

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 8th DAY OF APRIL IN THE YEAR TWO THOUSAND THIRTEEN IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 6:00 P.M.

IN RE: CALL TO ORDER

Chairman Davis called the meeting to order.

IN RE: INVOCATION AND PLEDGE OF ALLEGIANCE

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

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.

IN RE: CONSENT AGENDA

The Consent Agenda was presented as follows:

1. Approval of Minutes
 - a. February 27, 2013 work session
 - b. March 11, 2013 business meeting
2. Miscellaneous
 - a. One-year renewal of the contract with Dominion Chemical Company for the purchase of sodium hypochlorite and other chemicals as needed
 - b. One-year renewal of the contract with Arrowhead Environmental Services for industrial services
 - c. One-year renewal of the contract with Coyne Chemical for the purchase of sodium polyphosphate and other chemicals as needed
 - d. One-year renewal of the contract with Suffolk Sales & Service Corporation for the purchase of BioCarb DN and other chemicals as needed
 - e. One-year renewal of the contract with Univar for the purchase of aluminum sulfate and Micro C Glycerin, and other chemicals as needed
 - f. Agreement for Service between Colonial Downs, L.P., and the New Kent Fire-Rescue Department
 - g. Elevator Maintenance Agreement Addendum with KONE, Inc. (formerly Virginia Elevator Co., Inc.)
 - h. Contract with Caldwell Tanks for Eltham tank painting in the sum of \$247,394.
 - i. Contract with GeoComm for replacement mapping system for e911 in the sum of \$131,328.25 (100% grant funded)
3. Refunds
 - a. \$2,920.71 to Melvin Belcher for Veterans exemption

4. FY13 Carry Forward Appropriations
 - a. School FY12 End of Year balance, \$15,000.00

\$ 15,000.00	Total
\$(15,000.00)	From Gen Fund fund balance

5. FY13 Supplemental Appropriations
 - a. Program income received for FY13 from CDBG Plum Point grant, \$1,127.36
 - b. Funds received from insurance proceeds – Sheriff, \$2,067.00
 - c. Miscellaneous recovered costs – Sheriff, \$4,166.22
 - d. Donations for the Animal Shelter, \$180.00
 - e. Funds received by Extension from outside sources for sponsorship of programs, \$200.00
 - f. Funds collected for a concealed weapons class, \$945.00
 - g. Public education donation funds – Fire/Rescue, \$650.00
 - h. Additional special needs adoption funds, \$4,000.00
 - i. Funds received from insurance proceeds – Water/Sewer, \$680.60

\$ 14,016.18	Total
\$(14,016.18)	Total In/Out

6. Interdepartmental Budget Transfers
 - a. *Commissioner of Revenue*: \$2,500.00 from Computer Supplies and Tech Support to Part-Time Wages
 - b. *Victim-Witness*: \$3,948 from Clerk of the Board and among salary and operation line items
 - c. *Fire Rescue*: \$55,634.68 from CIP funding to salary line items
 - d. *Fire Rescue*: \$61,216.45 from Special Duty Colonial Downs to salary line items
 - e. *Schools*: \$3,395 from Appropriation of Funds from Prior years to Schools Misc Improv/Equip

7. Treasurer’s Report: Cash as of February 2013: \$40,419,187.92

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

The motion carried.

IN RE: VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) – RESIDENCY ADMINISTRATOR’S REPORT

Marshall Wynn reported on road issues in New Kent on behalf of Mike Cade, Residency Administrator.

He reviewed maintenance activities during the past month that included asphalt patching, ditch cleaning, routine sign maintenance, maintenance on non-hard surface roads, litter pickup, and pothole repair. He advised that maintenance during the next month would include continuing pothole repairs, monitoring of non-hard surfaced roads, shoulder repairs, sign maintenance, tree and debris removal, and litter pickup. He provided an update on the project on South Waterside Drive/Route 627 at Fanny's Creek, reporting that work on the project had to be scheduled around tidal waters, but they anticipated the job would be completed in two or three weeks. He also referenced a handout that had been distributed to the Board listing the locations of "modified single seal" projects that would be done prior to October 2013.

