

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 14th DAY OF DECEMBER IN THE YEAR TWO THOUSAND NINE OF OUR LORD 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
David M. Sparks	Present
James H. Burrell	Present
Stran L. Trout	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. Work session of October 28, 2009
 - b. Special meeting of November 4, 2009
 - c. Regular meeting of November 12, 2009
 - d. Regular meeting (continuation) of November 18, 2009
2. Miscellaneous
 - a. Abstracts of Votes from the November 4, 2009 election for recording in the Supervisors' Order Book
 - b. Resolution R-65-09 approving change of name for the Community Services Board to Henrico Area Mental Health and Development Services Board.
 - c. Acceptance of Farms of New Kent Utility Easements from Rod Taylor and Marian Williams
 - d. Resolution R-69-09 accepting the deed to the Historic School property
 - e. Resolution R-70-09 vacating a portion of 1st Street in the Windsor Shades subdivision
 - f. Resolution R-71-09 accepting Winggapo Road into the State system for maintenance
 - g. Award of the generator contracts for the Old Courthouse and Administration Building to Rudy L. Hawkins Electrical Contractors
 - h. Resolution R-72-09 setting the Board's January 2010 business meeting
3. FY10 Appropriations
 - a. Funds received from vending machine sales for employee Christmas parties, \$2,115.00

- b. Funds for FY10 Fire-Rescue revenue recovery to cover bank fees, \$915.00
- c. Funds received to date for Fire-Rescue revenue recovery for Fire-Rescue personnel, \$32,194.00
- d. Funds for public safety coverage at Colonial Downs and various events for October and November 2009, \$22,838.00
- e. Funds reimbursed to Parks & Recreation, \$1,218.80
- f. Fund donated for various items, \$5,568.00
- g. Funds received from citizens for pre-pay Fire-Rescue revenue recovery, \$50.00
- h. Funds donated to the New Kent Animal Shelter, \$1,519.00
- i. Funds donated to the New Kent Honor Guard, \$50.00
- j. Funds received for insurance proceeds, \$6,489.00
- k. Funds received from the Technology Trust fund for maintenance for the Logan Systems for the Circuit Court Clerk's Office, \$25,824.00
- l. Funds expected from the DMV Dog and Cat Sterilization Fund for the sale of animal friendly license plates to New Kent residents, \$495.00
- m. Program income received to date for FY10 from CDBG Plum Point grant participants, \$710.04
- n. Funds received for DMV stop fees in the Treasurer's Office, \$440.00

Total Supplemental Appropriation:
\$(100,425.84) Total
\$ 100,425.84 Money In/Money Out

- 4. FY10 Inter-Departmental Budget Transfers
 - a. *Social Services*: \$6,521 from Leased WAN lines, Dues, and Salaries & Wages to Professional Services
 - b. *Telecommunications-Cellular*: \$900 from Planning to Economic Development
 - c. *Schools*: \$5,609 from School Contingency Fund to Misc Services Fiscal Services
 - d. *Parks & Recreation*: \$20,056.00 from individual facility part-time wage line items to one part-time line item
 - e. *Schools*: \$10,000 from School Contingency Fund to Repair Services Maint Ops Bldg
 - f. *Training*: \$8,542 from Reserved for Contingency–Training to Training line items for Board of Supervisors, Administration, Human Resources, Financial Services, Sheriff, Dispatch, Building & Grounds, Economic Development, Planning Commission, Social Services, CSA, Human Services, Utilities Admin, and Water
 - g. *Fire-Rescue*: \$34,883.00 from Contingency to Overtime and Part-time line items
- 5. Treasurer's Report: Cash in Bank as of October 2009: \$44,784,789.21

Mr. Sparks moved to approve the Consent Agenda as presented. The members were polled:

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

The motion carried.

IN RE: CITIZENS COMMENT PERIOD

Chairman Davis opened the Citizens Comment Period.

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

IN RE: RESIDENCY ADMINISTRATOR'S REPORT

Torrence Robinson, former Residency Administrator with the Sandston Residency of the Virginia Department of Transportation (VDOT), commented how much he had enjoyed working with the Board and thanked them for their support during his tenure. He then introduced Ms. Jorg Huckabee Mayfield who would be serving as Interim Residency Administrator for the next three months.

Board members individually thanked Mr. Robinson for his hard work and responsiveness and wished him well in his new job, and welcomed Ms. Mayfield.

Ms. Mayfield reported on issues regarding roads in New Kent County. She advised that maintenance activity during the previous month included pothole patching, machining various graveled roads, preparations for snow removal, mowing, installation of entrance pipe, subdivision maintenance, pipe cleaning, and tree and debris removal. Work planned for the upcoming month was reported to include grading, drainage improvements, brush removal, litter pickup, pipe cleaning, and pothole repairs.

She advised that sight distance issues were being addressed in several locations, and that VDOT had provided comments on a Traffic Impact Analysis submitted for the Starr Express project. She reported on a road-widening project on Route 155, and advised that they were working to add Winggapo Road into the secondary system as well as continuing to consider options for an alternative access when flooding closed South Waterside Drive.

