

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 13th DAY OF NOVEMBER 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

Reverend William Goodwin of Lebanon Baptist Church gave the invocation and the Macon family 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. October 8, 2013 special joint meeting minutes
 - b. October 15, 2013 business meeting minutes
2. Miscellaneous
 - a. Resolution R-23-13 requesting acceptance of streets in Patriots Landing – Parcel E, Section 2, into the state system for maintenance
 - b. Policy for the Use of Cameras and Recording Devices During Meetings
 - c. Resolution R-24-13 recognizing Norma Holmes on the occasion of her 40th service anniversary with the New Kent Treasurer's Office
 - d. Disability Program proposal offered by VICORP with Standard Insurance Company
 - e. Road name addition: Baker Woods Place
3. Refunds
 - a. \$70.13 to Simmons Electrical Service for canceled permit
 - b. \$61.88 to Simmons Electrical Service for canceled permit
 - c. \$5,429.43 to Betty Johnson & Lynne Fischer for erroneous assessment resulting from 2012 AFD correction
 - d. \$1,390.05 to Wang Vera Lucia De Lima for erroneous assessment
4. FY14 Carry Forward Appropriations
 - a. Correcting the carry-forward amount for radio equipment in the Computer Replacement Fund for FY13 Open PO for Sheriff & Fire, \$6,934.36
 - b. FY13 end of fiscal year balance for the School Operating Fund (Fund #205), \$395,501.32
 - c. 2008 SAFER Retention Grant funds, \$103,359.37

\$ 505,795.05 Total

\$(395,501.32)	From General Fund (1) fund balance
\$(103,359.37)	From Grant Fund (6) fund balance
\$ (6,934.36)	From Computer Fund (800) fund balance

5. Supplemental Appropriations
 - a. Program income received for FY14 from CDBG Plum Point grant, \$587.08
 - b. Public education donations (Fire-Rescue), \$115.00
 - c. Miscellaneous recovered costs, \$4,326.28
 - d. Donations for the animal shelter, \$979.50
 - e. P&R sponsorship facility improvement funds, \$300.00
 - f. Insurance recovery funds (Fire-Rescue), \$1,136.20
 - g. Funds received from vending machine sales for employee holiday parties, \$562.84
 - h. Funds received from Davenport & Company for New Kent University, \$1,400.00
 - i. LEMPG grant funds (2013 EMPG – Emergency Management Performance Grant), \$27,932.00
 - j. Grant funds for Selective Enforcement – Alcohol (Equipment), Grant 154AL-2014-54277-5525-20.607, \$29,700.00
 - k. Grant funds for Selective Enforcement – Alcohol, Grant 154AL-2014-5496-5344-20.607, \$25,572.63
 - l. Grant funds for Selective Enforcement – Speed Grant SC-2014-54093-5341-20.600, \$11,303.25
 - m. Grant funds for Selective Enforcement – Occupant Protection Grant M2HVE-2014-54084-5332-20.616, \$5,651.63
 - n. Virginia Fire Programs fund, \$46,597.00

\$ (156,163.41)	Total
\$ 156,163.41	Total In/Out

6. Interdepartmental Budget Transfers
 - a. *Schools:* \$59,086.77 from NKES Mobile Classroom to NKMS Art Wing Renovation
 - b. *Schools:* \$187.15 between Software and Materials/Supplies line items
 - c. *Schools:* \$13,700 from Professional Services – Speech Services to Payment to Private Contractor Transportation
 - d. *Schools:* \$2,450 from Middle School Renovation to Mobile Classroom NKES

7. Treasurer’s Report: Cash as of September, 2013: \$24,819,929.03

Mr. Davis explained that the item on the Consent Agenda regarding the use of cameras or other filming devices during meetings was intended to reduce distractions but not to restrict the right to film.

It was noted that also on the Consent Agenda was a resolution recognizing Treasurer Norma Holmes for her forty years of service to the County.

Mr. Burrell moved to approve the Consent Agenda as presented and that it be made a part of the record. The members were polled:

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

The motion carried.

IN RE: 2013 NEW KENT UNIVERSITY GRADUATION

County Administrator Rodney Hathaway and Board members awarded certificates to the 2013 New Kent University graduates, identified as Carlton Anderson, Joan Daugherty, Ella Gainer, Walter Gainer, Jane Harding, Edwina Macklin, Ellen Madill, John Manion, Karen Martell, Barbara Martin, Linda Martin, Martha Martin, Barbara Moss, and John Phelps.