He reported that a traffic signal warrant analysis at the intersection of New Kent Highway and Dispatch Road would be done as soon as the new commercial sites in the area were operational. He indicated that a review of the crash history in the existing passing zone on Farmers Drive had resulted in a recommendation to retain the existing passing zone.

Mr. Tiller again reported an area of rough pavement on Route 60 eastbound near the Henrico County line. He advised that some of his constituents had expressed concerns about the proposed transfer of secondary system construction funds from the Henpeck Road project to the Dispatch Road project.

Mr. Evelyn asked about litter pickup. Both Mr. Wynn and Sheriff Howard advised that inmate crews were available for that if the Board members would let them know the areas that needed attention.

Mr. Stiers reported that clogged culverts near the second entrance into Woodhaven Shores were causing flooding in neighboring yards. He also asked about the possibility of installing a crossover on Route 60 for the convenience of residents living on Timberlake Lane.

Mr. Burrell spoke about rough pavement on Interstate 64 eastbound.

Mr. Davis commented on the deteriorating condition of Virginia's highways compared to roads in other states. He also spoke about flooding problems along Farmers Drive resulting from clogged ditches.

IN RE: ELECTORAL BOARD

Electoral Board member Kenneth Moore thanked the Board of Supervisors for its continuing support and assistance in helping to "ensure that registered voters could exercise their rights to vote", reporting that in the last election, no one had to wait more than 20 minutes. He also commended the General Registrar and her staff for their hard work.

He then introduced William Jeffries who was recently appointed as a member of the Electoral Board.

IN RE: CITIZENS COMMENT PERIOD

Chairman Davis opened the Citizens Comment Period.

Mark Daniel expressed his support for changing the County's parking ordinance so that the threshold for requiring hard surface parking lots reverted to 50 parking spaces. He noted that the threshold had been 50 spaces for many years and he could not recall, in all of his years serving on the Planning Commission, anyone ever complaining about a graveled

parking lot. He spoke about the expense of paving a parking lot for a new business and how he did not feel it was a safety issue. He suggested that the interests of the County would be better served with a 50-space threshold as he felt the lower threshold might result in lost business opportunities for the County and wind up costing the taxpayers.

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

IN RE: APPROVAL OF MINUTES

Before the Board for consideration was a request to approve the minutes from the March 15, 2013, special meeting. Mr. Burrell had not been present at that meeting so the minutes could not be included on the Consent Agenda with the others.

Mr. Evelyn moved to approve the minutes from the March 15, 2013, special meeting, as presented. The members were polled:

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

The motion carried.

IN RE: AMENDMENTS TO PARKING AND LOADING STANDARDS ORDINANCE

Before the Board for consideration was Ordinance O-01-13 amending Section 98-902 of the New Kent County Code regarding new parking areas. A public hearing was held on the proposed changes at the March 11, 2013, meeting and a vote had been tabled at the request of Mr. Stiers.

County Administrator Rodney Hathaway reviewed that, at its March 11 meeting, the Board had been presented with a recommendation from the Planning Commission to amend Section 98-902, Parking and Loading Design Standards, to increase the threshold triggering the requirement for hard-surfacing parking lots from 20 parking spaces to 50 in *Agriculture* and *Conservation* zoning districts. He reported that the Planning Commission's recommendation was the result of a unanimous vote taken at its February 19 meeting. He noted that the original initiating resolution adopted by the Board was for the Planning Commission to look at increasing the existing 20-space threshold in all zoning districts.

Mr. Stiers shared copies of photographs he had taken of existing businesses with non-paved parking lots. He remarked that he did not think the County should put more restrictions on businesses, and referred to letters received from both the New Kent Chamber of Commerce and the New Kent County Economic Development Authority in support of reverting to the 50-space threshold.

Ms. Gowdy reminded that the public hearing previously held by the Board had been on changing the threshold for parcels zoned *Agricultural* or *Conservation* and that was the only issue upon which the Board could vote at this meeting, and if the Board changed the ordinance to make that amendment for all zoning classifications, then it would have to go back to the Planning Commission.