Mr. Trout spoke about chronic flooding problems on South Waterside Drive, the sole access to over 200 homes and some businesses, and about efforts to coordinate a meeting between the Sheriff's Office, Fire-Rescue, VDOT, County staff and himself. He also explained problems at the intersection of Carter Road and South Waterside Drive where a guardrail might be a solution to some of the safety concerns in that area.

Mr. Burrell reported some speeding complaints from residents on Pine Fork Road and requested a speed study.

Mr. Sparks asked that VDOT keep watch on clogged drainage pipes, especially on Route 60 in Bottoms Bridge where there was frequent hazardous flooding.

Mr. Evelyn repeated his request for an update on the roundabout project on Route 106 at the interstate interchange where a construction zone had been established with no work underway.

Mr. Davis advised about some drainage problems needing attention in Plum Point and on Farmers Drive, as well as some unpaved roads that needed work after the recent rains.

Ms. Mayfield advised that she would check into all of these issues and report back to the Board.

IN RE: NEW KENT UNIVERSITY

Chairman Davis presented Carlton Anderson with his certificate for completing the 2009 session of New Kent University as Mr. Anderson had not been able to appear for the graduation ceremonies held at the Board's November meeting.

Board members expressed their condolences to Mr. Anderson on the recent death of his father, Norman Anderson, a long-time deputy sheriff for New Kent.

IN RE: ZONING ORDINANCE REWRITE COMMITTEE

Board members formally presented a copy of Resolution R-63-09 to members of the Zoning Ordinance Rewrite Committee, and thanked them for their hard work and diligence.

IN RE: COMPREHENSIVE ANNUAL FINANCIAL REPORT

Anne B. Wall, Member, Robinson Farmer Cox Associates presented the Comprehensive Annual Financial Report (CAFR) resulting from the recent audit for Fiscal Year 2009 that ended on June 30, 2009. She advised that New Kent received "unqualified" or clean opinions in all areas and that the County would again be applying to the Government Financial Officers Association for its Award of Excellence in reporting. She reported excellent cooperation from the staff and that the Financial Services staff had greatly assisted in the audit. She noted that there were two recommendations which had been discussed with management and were being addressed. She reviewed the format of the report and invited the Board members to contact her at any time if there were any questions, noting that the report would be posted on the County's website.

IN RE: BUSINESS INCENTIVE PROGRAM

Before the Board for consideration was Resolution R-68-09 authorizing extension of the Business Incentive Program previously adopted by the Board.

Economic Development & Tourism Director Rodney Hathaway reviewed that the program adopted by the Board in March of 2009 had been designed to stimulate local economic development by reducing the cost to businesses by waiving development fees for commercial projects submitted prior to December 31, 2009; refunding permit and inspection fees for those commercial projects receiving a certificate of occupancy by June 30, 2011; a goal of 7-day reviews for all commercial plans and permits; a 15% reduction of the Business Professional Occupational License (BPOL) fees; applying a 16% impervious groundcover default for commercial projects (rather than 8%); a business liaison program for help in navigating County government processes; and a review of existing regulations as they pertained to development of a "business friendly" environment. He reported that the program had been successful in attracting new businesses to the County and he had received several inquiries from other localities, some of whom had started similar programs. He indicated that the waiver of development fees would expire at the end of December and it was his recommendation that the deadline be extended until June 30, 2010, and that the 7-day review goal, business liaison program, and continuing review of regulations become a permanent part of the way that New Kent conducted business. Regarding the storm water regulations, he warned that the State would likely be adopting legislation that would limit

what the County could allow but that it would be his recommendation that the County be as lenient as it could with respect to stormwater measures required for commercial projects.

Mr. Trout commented that one of the reasons for the program's success was because of the efforts of Mr. Hathaway and he felt an extension of the fee waiver would be of benefit.

It was clarified that the deadline for certificates of occupancy would remain as June 30, 2011.

Mr. Burrell moved to adopt Resolution R-68-09, 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: TIMES FOR PUBLIC HEARINGS

There was discussion regarding moving the start time for public hearings from 7 p.m. to 6:30 p.m. The County Attorney advised that the change could be made when the Board considered its bylaws at the reorganization meeting to be held on January 11, 2010.

IN RE: VEHICLE REGISTRATION FEE

There was discussion regarding the vehicle registration fee and how it had negatively impacted those citizens who had disposed of vehicles during the year without replacing them, and the perception that they had been double charged for decals. Mr. Whitley spoke about how the registration fee was adopted in order to make up for the revenue to be lost with the adoption of a permanent vehicle decal. He advised that he had spoken with staff in both the Treasurer's Office and the Commissioner of Revenue, and there was no easy way to identify and confirm who the affected residents might be, but that staff would continue to look at the issue.

Mr. Sparks referred to a memo from the Commissioner of Revenue that might help explain the issue.

Mr. Trout advised that he would not be in support of any kind of a rebate program because the registration fee was not a decal fee but part of the tax on vehicles owned as of January 1, and a rebate this year might set an expectation of rebates in future years.