Board members congratulated the graduates on their participation. Class members spoke about the merits of the program, commended staff and the presenters, and urged the Board to continue its support of the program.

IN RE: VALOR AWARD

Sheriff F. W. Howard, Jr., Fire Chief Rick Opett, as well as members of their staff and Trooper Stephanie McFall of the Virginia State Police joined the Board to recognize Al and Shirley Macon, and their sons Clifton and Joshua, for their unselfish acts of bravery in the rescue of a mother and her two young children from a burning vehicle on August 26, 2013, along Old River Road.

Chairman Davis read aloud and then presented previously-adopted Resolution R-26-13 to the Macon family. The Macon family members were then each presented with individual framed awards from New Kent Sheriff's Office and New Kent Fire-Rescue, and comments were made about how this was another example of New Kent residents helping each other.

The rescued victim was also in attendance and expressed her gratitude to the Macon family.

IN RE: RESIDENCY ADMINISTRATOR REPORT

Mike Cade, Residency Administrator with the Virginia Department of Transportation (VDOT), reported on maintenance activities and construction projects on New Kent roads from the past month as well as those planned for the next thirty days.

He confirmed that the project on South Waterside Drive at Fanny's Creek had been completed as well as the Five Lakes dam repair. He advised that a speed study on Route 249 had been completed and had not included a recommendation to change the posted speed. He also advised that the repairs of the Route 618 Bridge at the Charles City County line were underway.

Several Board members thanked Mr. Cade and his staff for recent work performed in their district.

Mr. Burrell reported a dead tree that was a safety hazard to motorists.

Mr. Tiller reported a washout around a drainage structure on Holly Woods Court as well as some pavement deterioration on North Henpeck.

Mr. Evelyn asked about the possibility of accelerating the intersection improvements at New Kent Highway and Tunstall/Airport Roads in light of a recent increase in motor vehicle collisions at that intersection. Mr. Cade explained that the main problem with accelerating that project was coordinating the relocation of the power and telephone lines; however, he indicated that he would contact the department handling the work regarding that possibility. Mr. Hathaway confirmed that the project had a construction date of July 14; however, he

reported that the County had recently been advised that additional funding was needed to move the project forward, and those funds had been requested through the Metropolitan Planning Organization, who anticipated that the request for additional funding would be granted.

Mr. Cade advised that VDOT had met with the New Kent Sheriff's Office regarding some interim steps that could be taken to improve safety at the intersection, which included the enlargement of some of the road signage. He agreed that there were too many illegally-placed signs in the right-of-way that might be impacting sight distance or otherwise distracting to drivers and even though his staff continuously removed them, the signs "reappeared overnight". He added that the Sheriff's Office could take action against anyone they saw putting a sign in the right-of-way. Mr. Burrell asked about rumble strips and Mr. Cade indicated he would check with their traffic engineering staff to determine if that was something that could work.

Mr. Davis commented about steep drop-offs and lack of shoulders along Old River Road. Mr. Cade explained that there was little if no right-of-way to expand that road, and any expansion would be a construction project, not a maintenance issue, and would have to be funded through the Secondary Six Year Plan or some other source.

Mr. Davis reported dead pine trees that threatened a dam on Holly Fork Road. Mr. Cade advised that if the trees were on the dam, they were the responsibility of the dam owner, and that VDOT was only responsible for the pavement over the dam.

Mr. Cade reported that the results from the stoplight study in Eltham had not yet been completed.

IN RE: CITIZENS COMMENT PERIOD

Chairman Davis opened the Citizens Comment Period.

Doug Dill, President of The Colonies neighborhood association, expressed his concern that the County was not doing its part to properly staff Fire Station Four in Lanexa, and asked the Board to do what was necessary to get that done.

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

Several Board members responded to Mr. Dill's comments. Mr. Evelyn advised that the Board had looked into increasing the staffing coverage at Station Four, and Mr. Hathaway confirmed that offers had recently been made to four new fire-rescue candidates and the County was awaiting word from a grant application for funding of six more positions, which would bring in a total of ten new firefighters and improve coverage in Lanexa. Mr. Stiers advised that it was his understanding from Fire Chief Opett that beginning in November 2013, Station Four would be staffed from 7 a.m. until 7 p.m. Monday through Friday. Mr. Davis spoke about the need for more volunteers to help provide coverage in that area, adding that it was his understanding that New Kent currently had 30 new volunteers in training.

