleasant Road – leaving Route 613/Dispatch Road and Route 665/Henpeck Road.

He spoke about how the Henpeck Road project had a funding deficit of around \$2.6 million, there were no realistic scenarios to fund it, and it was not eligible for federal funding. He suggested that the County could move those funds to the Dispatch Road project, for which there was a new estimate and scope underway. He explained that they believed that instead of rehabilitating the entire length of Dispatch between the County line and the railroad tracks as originally planned, there would be enough funding to fix the drop offs and crumbling pavement, and actually get some work done. County Administrator Rodney Hathaway clarified that this would basically be a shoulder project.

Mr. Evelyn asked about Cosby Mill Road. Mr. Cade reported that there was a maintenance project that should be completed within the next year that would replace the pipes and improve the drainage in that area. He indicated that raising that roadway would be a very expensive project.

Mr. Burrell asked about Stage Road, noting that there were some areas where there were steep drop offs with no guardrails. Mr. Cade indicated that he would have those areas reviewed by their Traffic Engineering staff. Mr. Davis asked for an estimate (without a commitment on the County's part) on hard-surfacing the remaining parts of Stage Road under a "pave in place" program similar to what was done on Homestead Road. Mr. Cade advised that there was revenue sharing funding available in the coming years of up to \$1 million per project and that the County would have to match the funding on a dollar-for-dollar basis.

Mr. Stiers asked about Mt. Pleasant Road. Mr. Cade advised that there were no plans for any work on Mt. Pleasant, as it had been completed and would be removed from the SSYP.

Mr. Cade was asked about the funding for non-paved roads that was included in a recent proposal from the Governor. Mr. Cade indicated that no one knew what was going to happen with those proposals and if approved, when funding would be available.

There was consensus to move the funding for the Henpeck Road project to the Dispatch Road project and to plan for a joint public hearing at the Board's April business meeting.

Mr. Cade reported that work was continuing on South Waterside Drive, at Fanny's Creek, as weather permitted, and confirmed that he would be retiring in July 2013.

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IN RE:           PARKING AND LOADING DESIGN STANDARDS AMENDMENT

Mr. Hathaway reviewed that the Board had previously adopted an initiating resolution requesting the Planning Commission to look at amending the County's parking standards and zoning ordinance to change the number of parking spaces that triggered the requirement for a hard-surfaced parking lot, from 20 to 50. He reported that the Planning Commission considered that proposed amendment at a recent meeting and voted to forward an unfavorable recommendation to the Board, but had directed staff to look at having that expanded trigger apply only to agriculturally-zoned districts. He indicated that staff had reviewed State Code and believed there might be an opportunity for that change and they planned to review that with the Planning Commission at its February meeting. He confirmed that any change would require public hearings with both the Planning Commission and the Board.

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IN RE:           AGRICULTURAL AND FORESTAL DISTRICT (AFD) PROGRAM

Environmental Planning Manager Amy Walker reviewed that the Board had in 2012 temporarily suspended the application process for its AFD program until 2014. She noted that there were two districts due for renewal in 2014, and individuals had been inquiring and were waiting for the process to reopen so that they could apply. She spoke about changes made in the State Code that would require that New Kent update its program.

County Attorney Michele Gowdy explained that the Board would need to decide if it wanted to "tighten up" the definition of "significant" agriculture. Ms. Walker explained that the State Code just referred to "significant" and the individual localities were to define what that meant for them.

Mr. Davis suggested that a meeting of the AFD Advisory Committee and Commissioner of Revenue be scheduled for mid-March, by which time there should be information on any bills in the General Assembly that might also affect the County's program.

Mr. Evelyn asked about inherited land that was already in an AFD. Ms. Walker advised that such land could remain in the AFD.

Mr. Evelyn spoke about the importance of making sure that parcels in AFDs were "in there for the right reasons".

Mr. Burrell commented upon the real estate tax revenue that the County lost from this program and that land that had little chance of development should not be allowed to join.

The Board took a short break then resumed its meeting.