Mr. Hathaway recounted that the initiating resolution adopted by the Board had asked the Planning Commission to look at amending the threshold for all districts. He indicated that the Planning Commission voted to forward an unfavorable recommendation on that but did ask staff to draft changes that would apply to just Agriculturally-zoned districts. He noted that the Planning Commission did subsequently unanimously approve a proposal that amended the threshold in areas zoned *Agricultural* and *Conservation*.

Mr. Stiers pointed out that the original vote by the Planning Commission was not unanimous at 5:3.

Following discussion, Mr. Evelyn commented that he wanted to move forward to help people who were getting plans approved for development, and he moved to adopt Ordinance O-01-13, as presented. Chairman Davis clarified what the Board was voting on. The members were polled:

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

The motion carried.

Since the Board had to wait until 7 p.m. to begin its public hearings, it convened a Closed Session in the interim.

IN RE: CLOSED SESSION #1 OF 2

Mr. Burrell moved to go into Closed Session pursuant to Section 2.2-3711A.7 of the Code of Virginia for consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel involving the Treasurer's Office. 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.

Mr. Burrell moved to return to Open Session. 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.

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:

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

The motion carried.

IN RE: SECONDARY SIX-YEAR ROAD PLAN AND CONSTRUCTION PRIORITY LIST

Before the Board for consideration was Resolution R-09-13 approving the Secondary Six-Year Road Plan for FY2014 – 2019 and the FY14 Construction Priority List.

Residency Administrator Mike Cade reviewed that he had met with the Board earlier in the year but it had not changed the priorities from the FY13 Plan. He noted that Stage Road would be coming off the Plan as it was completed, leaving Dispatch Road and Henpeck as the other two priorities. He reported that there was some funding for the Dispatch Road project, but there was little potential to use the \$18,000 allocated to the Henpeck Road project, estimated to cost between \$1.5 million and \$2 million. He pointed out that there was some additional construction funding in the "out years" based on the Governor's Transportation Program and there was also some unpaved roads funding which might allow for a pave-in-place project for the remainder of Stage Road. He indicated that what he needed from the Board at this meeting was to adopt its priorities and decide if it wanted to move the \$18,000 from the Henpeck Road project to the Dispatch Road project where it could be used to "get some work done" rather than "have the money just sit there".

Mr. Tiller remarked that both projects were in his district, but as he had reported earlier, he had heard concerns from some his constituents about moving the funds and about how long Henpeck had been on the Plan. Mr. Cade reminded that the decision on whether to move the funds was up to the Board, but they were just pointing out an opportunity to transfer the funds to actually get some work done on Dispatch, as they did not anticipate enough funding in the next four to six year to do anything meaningful on Henpeck.

Mr. Tiller asked if there were any maintenance funds to address some of the problems on Henpeck Road. Mr. Cade responded that he could not address maintenance funding at this time.

There was discussion regarding collector road status. Mr. Cade confirmed that Dispatch Road was a "minor collector" and Henpeck was "rural collector".

Chairman Davis opened the Public Hearing.

Patrick Hester complained about Stage Road and the poor maintenance of the unpaved portion, including clogged culverts, and spoke about he could not understand why such a heavily traveled road was still unpaved.

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

Mr. Evelyn explained to the public that there was only around \$65,000 for road construction projects in New Kent for FY14, but that the County was required to go through this process every year even though there was limited funding.

Mr. Stiers expressed his frustration at how much funding was being allocated to the Courthouse to Courthouse Connector (bike path) project when local construction projects were receiving so little. Mr. Burrell reminded that those had different funding sources and went on to speak about how road construction funding was predicted to be exhausted by 2017 unless a plan was put in place. He talked about a current proposal to eliminate the gasoline tax, which Virginia had not raised in many years, and raise the sales tax.

Mr. Cade explained that according to Code of Virginia, maintenance funding had to "come off the top" and since there was not enough funding coming in, maintenance had been taking more of the funding for paving projects on the interstates and bridge rehabilitation work.

Following discussion, Mr. Evelyn moved to approve Resolution R-09-13 approving the Secondary Six-Year Road Plan for FY2014 – 2019 and the FY14 Construction Priority List of #1 Stage Road, #2 Dispatch Road, and #3 Henpeck Road, and to approve moving the funding for Henpeck Road of approximately \$18,000 to the Dispatch Road project. The members were polled:

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

The motion carried.