IN RE: HISTORIC SCHOOL RENOVATION PROJECT

Mr. Hathaway reviewed that the Board had requested that this item be included on the agenda for a discussion on how to move forward. He indicated that the Board's options for the project included an unsolicited Public-Private Education Act (PPEA) proposal (if one were

to be received), a solicited PPEA, or design bid. It was noted that the first phase of the project was underway through an unsolicited PPEA and was on time and on budget.

There was discussion regarding the subcommittee that had been previously established by the Board, to which Mr. Evelyn and Mr. Tiller had been appointed. Other members of that committee were identified as the County Administrator and the County Attorney, with participation as needed by staff from General Services, Building Development and Community Development. Mr. Hathaway advised that as soon as the School Board had made its appointments, a meeting of the subcommittee would be scheduled. There was consensus that the subcommittee would be charged with considering the process options and reporting back to the Board, but it would not decide on the process.

Chairman Davis asked that the subcommittee meet before the end of November.

The Board recessed its meeting until 7:00 p.m., at which time the meeting was resumed for public hearings.

IN RE: JACKASS FLATS LLC CONDITIONAL USE PERMIT APPLICATION FOR MINI-STORAGE FACILITY

Before the Board for consideration and public hearing was Resolution R-25-13 approving a conditional use permit (CUP) application (CUP-03-13) filed by Jackass Flats LLC (Monte Brown) to develop a mini-storage facility on property identified as Tax Map Parcel 44-68 at the intersection of Pocahontas Trail (Route 60) and Rockahock Road.

Planning Manager Kelli Le Duc reviewed that the proposed use would entail enclosed self-storage units and outdoor storage for boats and recreational vehicles. She indicated that Phase 1 would include 40 self-storage units and outdoor dry storage, and Phase 2 would add 80 more self-storage units, for a total of 120. She advised that the facility would be encased by secure fencing with a keypad entry gate. She pointed out that the 4.1 acre site was zoned *Business*, a designation that did allow a mini-storage warehouse with a CUP. She noted that the County's zoning ordinance provided eight performance standards for mini-storage facilities and warehouses, which would be enforced during the site planning process. She indicated that the Comprehensive Plan's Future Land Use Map designated the site as *Rural Cross Roads*, a designation characterized by a tight cluster of small commercial establishments, such as general stores, banks, restaurants, gas stations, and convenience stores, which typically occurred at intersections and served a local population. She advised that access to the facility was proposed to be from Route 60, but the exact location would be determined with VDOT during the site planning process.

She reported that the proposed use would contribute to the County's tax base through real estate and business taxes, without increasing the cost for school infrastructure and other residentially-related County services.

She confirmed that the application was reviewed by all County-reviewing agencies and any site-specific comments would be addressed during site planning process. She advised that staff had reviewed the application in the same manner as other zoning change applications and recommended approval with the 15 proposed conditions set forth in the resolution. She added that those conditions would assist in addressing, protecting and promoting the health, safety and general welfare of New Kent county citizens.

She reported that the Planning Commission had considered the application at its October 21, 2013 meeting and voted 9:0:1 to forward a recommendation for approval, subject to the proposed conditions.

The applicant, Monte Brown, advised that the timetable for his plans would depend on the findings of a structural engineer regarding whether the existing structures could be used or would need to be demolished. He explained that Phase 1 would entail the renovation (or demolition) of those structures and Phase 2 would take place on the currently-vacant land. He confirmed that he intended to use the existing septic systems and well that were on the property, and that it was his intent to use the main building as the office.

Several Board members commented about the current condition of the property and how anything would be an improvement, especially since this was a well-traveled route into busy campgrounds in the area.

Mr. Stiers asked if Mr. Brown had considered changing the name of the property. Mr. Brown advised that Jackass Flats had always been the name of the property but that would not be the name of the business, although he had not yet chosen a name.

There was discussion regarding access. Mr. Brown clarified that the current driveway was not his intended access to the new facility. He explained that the location of his access gate would determine whether or not a turn lane or acceleration lane would be needed on Route 60. Ms. Le Duc advised that all of those issues would be worked out during the site planning process.

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

Mr. Tiller moved to adopt Resolution R-25-13, as presented. The members were polled:

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

The motion carried.

IN RE: STORMWATER ORDINANCE

Before the Board for consideration and public hearing was Ordinance O-12-13 amending, restating and readopting Stormwater Management to the New Kent County Code of Ordinances.

County Attorney Michelle Gowdy reported that the County had recently learned that the Department of Environmental Quality (DEQ) had made more changes to the regulations and was likely to make even more changes after a meeting in December; therefore, she felt it would be premature for the Board to vote on changes to the County's ordinance at this meeting since it would likely need to be revised and sent back to the Planning Commission for review. She advised that the new deadline for localities to submit their proposed ordinance was January 15, 2014, and May 15, 2014 was the new deadline for submission of an adopted ordinance.