IN RE: REFUSE & RECYCLING CONVENIENCE CENTERS

There was discussion regarding exemptions for those without vehicle decals to use the County Refuse & Recycling convenience centers, and how there had been some miscommunications between the Board and staff regarding issuance of written authorizations. Mr. Whitley confirmed that the misunderstanding had been cleared up and there would be no change in how the authorizations were issued until the Board had a chance to look at the matter after the first of the year to see how the issuance of permanent decals had affected the number of requests. He indicated that those qualifying for exemptions were non-residents who owned property in New Kent, relatives or those

assisting elderly or handicapped residents, or residents who drove work vehicles registered in other localities.

Mr. Evelyn asked what would happen to those whose authorizations expired at the end of the month, and expressed his opinion that anyone with proof of residency should be able to use the sites. Mr. Whitley advised that he would make sure that holders of authorizations expiring on December 31, 2009 were advised that they needed to re-apply.

IN RE: DISTRICT APPOINTMENTS

The Board continued to make district appointments.

Mr. Sparks moved to appoint Larry Haislip as District Two's representative to the Economic Development Authority to serve a four-year term beginning January 1, 2010 and ending December 31, 2013.

Mr. Sparks moved to appoint Claude Baldwin as District Two's representative to the Board of Road Viewers to serve a one-year term beginning January 1, 2010 and ending December 31, 2010.

Mr. Burrell moved to appoint Jean Street as District Three's representative to the Historic Commission to serve a four-year term beginning January 1, 2010 and ending December 31, 2013.

Mr. Burrell moved to appoint Charles Moss as District Three's representative to the Parks & Recreation Advisory Commission to serve a four-year term beginning January 1, 2010 and ending December 31, 2013.

Mr. Burrell moved to appoint James Moody as District Three's representative to the Board of Road Viewers to serve a one-year term beginning January 1, 2010 and ending December 31, 2010.

Mr. Burrell moved to appoint Jean Street as District Three's representative to the Wetlands Board to serve a five-year term beginning January 1, 2010 and ending December 31, 2014.

Mr. Trout moved to appoint Emily Friend as District Four's representative to the Affordable Housing Advisory Committee to serve a term ending December 31, 2011.

The members were polled:

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

The motions carried.

IN RE: NON-DISTRICT APPOINTMENTS

The Board continued to make non-district appointments.

Mr. Trout moved to appoint Marty Sparks as New Kent's representative to the Smart Beginnings Leadership Council.

Mr. Burrell moved to appoint Jean Street as a New Kent representative to the Chickahominy Health District Advisory Board to serve a two-year term beginning January 1, 2010 and ending December 31, 2011.

Mr. Sparks moved to appoint Ron Jordan as a member of the Farms of New Kent Community Development Authority Board to serve a four-year term beginning January 1, 2010 and ending December 31, 2013.

Mr. Sparks moved to appoint Pete Sweet as New Kent's alternate representative to the MPO Citizen Transportation Advisory Committee to serve a four-year term beginning January 1, 2010 and ending December 31, 2013.

Mr. Davis moved to appoint Steve Miles as a member of the Farms of New Kent Community Development Authority to serve a four-year term beginning January 1, 2010 and ending December 31, 2013.

Mr. Davis moved to appoint James Talley as an at-large representative to the Agricultural and Forestal Advisory Committee to serve a four-year term beginning January 1, 2010 and ending December 31, 2013.

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 motions carried.

The Board took a short break before resuming its meeting at 7 p.m. for public hearings.

IN RE: DUNHAM REZONING APPLICATION

Before the Board for consideration was Ordinance O-16-09 approving an application filed by Godsey Properties Inc. to rezone approximately 131 acres of land from *A-1, Agricultural* to *R-1, Single Family Residential*.

Planner Kelli Le Duc advised that the applicant planned to create a 113-lot cluster subdivision, with lots of varying sizes. She noted that the subject property was composed of three separate parcels, one of which was already zoned *R-1* and was not included in the proposed ordinance. She indicated that the subject property was east of Tunstall Road between the Deerlake and Kenwood Farms subdivisions, and was designated in the Comprehensive Plan as *Rural Lands* and *Suburban Housing Detached*. She pointed out that the area was primarily made up of residential subdivisions. She stated that the proposed zoning classification was consistent with the language contained within the *Suburban Housing* land use designation in the Comprehensive Plan but was not entirely consistent with the language contained within the *Rural Lands* use designation. She explained that the intensity of development in *Rural Lands* as a whole was to be kept at low levels; however, the spot intensity of a particular development in a specific location might be

greater than in other areas with the use of open space development techniques. She added that *Suburban Housing Detached* referred to single-family, detached dwellings with approximate densities from two units per acre to one unit per two acres, within planned units that utilized public water and sewer.

She reported that one of the goals of the Comprehensive Plan was to investigate innovative approaches to rural housing development, including but not limited to cluster and open space techniques and the applicant had submitted a plan for a cluster/open space development.

She indicated that another goal of the Comprehensive Plan was to increase and enhance recreational opportunities, noting that the applicant had submitted a plan that included approximately 66 acres of open space and seven acres of recreational area that included a playground or "tot lot".