IN RE: MOTORCYCLE RACE AT COLONIAL DOWNS

Before the Board for consideration was Resolution R-10-13 approving a Conditional Use Permit application filed by Colonial Holdings, Inc. for a one-time motorcycle race in 2013 at Colonial Downs.

Planning Manager Kelli Le Duc explained that Colonial Downs was subject to a 1993 conditional use permit (CUP) as a "horse racing facility" and a subsequent 2002 CUP which

allowed some ancillary activities. She reported that the property had been rezoned from A-1 to Equestrian Planned Unit Development (PUD) in 1997, and its classification had been changed to PUD in 2002 when the Equestrian PUD zoning classification was eliminated.

She reviewed that New Kent's Code required that changes to uses in a PUD were to be handled in the same manner as the original application. She advised that the CUP process required the filing of an application, providing notice, a public hearing by the Planning Commission, and recommendation by the Planning Commission, a public hearing with the Board and a vote by the Board. She confirmed that this was the same process followed during the original PUD application, and the 2002 CUP, as well as the subject application.

She reported that, in compliance with the standards for review of CUP applications, the subject application had been sent to all County reviewing agencies. She advised that there were no comments from the Fire Marshall's Office, VDOT or the Environmental Planning Office; New Kent Sheriff's Office reported that it had no issues with the application and would be happy to handle traffic and crowd control; and the Department of Public Utilities reported that the facility was connected to public water and sewer and it did not appear that the event would have negative impact on the utility system.

She advised that staff had reviewed the application and found that the seven proposed conditions in R-10-13 would assist in addressing, protecting, and promoting the health, safety, and general welfare of New Kent County citizens. She reported that the Planning Commission considered the application at its March 18 meeting and voted 10:0:1 to recommend approval.

Ian Stewart, President of Colonial Downs, reviewed that Colonial Downs was interested in bringing an AMA Pro Racing event on Saturday, August 24, 2013. He described AMA as the "premier racing organization in North America" and indicated that the event at Colonial Downs would be a one race in a 17-race circuit around the country. He reported that Colonial Downs would invest in excess of \$100,000 to bring the event to New Kent. He indicated that the event would be held during daylight hours, with practice between 10:15 a.m. and 12 noon, and the races running from 1:30 p.m. until 4:30 p.m.

He reported that over 5,000 attended the motorcycle race held at Colonial Downs in 2001, with no incidents. He indicated that race had over 85 riders from 24 other states and Canada.

He advised that the 2013 race would be "first class in every way", from sponsors to large purses, and would provide a unique opportunity to attract tourism and visitors to New Kent. He predicted that the event would generate tax revenue for the County and would provide additional employment for seasonal employees, and with the race ending at 4:30 p.m., would provide an opportunity for New Kent restaurants to pick up additional business.

Regarding the concerns about noise to be generated, he reviewed that Colonial Downs had provided a copy of a theoretical sound study that showed that noise from the event should be around 70 decibels at the clock tower.

Mr. Burrell noted that he could hear fireworks from Colonial Downs at his home, and he asked if there were any complaints about those. Mr. Stewart advised that there had been none to his knowledge.

Mr. Burrell commented that since the motorcycles would be racing during the day, and sound traveled farther at night, he did not think that noise would be an issue.

There was discussion regarding the requirement that the race be stopped if the noise exceeded 95 decibels. Mr. Steward advised that "at the end of the day, one of the advantages of being president" was that he was responsible for "all things that happen" adding that he had had "to do things that were unpopular before, and probably would have to do them again". He suggested that if the race had to be called early because of noise, they would likely issue refunds; however, he reminded that each bike would be tested during the practice period and if there were problems, some things could be adjusted beforehand, but if he had to cancel the event during the race, he would do it. He advised that the race would be over by 4:30 p.m., even if weather caused any kind of delay.

There were questions about a "rain date". Ms. Gowdy explained that the date of the event had been omitted on purpose and the application was just asking for a Saturday, knowing that August 24 was the probable date.