John McCutcheon, Stormwater Manager of DEQ's Piedmont Region, explained that his role was to work with the localities that were developing stormwater management plans that were required by State law to be adopted by July 1, 2014. He admitted that there was no plan for any penalties and fines, and emphasized that their focus was to provide assistance to the localities to develop plans that were "workable for everyone". He reported that the recent changes were "more clarification than changes" and were meant to remove ambiguity and make the regulations easier to understand.

Board members expressed their frustration that the State was requiring the localities to adopt ordinances when the State itself hadn't decided on what needed to be in the regulations.

Mr. Evelyn remarked that many of these regulations had been "on the books" since the Clean Water Act was adopted in 1996, and asked how often State inspectors had been out to inspect the various sites on which permits had been issued.

Mr. McCutcheon explained that stormwater management used to be under the Department of Conservation Resources and had been moved to DEQ last summer. He indicated that since that time, his department had been issuing permits, performing inspections and working with developers and local governments. He advised that they currently had 20 to 25 inspectors working statewide, but admitted that they had not been able to "keep up". Board members commented about how the State was now asking the localities to take over the program without any funding, and how many would have to raise taxes to comply.

Mr. McCutcheon reminded that New Kent already had a stormwater program in place and what was being required was "an extension of that".

Mr. Evelyn pointed out several concerns he had with the proposed changes, especially the word "assumption" that was used in the regulations. Mr. McCutcheon advised that the DEQ would be issuing "guidance" for those "assumptions". He indicated that under the Virginia Stormwater Management Program (VSMP), any project that discharged to a body of water with a Total Maximum Daily Load (TMDL) would have to have more frequent inspections and stricter discharge requirements with the new regulations.

Mr. Stiers asked if the State understood that "the people don't want this", and remarked that this was an issue of the government trying to gain more control and an "erosion of personal property rights".

Board members asked several times what would happen if New Kent or other localities refused to adopt the new regulations, to which Mr. McCutcheon responded that his department was only focused on implementing the regulations and not on any fines or penalties for non-compliance.

Mr. Burrell remarked that he could understand both sides of the issue and recognized a need for balance, but admitted that he felt that government regulations were necessary to reduce pollution, and spoke about how the Chesapeake Bay had improved in recent years as a result of government intervention, and as well as about the improvements in air quality as a result of actions by the Environmental Protection Agency (EPA). He agreed that government regulations could be overbearing but stated that he would rather have that than have the environment polluted. He remarked that often "people did the cheapest thing" and he felt that some regulations were needed, but that the localities should also be given some funding to comply.

Mr. Davis asked how many localities in the Piedmont Region had adopted the new stormwater management program. Mr. McCutcheon advised that although all 23 localities had erosion and sediment control programs and were working on the new program, none had actually adopted a program. He indicated that it was an ongoing process and all were working under the deadline of the summer of 2014.

There was discussion as to whether the recent changes were significant enough to send the ordinance amendments back to the Planning Commission. Ms. Gowdy advised that some of the major changes dealt with clarification of the limits and she felt it was best that it be sent back to the Planning Commission. Mr. McCutcheon surmised that the Planning Commission would want to look at them.

There was additional discussion regarding the consequences of not adopting the program. Mr. McCutcheon advised that the Stormwater Management law passed by the General Assembly would still be in place, and would require that any project that involved land disturbance of land over one acre or 2,500 square feet in the Chesapeake Bay management area, to have a stormwater pollution prevention plan and a stormwater management plan that was reviewed and approved by a VSMP authority. He pointed out that if New Kent did not adopt a program, then it would not be able to review and approve projects in New Kent, and those projects would have to be reviewed and approved by DEQ. He added that any developer working in New Kent without the required plan would be in violation of State law and the Clean Water Act. He predicted that there would be a problem for commerce in the County if New Kent was not involved in the review and approval of its own developments.

Mr. Evelyn advised that stormwater management was a "big topic" at the recent Virginia Association of Counties conference and there was consensus that DEQ was asking the localities to adopt ordinances before the regulations were ready. He asked that the State delay the process for a year to give DEQ a chance to "get it straight". He indicated that he wanted his constituents to understand how these regulations would affect them and more time to educate developers.

Mr. Stiers suggested that governing bodies across the state should join together to push back against these mandates.

Mr. Evelyn moved to send the matter back to the Planning Commission. The members were polled:

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

The motion carried.