Ms. Le Duc advised that another goal of the Comprehensive Plan was to provide safe and sanitary housing opportunities for all citizens of the County, and implementing an affordable housing policy that would serve the unmet needs of the area. She noted that the application stated that it reserved 20 of the interior lots for workforce housing.

She reported that 20% of the subject property was environmentally sensitive and if it were to be developed at a higher intensity, there would be a negative impact on those sensitive areas. She indicated that if the property were zoned *R-1* and developed fully, it could be subdivided into 255 lots but the applicant had proffered a maximum of 113 lots.

She indicated that there would be only one entrance to the project from Tunstall Road and the subdivision roads would be extended to connect with existing stub roads in adjacent neighborhoods.

She advised that VDOT had reviewed the application and Traffic Impact Study and found that existing intersections were expected to operate at an acceptable level at full build-out of the proposed development, based on completion of the planned roundabout at the intersection of Tunstall Road and New Kent Highway.

She noted that the property was located within a utility service area and the applicant was proposing to connect to the existing water system at Deerlake, and the new water infrastructure would be owned and maintained by New Kent County. She confirmed that the lots would be served by individual drain fields and that a one-acre lot would be dedicated to the Department of Public Utilities for its future use.

Ms. Le Duc reported that the property contained several family cemeteries, Native American burial sites, a disturbed foundation feature, an old roadbed, and some low mounds, all of which would be preserved in place.

She noted that the applicant had advised that the homes would have assessed values of between \$200,000 and \$400,000 and the 113 homes were expected to generate \$247,470 per year in real estate tax revenue and \$121,588 in personal property tax revenue.

She advised that the community impact analysis indicated that the subdivision would add an estimated 15 students to the school system each year. She indicated that the applicant represented that while there was current capacity in the schools, should even half of the already approved un-built residential units in the County be constructed, all schools would be over-crowded.

She reported that neither the Sheriff's Office nor Fire-Rescue had submitted comments on the application.

She reviewed that the proffers included that the project would develop in conformity with the concept plan dated June 26, 2009; there would be no more than 113 single-family residential building lots created; there would be no more than 40 building permit applications filed in any one year; the establishment of a homeowners association with covenants and restrictions; workforce housing units would contain between 1,200 and 1,400 square feet and all other units would have a minimum of 1,400 square feet for a one-story home and 1,600 for a two-story; all workforce housing units would be constructed on interior lots only; cash proffers of \$4,000 per lot for each of the 93 non-workforce housing lots; one entrance from Tunstall Road, with connections to the stub roads in adjacent subdivisions; private drain fields as approved through the Health Department; and recreation space to include a playground area/tot lot to be maintained by the homeowners association.

Ms. Le Duc indicated that the applicant had submitted plans for an attractive, well-planned community, sensitive to the environmental constraints on the property and to the needs of workforce housing in New Kent. She added that the proffering of a phasing plan would help ensure that there would not be empty homes sitting on lots within the subdivision, and staff had recommended approval of the application and its associated proffers.

She reported that the Planning Commission considered the application at its September and October meetings and voted 8:1:1 to forward it to the Board of Supervisors with an unfavorable recommendation.

Present on behalf of the applicant were Attorney Randy Cook, Dan Caskie, P.E., of Bay Design Group, Larry Gianassi of GeoEnvironmental Services, and Erich Strohacker, P.E., of Ramey Kemp & Associates of Richmond, Inc., as well as Mr. Doug Godsey.

By PowerPoint presentation, Mr. Cook reviewed the application, noting that the project fit well between two existing R-1 zoned properties; would help to meet the needs for workforce housing in the County; that clustering would preserve open space; would provide opportunity for recreation areas; and would protect environmentally-sensitive and scenic natural areas. He represented that the homes would be of similar design and size as those in adjacent neighborhoods, and that common area would surround the entrance road so the scenic view-shed from Tunstall Road would be unchanged.

He advised that the project would create anticipated revenue of \$247,470 per year in real estate tax revenue and \$121,588 per year in personal property tax revenue. When questioned by Mr. Sparks how those figures were calculated, Mr. Cook advised that they were based on mean value estimates. Mr. Caskie added that they had used an average home value of \$300,000 to make the tax revenue projections.

Mr. Cook reported that the applicant had worked with the County's Department of Public Utilities to determine that the public water system had capacity for the development, and he stated that the individual drain fields would need to be approved by the Health Department. There were questions regarding the percentage of alternative septic systems that were anticipated. Mr. Cook advised that would not be known until the soil work had been completed, but they were anticipating that a large percentage would be alternative. Mr. Caskie interjected that there was "quite a bit of good soil out there" and he estimated that around 50% would be alternative systems. He indicated that they were trying to place the

homes in the more suitable areas and it might be that the majority would have standard septic systems. Mr. Evelyn referred to the large number of alternative systems in nearby Deerlake. Mr. Godsey commented that they had "racked and stacked" homes in Deerlake but in Dunham he felt that the homes would be placed on the best soils and estimated that about 50% would be alternative.