It was confirmed that this application only asked for one date in 2013, and any races in future years would have to be applied for.

Mr. Stiers asked what Mr. Steward could say to reassure the neighbors that Colonial Downs would not request three or four motorcycle racing events in 2014. Mr. Steward stated that if the event was successful, Colonial Downs would request one race in 2014. There was a reference to the possibility of holding a monster truck race, to which Mr. Steward responded that although he could not speak to that, such an event would take a heavy toll on their racetrack which was a valuable asset.

Mr. Steward advised that if the event was approved and the decibel levels exceeded what were permitted, Colonial Downs would not apply for any future motorcycle racing events unless they had a sound mitigation plan.

Chairman Davis opened the Public Hearing.

Jane Keegel voiced her opposition to approval of the application, speaking about how Colonial Downs was approved with the stipulation that it would not host motorized racing and how she and others were "invited to invest" in nearby residential communities and did not want motorcycle racing close to their homes. She asked that the Board deny this and future applications for motorcycle racing events at Colonial Downs.

Blase Keegel predicted that another race would be requested in 2014 and there would be the same issues with noise. He spoke about how the absence of data resulted in anecdotal and theoretical sound opinions, and that there were "true noise professionals out there" who could perform certified noise measurements and ratings. He suggested that if the Board was going to approve the application, it should require Colonial Downs to pay for a professional noise study by a group approved by both Colonial Downs and the homeowners associations (HOAs), which would give the County the data it needed for future applications.

Bill O'Keefe stated that he was not here to object to the race, but to ask that Colonial Downs "not be given a pass" for failing to comply with the County's noise regulations. He spoke about how, after Colonial Downs failed to get approval for a motorcycle race ten years ago, it promised to conduct a sound test but never did. He advised that in late February 2013, Mr. Steward had promised him that he would conduct a test, retain a sound engineer and involve the County in the plan, but hasn't kept his word. He shared his suspicion that it was never done because Colonial Downs knew the noise levels would be excessive. He suggested that the requirement to stop the race if the noise reached

unacceptable levels was impractical and would risk a civil disturbance, and he asked the Board to require Mr. Steward to fulfill his promises.

Attorney Jeff Summers advised that he was representing the Brickshire Community Association and spoke about how motorcycle racing was not a permitted use in the County Code and the County could not condition a use that it did not permit. He suggested that the only way to approve this event would be to either amend the Zoning Ordinance to create the use, or to amend the Kentland PUD. He stated that the Board was being asked to pursue an "invalid process" and was being "led down the primrose path". He spoke about the Dillon Rule and how the County only had those powers granted it, and if the County wanted to have a motorcycle race, "it had to do it the right way". He warned that such a procedural default placed the Board and the New Kent taxpayers at risk, not Colonial Downs. He also commented that the only proper measure of sound from this event would be the simultaneous testing of all motorcycles in the race.

Donna Friend advised that she supported Mr. Summers' comments and spoke about how Colonial Downs had been asked in connection with its 2003 application for a similar event to provide a sound test, not a theoretical study. She noted that the petition opposing the 2003 event contained 35 signatures, and the petition opposing this event had 389 signatures, many of whom had given up their time to speak to Mr. Summers. She stated that the request she and her neighbors were making was the same one made in 2003 – that a credible sound test be performed before the County approved the application. She noted that those in opposition were not in opposition of a motorcycle race, but opposed such an event without a sound test in advance.

Gary Green spoke in support of the "showcase" event, which he felt would be good for the County and would "help New Kent in the long run". He agreed that a full scale test by a certified firm during the race would be the only way to get an accurate reading on the noise levels and that he did not feel that six and a half hours on one day in the middle of the summer was too much to ask of the neighbors and that Colonial Downs, who was a good corporate citizen, deserved this opportunity.

William O'Brien spoke against approval of the application because it did not conform to County Code and because the proposed maximum decibel level was above that which was allowable under the Brickshire covenants.