Chairman Davis remarked that even though the Board would not be taking action on the amendments at this meeting, a public hearing had been advertised and anyone who wished to speak would have that opportunity. Mr. Burrell reminded potential speakers that since more changes would be made, it might be best to wait and speak to those changes.

Chairman Davis opened the Public Hearing.

Doug Dill commented that the Board members had "hit on everything I wanted to say". He spoke about how the regulations would affect every property owner who wanted to do any improvements, about the costs of permits and new staff, and about how the requirements would "reduce the rights of residents" to do things with their own property and would increase "every step of bureaucracy". He thanked the Board "for stepping up to the plate and saying no".

Chester Alvis expressed his appreciation for the Board's position, and commented that every regulation was "another burden on someone starting a business". He spoke of his concern about the power that the person "at the County level" would have over these plans, and he hoped there would be some kind of redress or appeal process. He advised that he would support the Board in "fighting this thing", as he felt that the regulations would hamper development of small business in New Kent.

Bart Leader spoke on behalf of the New Kent Chamber of Commerce. He commended and thanked the Board for its position and advised that the Chamber would continue to support the Board in this matter. He indicated that he agreed with most of the comments of the Board members, except those from Mr. Burrell. He added that he agreed with Mr. Alvis that should the County be forced "to go down this road", there should be some kind of oversight or recourse for decisions made by the administrator of the program at the local level.

William E. Cunningham spoke about how much cost and time had been added to development process over the years as a result of government regulations, and thanked the Board for the stand that it had taken.

John Phelps advised that in light of the Board's actions, he would not be making his planned remarks. He commented that the "first role of government was to protect the citizens, and not to run or manage their lives". He suggested that if the changes were enforced, then the Board should adopt an ordinance that was tailored to New Kent rather than the "boiler plate" ordinance under consideration. He talked about the need for exemptions for things like home gardens, and remarked that the proposed program would vest "huge power in an unelected official". He agreed with Mr. Evelyn's concerns about the use of "assumption", and suggested that some of the regulations could be constitutionally challenged. He expressed his appreciation for the Board's actions "to protect taxpayers and citizens".

James Poole advised that he agreed with the comments made by the previous speakers, but did point out some problems he had with some of the language in the proposed ordinance. He commented that the proposed amendments would "open the door to future regulations" and spoke about how all of this had begun as a "backdoor thing" with the acceptance of a grant in January 2012 for GIS mapping of the County's BMP structures, and by the County including the stormwater management positions in its latest budget. He suggested that the Board had been manipulated by staff by setting up the infrastructure to "slap us with this".

Steve Dubosky expressed his concerns with the ordinance, speaking about "dirt Nazis", constitutional violations, and illegal search and seizure. He shared some of the problems he had when he was building his home and what had resulted to his property because of requirements mandated by the State and EPA. He advised that he had worked for the Federal government for forty years and warned the Board not to "let them in the back door".

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

Mr. Davis asked Mr. McCutcheon to share everyone's comments and concerns with the State.

IN RE: ELECTED OFFICIALS' REPORTS

Mr. Tiller made comments about the recent VACo conference.

Mr. Evelyn spoke about how the earlier recognition of the Macon family was another example of how New Kent "came together". He remarked on the recent tragic death of a high school football player and how the community gathered around the family and students, and he offered the condolences of the Board.

Mr. Stiers reported that he had accompanied the Fire Chief to a meeting at the Insurance Services Office (ISO) meeting in Richmond regarding insurance ratings in the County. He indicated that there had been no update of New Kent's rating since 1998 and that an evaluation had been requested for 2014 that would hopefully result in a reduction in the cost of homeowners insurance premiums. He also announced details of the annual Thanksgiving dinner at the Providence Forge Recreation Center.

Mr. Davis pointed out that the Parks and Recreation Guide had a listing of adult education classes that would start in January in collaboration with the Bridging Communities Technical Center.

IN RE: STAFF REPORTS

There were none.

IN RE: APPOINTMENTS

There were none.

IN RE: MEETING SCHEDULE

The Chairman announced that the next business meeting of the Board of Supervisors would be held at 6:00 p.m. on December 9, 2013, and the next work session at 9:00 a.m. on November 20, 2013, both in the Boardroom of the County Administration Building. He further announced that the Board would hold a Retreat on November 22, 2013, at 10:00 a.m. at the New Kent Forestry and Conference Center in Providence Forge.

IN RE: ADJOURNMENT

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

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

The motion carried. The meeting was adjourned at 8:21 p.m.