Mr. Cook reviewed the concerns voiced at the public hearings before the Planning Commission, which included increased traffic, street connections to stub roads in adjoining subdivisions, the effect on existing home values by including workforce homes, school capacity, water supply impact, existing residential lot inventory, timing, and the amount of the cash proffers.

Regarding traffic impacts, he reminded that VDOT had found that additional traffic from the proposed development would not degrade existing levels of service on adjacent roads. He advised that the applicant would construct the required right-turn lane, and the connections to four existing stub roads in adjacent subdivisions were required by the State and County.

He indicated that workforce housing was identified as a need for New Kent government staff and school employees, and research had revealed that having a limited number of affordable housing units integrated into the project would preserve home values and would not result in any "low income" stigma. In response to an inquiry from Mr. Trout as to what defined "workforce housing", Mr. Cook explained that keeping the price down was the most direct way to control size and that locating these units on the interior of the project would keep the perimeter lots for larger homes and have less impact on the value of homes in neighboring communities.

Regarding impact on the public schools, Mr. Cook advised that, using an average of .5 children per household, it was anticipated that the project would put 50 – 60 additional students into the public school system over a number of years. Mr. Caskie explained that they had determined the .5 children per household average by dividing the number of current County school students by the number of County households to arrive at a projected total of 56 students, or 18 students per year until build-out, which represented an increase of one-half of 1% to the school population at total build-out. Mr. Caskie indicated that the School Board Office had provided information regarding school population projections and it was his understanding that there had been a 15-student shortfall in the current year's projection, and that all three schools serving the project -- Watkins Elementary, New Kent Middle, and New Kent High -- had additional capacity. Mr. Evelyn indicated that he felt that the applicant was missing an important piece of information -- the "per student" cost of education. Mr. Cook commented that the cash proffers addressed the cost of education but were not meant to cover them 100% and no developer in a rezoning would pay that total cost. Mr. Davis commented that considering the annual cost to educate one child, he did not feel that the cash proffers "went very far". Mr. Burrell noted that the State average was 1.48 children per household and New Kent's average might be lower because of its DINC (Dual Income No Children) households, but added that there would be other impacts such as the need for increased County services, human services, and law enforcement. Mr. Trout remarked that he did not feel the applicant had considered the cost of school and government construction, pointing out that although there currently might be capacity in the schools, it was unpaid for, and adding more students would hasten the need to build another school and other County facilities. Mr. Cook responded that they recognized that there would be other costs but reminded that the owners of the new homes would pay their "fair share" and it was not the applicant's policy to fund those additional costs upfront with proffers. He indicated that broad-based taxes were used to pay for those costs and it

remained their opinion that there was additional capacity in the schools, notwithstanding the possibility that development of existing inventory could use up that capacity.

Mr. Evelyn questioned that there was capacity at Watkins Elementary.

Mr. Sparks disagreed with the projected number of students, adding that he felt the State average was more reflective that the existing older neighborhoods were "skewing the numbers".

Regarding the water supply, it was reported that the applicant had a letter from the Director of the Department of Public Utilities confirming that there was sufficient water capacity for the development.

Mr. Cook admitted that there was an inventory of between 6,000 and 7,000 lots already approved for residential development, but added that those lots were not likely to be built on all at one time, and that Dunham represented 1.7% of that inventory. He suggested that market demand had been metering development for years and continued to be the biggest factor, and many of those already-approved lots might never be developed. Mr. Caskie added that this project was an infill piece of development that already existed and the lots in Dunham were already reflected in the inventory numbers. He noted that the County considered this property as residential development in its population projections. Mr. Evelyn asked why property that had not yet been rezoned was being used by County staff in their projections. Ms. Le Duc reported that when those projections were developed, she had been instructed to use those lots already approved as well as what was "in the pipeline". Mr. Evelyn commented that he did not believe that property not yet rezoned should be used in projections.

In response to Mr. Evelyn's inquiry as to how many homes could be built on the property as it was currently zoned, Ms. Le Duc responded that between seven and thirteen lots could be developed, depending on whether they were 15-acre or 25-acre lots.

Mr. Cook maintained that this was a financial decision by the developer and was not an inventory issue.

He indicated that connecting to existing stub roads in adjacent neighborhoods was a requirement.

He again reviewed the proffers, noting that they had been improved two or three times since the initial application, and reminded that the County's professional planning staff had recommended approval of the application. He stated that it was "great to come up with something staff felt comfortable recommending". He called the project a "perfect example of infill rezoning" that minimized sprawl and the need for new roads. He noted that the development would be surrounded by comparable housing, was supported by the Comprehensive Plan, and was appropriate from both a planning and legal perspective. He indicated that zoning was not a decision based on public opinion but was a legislative decision for the Board to make -- doing what was right for the landowner and what was right for the County. He suggested that, in its deliberations, the Board would need to consider how the property was different from the surrounding parcels zoned *R-1*. He again reminded that the Comprehensive Plan took into account that the property would be developed for residential use, water was available, and traffic was not an issue. He emphasized that the Board's decision was not "timing" but whether the project complied with the Comprehensive Plan and what facts the Board could articulate to distinguish the subject property from the surrounding parcels already zoned *R-1*. He stated that there

were no environmental, historic or other resources negatively impacted. He maintained that the property was supposed to be zoned *R-1* as evidenced by stubbed-out roads in adjacent neighborhoods, and there was no better example as to what complied with what was already in place, the property owner was entitled to a rezoning, and there was no basis for the Board not to approve the application. He stated that zoning was based on good planning and the Comprehensive Plan, and the applicant had done everything he was asked to do and had the right to a rezoning.