Bart Leader, representing the New Kent Chamber of Commerce, remarked that he agreed with a lot of what had been said by previous speakers, but he and the Chamber supported Colonial Downs. He agreed that sound tests should be done but felt the only way to test the actual conditions was to conduct the race. Although he wondered how the Brickshire HOA had engaged an attorney without the homeowners being made aware, he indicated that his major concern was that the County should do whatever it had to in order to legally allow Colonial Downs to conduct a race one afternoon in 2013 but to also require a certified sound test so that the County would have data upon which to make decisions about future applications for motorized racing events.

Kate West admitted that she supported both sides of the issue. As a resident who lived "across the street in the shadow of the Colonial Downs light towers", she explained that she was not excited about the idea of the race and felt that "there had to be a better way for Colonial Downs to make money". However, as a small business owner, she provided child care services for the seasonal workers at Colonial Downs and needed them to succeed because it made her business successful. She indicated that she intended to be away from home on the afternoon of the race and felt that "one day won't kill us". She suggested to

"let them have the race and see how it turns out" but asked that it end at a reasonable hour as she had small children with early bedtimes.

Leo Wells spoke in support of Mr. Summers' comments. He spoke about ways to measure sound as well as the variance of noise levels produced by different brands and models of motorcycles, and about how it was his information that the noise would be increased because racers removed the suppressors from their bikes in order to increase speed.

Mark Flynn advised that he used to work with a professional motorcycle team, like the ones who would be competing in this event, and assured that more than one race in this circuit could not happen again at Colonial Downs in 2013. He explained that sound limits would be in the contract between the promoter and the AMA and that this circuit was used to dealing with nearby neighborhoods on noise issues. He confirmed that the AMA would not let a bike onto the track if it exceeded noise levels on the day of the race and it made sense to have the testing done at the property line in the same place it was conducted during the previous race. He predicted that the types of motorcycles that would be raced at this event would not be as irritating because of their deeper sound. He indicated that this event would bring a lot of tourism to New Kent County as this was a very popular nationwide sport.

Perryann Whitehurst spoke in support of the application, noting that her family had been racing motorcycles for many years, and these races were fun, family-oriented events.

Robert E. Piper, Jr. addressed the sound decibels of everyday activities and the statements made by some of the previous speakers. He indicated that the motorcycles that would be racing in this event were not general use motorcycles but were very specialized. He explained how they were tested prior to a race and that the riders raced all the time and it would be difficult to set up a test ahead of time. He recommended that the tests be conducted during the race event and he supported approval.

Chase Whitehurst and Bobby Whitehurst both advised that they were in support of approval of the application.

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

The Board took a ten minute recess to "digest" the comments from the Public Hearing and then resumed the meeting.

Jeff Geiger, Attorney for Colonial Downs, summarized that his client had requested approval of a one-time event that would not be prejudicial to the character of the neighborhood and would have conditions designed to prevent unreasonable impacts. He reiterated that this was not a request to turn Colonial Downs into a motorcycle race track and would not affect plans for the adjacent residential areas or impact home values. He characterized the race as a one-time event that would attract visitors to the area, including potential home buyers and investors, and would not impact County services, other than the additional safety personnel which Colonial Downs would pay for.

Mr. Burrell commented that he recognized and did not "make light of" the fears of those who opposed the event, but felt that "one test was worth one thousand expert opinions" and suggested running the race as a test. He advised that if the event was too loud, it would not happen again. He predicted that the noise from fireworks was louder than the motorcycle race.

Chairman Davis asked that the Board go into closed session in order to consult with its attorney.

Mr. Tiller moved to go into Closed Session pursuant to Section 2.2-3711A.7 of the Code of Virginia for consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by the Board regarding specific legal matters requiring the provision of legal advice by such counsel involving Colonial Downs. 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.

Mr. Burrell moved to return to open session. 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.

Mr. Tiller 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:

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 asked if, instead of requiring the race to be stopped if the noise exceeded a certain level, the County could impose a fine on Colonial Downs. He also suggested adding a condition that the County had to agree to the third party selected to conduct the sound testing during the race.

There was discussion as to whether the County could impose a fine, after which time the suggestion was withdrawn.