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IN RE:           MOTORCYCLE RACING AT COLONIAL DOWNS

Chairman Davis reminded those in the audience that there was no opportunity for public comment during work sessions but the Board would accept any paperwork at the end of the meeting.

Present on behalf of Colonial Downs was its attorney, Jeff Geiger, as well as President Ian Stewart, Vice-President of Operations Jeanna Bouzek, Director of Security Pat Kelleher, and Director of Marketing Darrell Wood. Ms. Gowdy explained that Mr. Geiger and his clients were not present to ask for any action from the Board but to review the possibility of amending a previously-issued Conditional Use Permit (CUP) in order to hold a motorcycle race. She clarified that this would not be a request to amend the Planned Unit Development (PUD), nor was it the same process recently denied by County staff as a part of Colonial Downs' 2013 cultural events permit application. She confirmed that any amendment of the CUP would require a public hearing with both the Planning Commission and the Board of Supervisors.

There was discussion regarding a previous amendment of the Kentland PUD and references to PUD amendments elsewhere in the County.

Attorney Geiger explained that his client was contemplating submitting an application to amend its CUP to allow it to host one motorcycle race in 2013, on a Saturday afternoon in August. It was reported that the proposed schedule called for registration to begin at 9:00 a.m., tune-ups and sound-level checks at 10:30 a.m., warm-ups at 12:00 p.m. or 12:30 p.m., and racing would begin at 1:30 p.m. and conclude at 4:30 p.m. He indicated that the race would consist of eleven heats of 10 minutes each, and two final races of 20 minutes each, and would take place as laps around the harness racing track.

There was discussion regarding the closest place that similar races were held in case anyone wanted to visit.

There was significant discussion regarding the concerns being expressed by residents in nearby neighborhoods regarding the noise that would be generated. Mr. Stewart reviewed that a sound engineer had been engaged to perform a thorough analysis, and noted that decibels were reduced by distance and that their calculations reflected that the noise to be generated at the closest residence would be similar to that of a lawnmower 120 feet away or a small aircraft passing overhead at 1,000 feet. He confirmed that the promoter, AMA Pro Racing, did have strict sound level standards and every motorcycle was tested before the race to make sure it did not exceed those levels.

Mr. Stewart clarified that the date of the proposed race had been moved from April, as had been requested in the cultural events permit, to August.

Mr. Stiers expressed his disappointment that Colonial Downs had not acted on his suggestions to meet with its neighbors and hold some noise tests. Mr. Stewart responded that he had talked with several residents but had not attended a homeowners' association meeting since Colonial Downs had not yet made a determination as to exactly how it was going to proceed, and he felt it was best to wait until some decisions had been made. He admitted that he was not aware of a petition that had been signed by nearby residents and

that he did not live in New Kent, but that he was committed to working with the neighbors. Mr. Geiger advised that he lived in Brickshire, a neighborhood adjacent to Colonial Downs.

Mr. Evelyn asked about the economic benefits of the race. Mr. Stewart estimated gross revenue of around \$200,000 from tickets and food and beverage sales, but could not predict the tourism dollars that it would bring to the community. He indicated that they would not want to hold such an event more than once a year because of the work and expense to restore the track after the race, estimated at about \$45,000.

Mr. Stiers asked about holding other events instead, such as an antique car show. Mr. Geiger advised that his client was willing to talk to any promoter and he hoped those conversations were taking place, as they wanted to leverage the facility as much as possible and were hoping to attract people who had never visited New Kent and promote local businesses.

There was discussion regarding a motorized race held about ten years previously where it was reported that windows in nearby homes shook during the race. Mr. Wood advised that he was at the closest residence at the time, with a decibel reader, and was surprised by the negligible amount of noise that was detected.

There were comments about how the time of day, weather, and buffering trees impacted sound travel.

Mr. Stiers spoke about how the holding of a motorized race at Colonial Downs would negatively impact home values and resale potential in nearby neighborhoods. He also speculated that horse owners might be reluctant to run their horses on a track that had been used for motorized racing.

There was discussion regarding holding some kind of testing to determine what kind of noise would be generated.