In response to an inquiry from Mr. Trout, Mr. Cook advised that there was no age-restricted component to the project as the applicant felt there was significant inventory of those units already existing in the County.

Mr. Sparks commented that he understood the rationale for making no cash proffers on the workforce housing but asked if the applicant was making an assumption that the purchasers of those homes would not have children. Mr. Cook said they were not making that assumption, although the most likely purchasers of those homes would be first-time buyers who normally "moved up" when they started having children.

The Chairman opened the Public Hearing.

Lisa Guthrie of 6019 Wensleydale Drive spoke about the existing inventory of already zoned residential development lots, and suggested that the County should be encouraging development in the recently-approved Courthouse Development District which was a State-required Urban Development Area designated to handle growth in the County over the next 10 – 20 years. She indicated that it was her understanding that there might be some incentives coming out of the upcoming session of the General Assembly in this regard and the County should not compromise the potential of the Courthouse Development District by adding more than 100 residential lots. She commented that the project was not needed and the County had little to gain, adding that it would result in additional school and traffic impacts. She spoke about failing alternative septic systems in nearby areas and her concerns about groundwater contamination. She asked that the Board consider the quality of life of the existing residents and deny the application.

Pam Scholla of 5949 Hingham Drive spoke about "knowns" and "unknowns", and how the project would negatively impact the existing residents in the area. She submitted to the Board a copy of correspondence from the County's Department of Public Utilities which she said reflected that there was not enough water capacity for the project, as well as covenants and restrictions for her development which she felt might be affected if this application were approved.

David Maxim of 5960 Hingham Drive spoke against the application and the extension of stub roads, noting that the requirement for stub road extensions could be waived if there was a 16-foot bike or walking path to accommodate emergency equipment. He complained about the increased traffic that would result in his neighborhood as well as on Route 612, and asked the Board to deny the application.

Tina Maxim of 5960 Hingham Drive reported that her research had shown that there was ample affordable housing stock in New Kent. She talked about the already dense residential development in the area and maintained that more residential lots were not needed.

Patrick Blackburn of 6021 Hingham Drive talked about the impact on the County's population and expected increase in traffic, and questioned the projected increased tax revenue for the County. She commented that there was already affordable housing

opportunities and encouraged the Board to accept the Planning Commission's recommendation to deny the application.

Charles Adams of 5950 Hingham Drive spoke about extension of the stub roads and the resulting increase in neighborhood traffic, and asked the Board to vote against the application.

Julie Vaisvil of 9116 Shewsbury Drive talked about impact of increased traffic that would result in her neighborhood, as well as the impact on the water supply and asked the Board not to approve the application.

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

Mr. Trout stated that he still had concerns about the impact on County services and the ultimate cost of providing those services. Mr. Davis and Mr. Sparks both agreed, with Mr. Sparks adding that he considered the cash proffers of \$4,000 to be "negligible".

Mr. Evelyn moved to deny Ordinance O-16-09, as presented. The members were polled:

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

The motion carried and the application was denied.

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

IN RE: PHILBATES REZONING

Before the Board for consideration was Ordinance O-26-09 approving an application filed by George and Rebecca Philbates to rezone approximately four acres of land from *A-1, Agricultural* to *Business*, and Resolution R-67-09 approving a conditional use permit (CUP) application to operate a mini-storage facility on the property.

Planner Kelli Le Duc reported that the subject property was located across the road from the applicant's auto wrecking and towing facility and the zoning classifications of adjacent parcels were *Industrial, A-1, and Economic Opportunity*. She indicated that when the Comprehensive Plan was developed, it was decided that this area of New Kent Highway should be protected as it was designated a Virginia Scenic Byway and it was part of a 600-foot wide buffer on the Future Land Use Map designated to protect the scenic view shed in that area. She explained that *Business* zoning permitted a wide range of commercial, retail and office activities including mini-storage warehousing (with a CUP) which were not consistent with the *Rural Lands* designation. She added that the applicant had proffered that the site would be used for mini-storage use only and there would be no outside storage of boats, recreational vehicles, or motor vehicles.

She indicated that the applicants had also proffered that the front wall would be faced with stone in open areas, the entrance would be constructed at a 90° angle so that the buildings and contents would not be visible from the road, and the site would be developed in stages as close to the concept plan as possible.

Ms. Le Duc advised that if the application were approved, the applicants would have to comply with all requirements for landscaping, land disturbance, and setbacks, and the property layout would need to be carefully addressed in order to mitigate negative impacts on the surrounding property owners and neighborhood. She distributed a new drawing that was recently submitted by the applicants.