Mr. Evelyn commented that Colonial Downs was a great asset and business partner to New Kent. He indicated that he knew a lot of residents in Brickshire and in its HOA and understood their noise concerns, but he pointed out that there were a lot of Brickshire residents who did not oppose the event. There was some confusion as to whether Mr. Summers' client, the Brickshire Community Association" was the same as the HOA or not. Mr. Evelyn indicated that if the event "goes off bad", then he would not support approval of any future application.

Mr. Stiers remarked that no matter the outcome of the vote, "the sky is not falling". He described how stressful the issue had been for him as he had friends and associates on both sides of the issue. He detailed the steps he had taken over the past months to try to bring both sides together to resolve some of the issues involved in this application, until both sides had "lawyered up". He acknowledged the petition signed in opposition, but also the fact that there were just as many people who supported the event or weren't against it. He spoke about the assertion from a realtor that home values would suffer and how he had talked to other realtors who didn't agree that it would have any impact at all. He reported that he had canvassed residents door-to-door in Oakmont and Bel Green over the past two weekends and found only one person who opposed the event.

Mr. Evelyn and Mr. Stiers both asked that the conditions in the proposed resolution be amended to require that the application would employ a third party contractor, to be approved by the County, to monitor and record sound levels, and provide a report to the County within sixty days of the event. Attorney Geiger advised that was acceptable to his client.

Mr. Evelyn moved to adopt Resolution R-10-13 adding the following condition: To conduct the noise level monitoring required by Condition 5, Colonial Holdings, Inc. will employ a third party contractor/company to monitor and record the sound levels and duration of sounds during the motorcycle racing event. This third party will be approved by the County Administrator or his designee. Within sixty days after the race, Colonial Holdings, Inc. shall provide a report prepared by such contractor/company to the County depicting the sound levels and the duration of the sound levels for each race. The members were polled

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

The motion carried.

IN RE: FY14 DRAFT BUDGET

Mr. Hathaway presented the FY14 draft budget.

As an FY13 budget overview, he recounted that real estate values had declined 17.82% resulting in a \$3.2 million reduction in tax revenues; that the Board had adopted a 81-cent real estate tax rate, one penny below the revenue-neutral rate of 82 cents; there had been both VRS rate increases and health insurance increases; that the School budget had a \$2.7 million deficit and after a \$1 million increase in local funding, had a \$1.7 million deficit.

He indicated that methodology for the FY14 budget had many of the same issues as FY13, which included goals to maintain County fees at FY13 levels (except utilities); to utilize cash reserves for capital projects; to work with the School System to maintain educational excellence and respond to the need for additional classrooms; and to maintain public safety and social services during a period of increasing demand.

He reported that his proposed recommended budget totaled \$67,340,531, which included a 4% increase in the real estate tax to 85 cents, with increase in the General Fund of \$1,816,686, or 5.4%.

He indicated that projections included increased revenue from personal property taxes, sales tax, business tax, meals tax and permits and licenses, all of which he felt was reflective of an improving economy. He reported declining revenue from investment earnings, off-track betting, and the end of a prior Federal SAFER grant for firefighters. He clarified that the increase in personal property tax revenue was due to growth and not changes in the Personal Property Tax Relief Act.

He reviewed real estate revenue calculations that included an FY14 assessment of \$2,279,571,426. He reported that an 81-cent rate would bring in \$135,908 and an 85-cent rate would result in \$1,020,381. He advised that one penny on the real estate tax at a 97% collection rate currently equated to \$232,121.

He noted that personal property tax revenue, calculated at a 94% collection rate, was estimated at \$6,274,408, an increase of \$345,593, with one penny equating to \$17,422.

Increases in expenditures for FY14 included a 2% Cost of Living Adjustment (COLA), some new positions (including two new mandated environmental positions) and upgrades, and a 12.1% health insurance increase that the County would absorb.

Mr. Hathaway reported that department requests had been reduced by \$2,582. He advised that his recommended budget included additional school funding of \$700,000 (below the requested \$1,347,401), additional funding for social services and Comprehensive Services Act (CSA) to cover increasing caseloads; a decrease in debt service due to a recent refinancing; \$465,085 (equal to two cents of the new tax rate) for debt service on additional elementary classrooms (Historic School renovation); \$2,513 for the Airport; and two new mandated new positions (storm water compliance inspector and technician) which were proposed to be hired in May 2014 as they were required to be in place when the new regulations come into effect on July 1. He spoke about how the Affordable Care Act was affecting hours for part-time staff, and that his budget would include upgrade recommendations for three New Kent Sheriff's Office employees and one Parks and Recreation employee.