Mr. Burrell spoke about how some of the same concerns had been expressed when Colonial Downs first opened and none of those fears had been realized. He suggested that instead of a test, Colonial Downs should be allowed to hold one race and if it was found to be too loud, then no other motorized racing would be permitted. He suggested that the "race be the test". He also spoke about how the race would bring tourism exposure to both New Kent and the Richmond Region. He did not agree that the race would negatively affect home values and pointed out that many motorcycle enthusiasts were high-earning professionals.

Mr. Davis stated he would like to find some way to test the noise levels.

Mr. Stiers asked if Colonial Downs would be willing to bring some bikes out and run them around the track as a test. Mr. Stewart indicated that he would look into that possibility but did not know if it would be practical.

Mr. Stiers asked if Colonial Downs was going to take into consideration that the majority of its neighbors did not want the race. Mr. Stewart noted that those residents made up only a small percentage of New Kent residents and he felt that this was a situation where everyone could make some accommodations to get along in light of the fact that it would only be for four hours on an August afternoon.

He reiterated that it was not their intention to convert Colonial Downs into a motorized race track, that they were only applying for one race, and if it was too loud then they did not anticipate coming back to ask for more; however, it might be something that they would like to do annually. He projected that attendance might be in the range of 7,000 and confirmed that the wagering windows would not be operational at the track on that day.

Mr. Evelyn commented that everyone realized that Colonial Downs brought revenue to New Kent and that its neighbors were upset at the proposal, but he felt the best thing was to get together and try to work it out.

Mr. Geiger advised that they would need approval well in advance of the event in order to conduct marketing.

There was discussion regarding whether the testing would require permission from the County. Ms. Gowdy noted that the ordinance prohibited racing but not the running of motorcycles, but she would need to look into that further.

Mr. Tiller suggested holding the test but not advertising it and seeing what complaints were received.

Mr. Geiger advised that his client had not yet made a formal decision and that they would digest the comments received before moving forward.

The Chairman accepted petitions from the audience. It was reported that 243 signatures had been received, with more coming in.

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IN RE: EXTENDED RAIL SERVICE

Before the Board for consideration was Resolution R-02-13 supporting the exploration of expanded rail service in New Kent County.

Chairman Davis announced that although the Board would be discussing the resolution, they would not vote on it. Mr. Burrell noted that the resolution would be to support looking at the feasibility of the project, but Mr. Davis insisted that it would be a vote on "support".

Mr. Hathaway reviewed that the resolution, first shared with the Board at its last meeting, had been requested by the Purina (kitty litter) Plant in King William County who was looking at extending a rail line from Doswell to its site and was also looking at the possibility of continuing that rail line to Toano. He indicated that the plant was in the process of trying to obtain State support inasmuch as the new line would bypass the congested Richmond Rail Yard, where it can take as much as 16 hours to move freight through, as well as the increase in port activities and the expansion of the Panama Canal. He added that the proposed new line would pass through New Kent and that was why a resolution of support for a study had been requested. He emphasized that the plans and route were very preliminary, and that the resolution would support a feasibility study by the Virginia Department of Rail and Public Transportation that would look at environmental issues, rights-of-way, and costs. He indicated that the cost of the study would come from State and Federal tax dollars.

Mr. Stiers asked about any benefits for New Kent. Mr. Hathaway reported that one of the proposals included a spur that would connect to a parcel on Route 33 that was designated as *Economic Opportunity* and near a site that had been considered as a port facility. He explained that a port facility study previously performed showed that having a port at that

site would remove from Interstate 64 around 47% of the truck traffic from Hampton Roads ports; however, products would have to move in both directions to make the project feasible.

Mr. Evelyn asked if the Eltham Bridge would allow barge traffic. Mr. Hathaway advised that it would, with a special but commonly used barge, with tug assist. He indicated that the Port of Hampton Roads was "in the running" to be the second call port on the East Coast, and it all depended on how "fast and cheap" products could be moved, and he felt that the State might support the study.