She reported that among the criteria to be considered in any rezoning was whether the existing zoning was "unreasonable" based upon the Comprehensive Plan. She noted that the applicants had represented that the land was unsuitable for other uses but staff found that the applicants created that condition by agreeing to allow the property to be filled by VDOT. She indicated that the proposed zoning classification and use were not consistent with the *Rural Lands* designation in the Comprehensive Plan and, based upon all of those reasons, staff had recommended that the applications be denied.

Ms. Le Duc reported that the Planning Commission voted 9:1:1 to forward both applications with a recommendation for denial.

She advised that should the Board wish to approve the applications, staff had drafted a list of recommended conditions.

Applicant George Philbates, Jr. explained to the Board that the subject property had been in his family for 71 years and during that time had only been timbered once because of its poor red clay soil. He indicated that the parcel was not suitable for farming, would not perk, and was not suitable for anything except a mini-storage facility. He added that he paid only about \$33 per year in real estate taxes whereas a mini-storage facility would generate between \$4,000 and \$5,000 in annual taxes and would not require any County services. He surmised that those who developed the Comprehensive Plan did not know about the poor quality of the soil. He noted that only two neighbors had spoken against the applications, and both of them were operating businesses out of their homes. He indicated that he would like to have a use on the property that would be of some benefit to the County and he felt a mini-storage facility would look nicer than what was there and would not detract from the area.

Mr. Burrell noted that the property had been filled with concrete and asphalt from the recent Eltham Bridge project, and asked if the applicants had any compaction tests performed. Mr. Philbates admitted that he had not but commented that the ground was very compact. He also confirmed that he had sufficient space for any required stormwater retention feature.

Mr. Davis commented on how old Route 33 ran behind the subject property and asked about the scenic buffer. Ms. Le Duc explained that when the Comprehensive Plan was last updated, it was decided that because that part of Route 249 had been designated as a Virginia Scenic Byway, the property should be a part of the 600-foot *Rural Lands* buffer that extended along Route 249 from Route 155 to Eltham, but admitted that was not a part of any ordinance.

The Board members complimented Mr. Philbates on the recently-submitted drawing. Mr. Philbates confirmed that it was his intention to construct the facility as close to the drawing as possible; that none of the buildings would be more than one-story high; and that he had proffered away any outside storage because of the concerns raised by the neighbors.

On more than one occasion, Mr. Philbates confirmed that he had read and understood the draft conditions recommended by staff and was prepared to abide by them.

Mr. Davis alluded to past violations at the applicant's auto wrecking yard and warned that there should be no instances where vehicles from the wrecking yard ended up at the mini-storage. Mr. Philbates talked about the improvements he had been trying to make at his wrecking yard and pointed out that he had proffered away any outside storage of vehicles.

There was discussion regarding security and fencing. Mr. Philbates explained that the back wall of the units would serve as a portion of the fencing and those areas not screened by shrubbery would be faced with stone on that portion facing New Kent Highway. He indicated that it was his intention to put up the fencing during the initial phase of the project, but that all development would depend upon his health. Board members expressed their concern about appropriate screening from the neighbors and that the fencing be one of the first things constructed. Ms. Le Duc reported that the conditions required that the perimeter of the facility be fenced and that the Board could add language requiring a time frame in which that had to be completed; however, County ordinances already required that the landscaping be in place. Mr. Evelyn warned that if the soil was as poor as reported, sustainable landscaping might be a challenge.

County Attorney Jeff Summers suggested some language to be added to the Resolution to address the fence issue, similar to language used in another mini-storage CUP recently approved.

Mr. Evelyn asked what would happen if the CUP expired in five years and the applicant had not built the mini-storage facility. Staff confirmed that in that case the zoning would remain *Business* but that the proffer limiting the use to mini-storage would remain until another rezoning or CUP application was filed.

Mr. Davis asked about paving requirements. It was noted that the facility would have to be hard-surfaced.

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

Mr. Sparks voiced his concerns about landscaping and fencing. Staff reported that County ordinances required a 35-foot minimum landscaped buffer between parcels zoned *Business* and *A-1*, and that the buffer would have to be in place before any certificate of occupancy was issued.

Mr. Trout stated that he still had concerns about the application because it was contrary to the Comprehensive Plan.

Mr. Davis stated that the proposed use would be a definite improvement over the parcel's current condition and, if properly screened, would not detract from the area. He indicated that there was little else that could be done with the property and "sometimes you had to use common sense". He added that the use would bring in more tax revenue and would not require any County services.

Mr. Burrell indicated that his opinion of the application had changed since the Planning Commission's public hearing and the recently-submitted drawing gave him a clearer picture of what was intended, especially since outside storage had been proffered away.

Mr. Sparks stated that he felt that the Board respected the Comprehensive Plan but reminded that it was a "plan" and there were always exceptions, and he felt this was an

exception that would do more good than harm, would help that area, and he was okay with it.

Mr. Evelyn commented that the application had "come a long way" since it was first submitted.

Mr. Sparks moved to adopt Ordinance O-26-09, as presented. The members were polled:

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

The motion carried.