Mr. Burrell asked about the funding for the Airport. Mr. Hathaway explained that the funding was tied to a grant and this would cover the County's 2% local match.

Mr. Stiers asked if the School System had itemized its \$1.3 million request for additional local funding. Mr. Hathaway advised that it was the same that had been reviewed at the joint meeting.

When asked how he had arrived at his recommendation of \$700,000 for additional funding for the Schools, Mr. Hathaway explained that he had based that figure on priorities and what the County could afford.

He reviewed other proposed new positions, which included a CSA Administrative Assistant, two new firefighters, and a school resource officer for Watkins Elementary School, as well as Fire-Rescue upgrades, promotions at the Sheriff's Office and in Public Utilities.

He advised that the Affordable Care Act would mostly affect part-time workers in the Sheriff's Office and Fire-Rescue, but not the County refuse site workers.

He indicated that the 2% COLA increase would cost taxpayers \$202,572 (excluding Public Utilities, which was not taxpayer-funded).

He pointed out that in his proposal, 64% of new revenues would go to the Schools, which included the \$700,000 recommended for operations and two cents of the real estate tax rate increase for elementary school renovations.

He reviewed notable items that included the fact that the Debt Service Fund balance (set aside) would expire in 2016, so in 2017 there would be an additional \$300,000 the County would have to pay; a \$5.28 million transfer for debt service; that capital projects would be funded with existing cash reserves on deposit in the CIP fund; local funding for proposed FY14 CIP totaled \$3,580,091 (that did not include a \$5 million debt for Historic School renovations).

He explained that his recommendation included an 8% increase in the base water and sewer usage rates in order to maintain bond compliance and self-sufficiency, but no increase in connection or availability fees.

It was noted that the Board was scheduled to hold another joint meeting with the School Board on April 24, with a budget public hearing tentatively scheduled for the May 13 meeting.

There was consensus to hold a budget work session on April 16, 2013, at 8:30 a.m. in the Boardroom.

IN RE: ELECTED OFFICIALS' REPORTS

Sheriff Howard distributed a handout with 911 call statistics for Interstate 64. He explained that the handout reflected the number of officers and vehicles dispatched to the scene. He confirmed that these calls were a drain on County resources. He indicated that his deputies did not respond to calls on interstate unless requested by the Virginia State Police; however, he did note that this area was down six troopers.

He also reported that inmate volunteers for litter pickup had increased with the warming weather. He indicated that he had shared Mr. Stiers' suggestion regarding sentencing

offenders to litter pickup with the Circuit Court Judge and it was decided that Court had more serious offenders who would likely not fit the criteria. The Sheriff advised that he would talk with the General District Court judges to see how they felt about this type of community service.

IN RE: STAFF REPORTS

Mr. Hathaway announced that after having advertised for the Assistant County Administrator position, 74 applications had been received and eight candidates interviewed, and Jonathan Stanger, current IT Director, had been chosen from a very qualified pool of candidates. He reported that Mr. Stanger, who would begin his new position on April 16, 2013, had worked for New Kent for 19 years in various positions, knew the County well, and would be a good asset.

Mr. Stanger was congratulated on his new position.

IN RE: DISTRICT APPOINTMENTS

Mr. Davis nominated David R. Paul for Circuit Court appointment as District Five's representative to the Board of Zoning Appeals to serve a five-year term beginning January 1, 2013 and ending December 31, 2017.

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.

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 May 13, 2013, and the next work session at 9:00 a.m. on April 24, 2013, both in the Boardroom of the County Administration Building. He reminded that the Board would also hold a budget work session on April 16, 2013, at 8:30 a.m.

IN RE: ADJOURNMENT

Mr. Burrell moved to continue the meeting until April 16, 2013, at 8:30 a.m. for a budget work session. 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. The meeting was adjourned at 9:44 p.m.