Mr. Davis commented that this was "nothing but a sham put on by someone" to do a feasibility to run a rail line going to a port that didn't even handle containers, and pointed out that an existing Norfolk Southern rail line ran within six miles of the Purina Plant. He speculated that "something else was going on that we don't know about" and he didn't think officials in James City County knew about it either. He continued that "kitty litter wasn't worth that much" and he felt the only business that would make it worth doing was trash. He indicated that the King William County Board of Supervisors had passed a similar resolution, but he didn't want to approve something "that made no sense" even if "it made some people mad".

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IN RE:            APPOINTMENTS

Mr. Evelyn moved to appoint Debbie Downs as District One's representative to the Historic Commission to serve a four-year term beginning January 1, 2013 and ending December 31, 2016.

Mr. Evelyn moved to appoint J. Joseph McLaughlin, Jr. as a District One representative to the Transportation Safety Commission to serve a four-year term beginning January 1, 2013 and ending December 31, 2016.

Mr. Davis moved to appoint Stephanie Ripchick as District Five's alternate representative to the Historic Commission to complete a term ending December 31, 2014.

The members were polled:

C. Thomas Tiller, Jr.	Aye
James H. Burrell	Aye
Ron Stiers	Aye
Thomas W. Evelyn	Aye
W. R. Davis, Jr.	Aye

The motions carried.

Mr. Davis moved to appoint Edward Pollard as New Kent's Planning Commission representative to the Richmond Regional Planning District Commission to serve a one-year term ending December 31, 2013.

The members were polled:

James H. Burrell	Aye
Ron Stiers	Aye
Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye

W. R. Davis, Jr.                      Aye

The motion carried.

Mr. Davis moved to appoint Richard Opett as the Coordinator of Emergency Management pursuant to Code of Virginia Section 44-146.19 and as Coordinator of Emergency Services pursuant to County Code Chapter 30-162.

The members were polled:

Ron Stiers	Aye
Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye
James H. Burrell	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE:            OTHER MATTERS

Mr. Hathaway reminded of the upcoming VACo Legislative Day and asked Board members to advise if they wanted to attend.

He also introduced Kathy Diradour from the Virginia Association of Realtors, who would give a housing report at the February business meeting.

It was confirmed that Girl Scout Junior Troop 177 would also be on the February agenda to request a proclamation for a Litter Awareness Day.

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IN RE:            PLANNING COMMISSION

Mr. Stiers spoke about a request he had made in 2012 to reduce the size of the Planning Commission, remarking that some current commissioners did not do their job or read their materials, and he suggested that the number be scaled down from ten district appointees to five, with two at large, which would save around \$6,000 a year.

There was discussion on how that would be accomplished. Ms. Gowdy advised that the Board last reorganized the Planning Commission in 2004 and the suggested changes would require a change in the ordinance, at which time it could "start over".

Following discussion, it was agreed that the Board schedule a joint meeting with the Planning Commission to discuss the issue, and it was suggested that good time would be a 6 p.m. just before the Planning Commission's 6:30 p.m. meeting on February 19.

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IN RE:            CLOSED SESSION

Mr. Evelyn moved to go into Closed Session pursuant to Section 2.2-3711A.1 of the Code of Virginia for discussion on assignment and performance of a County employee, and pursuant to Section 2.2-3711A.7 of the Code of Virginia for consultation with legal counsel and briefings by staff members regarding specific legal matters requiring the provision of legal advice. The members were polled:

Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye
James H. Burrell	Aye
Ron Stiers	Aye
W. R. Davis, Jr.	Aye

The motion carried. Chairman Davis announced that the Board would not take any action after Closed Session. The Board went into closed session.

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

C. Thomas Tiller, Jr.	Aye
James H. Burrell	Aye
Ron Stiers	Aye
Thomas W. Evelyn	Aye
W. R. Davis, Jr.	Aye

The motion carried.

Mr. Evelyn 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:

James H. Burrell	Aye
Ron Stiers	Aye
Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE: ADJOURNMENT

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

Ron Stiers	Aye
Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye
James H. Burrell	Aye

W. R. Davis, Jr.

Aye

The motion carried.

The meeting was adjourned at 11:25 a.m.