Mr. Sparks moved to adopt Resolution R-67-09 with the following changes: addition of the following condition: *n. Temporary chain link fencing may be used along a temporary perimeter during the phased development of the mini-storage facility. This temporary chain link fence shall not be present for longer than 730 days from the issuance of a certificate of occupancy at the conclusion of one phase or the issuance of a building permit at the start of the next phase, whichever is later. The chain link fencing shall be no less than six feet (6') and no greater than ten feet (10') in height as measured from the surface of the ground. Any fence so constructed shall run perpendicular to Route 249 (New Kent Highway). A performance agreement and surety shall be submitted to and approved by the Department of Community Development before said fencing is installed. The County Attorney shall approve the form of the surety. The land owner shall properly maintain all fencing and shall keep it free of trash and debris.* The members were polled:

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

The motion carried.

IN RE: EQUALIZATION BOARD 2010

Before the Board for consideration was Ordinance O-25-09 establishing the Board of Equalization.

County Attorney Jeff Summers advised that as a part of the County's switch to biennial general re-assessments, the proposed ordinance would create a temporary Board of Equalization whose term would expire at the end of the calendar year, and also provided a process for the Board's creation, appointment, hearings, reports, and shutting down within a determined time frame. He confirmed that Board of Equalization members would remain appointed through the entire calendar year to allow for any possible extensions. He indicated that no changes had been made to the proposed ordinance since it was reviewed at the last work session.

Mr. Summers reported that the Board of Equalization would be appointed in January, trained in February, and would begin operations in March, and then work 90 days, and

assuming there was no extension, would cease operations by the end of June. He added that should the Circuit Court be petitioned to extend the deadline for completing the re-assessment, then the deadlines for the Board of Equalization would be extended day-for-day. He clarified that Court extensions beyond March 30 were not permitted so the Board of Equalization would be completed its work no later than the end of September, even though they would remain appointed until end of 2010.

There was discussion regarding staffing and budgeting. Mr. Whitley suggested that the County move forward through normal County processes to hire and train a temporary part-time staff person.

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

Mr. Sparks moved to adopt Ordinance O-25-09, as presented. 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.

IN RE: PARKING IN A FIRE LANE

Before the Board for consideration was Ordinance O-25-09 re-establishing "parking in a fire lane" as an offense in the New Kent County Code.

County Attorney Jeff Summers reported that at the time changes were made to the Fire-Rescue ordinance that combined Chapters 34 and 30 into Chapter 30 and adoption of the International Fire Code (IFC), one portion of Chapter 34 related to parking in a fire lane was overlooked. He indicated that one of the unforeseen consequences was that the IFC treated parking in a fire lane as a Class One Misdemeanor which could result in jail time and a \$2,500 fine, meaning that everyone charged with that offense needed an attorney and required a full Court hearing. He reported since that consequence was discovered, local law enforcement had refrained from enforcing the statute.

He advised that the proposed ordinance would re-establish parking in a fire lane as a traffic offense which could be pre-paid at a reduced rate and would give the Sheriff's Office a chance to enforce a recurring problem as a traffic offense. He indicated that putting the offense back into Chapter 30 as a traffic violation was the "right thing to do"; however, the authority to charge an offender with a Class One Misdemeanor would remain in the event that there was an incident where it was appropriate.

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

Mr. Evelyn moved to adopt Ordinance O-22-09, as presented. The members were polled:

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: ELECTED OFFICIALS' REPORTS

Mr. Trout announced details of an upcoming informational meeting on the Walkers Dam repair project, an Entrepreneur Workshop in January being hosted by the Cooperative Extension Service, and the continuing sale of rain barrels by a local Scout group.

Mr. Burrell extended holiday wishes to everyone. He then moved to appoint Lisa Guthrie as New Kent's representative to the MPO Citizen Transportation Advisory Committee to serve a four-year term beginning January 1, 2010 and ending December 31, 2013.

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.

Mr. Sparks extended his wishes for a safe and happy holiday season.

Mr. Evelyn expressed similar sentiments and encouraged everyone to take time to remember the meaning of the season.

Mr. Davis announced that the Board had been requested, as a way of honoring the New Kent citizens who gave their lives in service of their country during past wars so that their sacrifices would not be forgotten, to read a list of names as inscribed on the Shrine of Memory sponsored by the Virginia War Memorial Educational Foundation, as follows:

World War II

*Everette A. Burnette
Harry Gaillard
William W. Jones, Jr.
Joseph Masnari
Harry M. Sutherlin*

*Major Christian
Arthur B. Johnson
Marr Cornelius
Anderson L. Powers
Milton T. Ward*

Vietnam

Carl Reed Gibson

William Martin Valentine

IN RE: STAFF REPORTS

Interim County Administrator wished everyone a Happy New Year.

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 January 11, 2010, in the Boardroom of the County Administration Building, New Kent, Virginia. He confirmed that there would be no December work session but that the Board might call a special meeting for a closed session regarding candidates for the County Administration position.

IN RE: ADJOURNMENT

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

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

The motion carried.

The meeting was adjourned at 9:31 p.m.