

THE NEW KENT COUNTY BOARD OF SUPERVISORS JOINED THE PLANNING COMMISSION WHICH WAS ALREADY IN SESSION, FOR A JOINT PUBLIC HEARING ON THE 16<sup>TH</sup> DAY OF JANUARY IN THE YEAR TWO THOUSAND SEVEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING AT 7:00 P.M.

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IN RE: ROLL CALL

Mark E. Hill	Present
David M. Sparks	Present
James H. Burrell	Present
Stran L. Trout	Present
W. R. Davis, Jr.	Present

Chairman Trout called the Board of Supervisors' meeting to order and yielded chairmanship of the meeting to Jack Chalmers, Chairman of the Planning Commission.

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IN RE: PROPOSED READOPTION OF PROHIBITED USES

County Attorney Jeffrey Summers indicated that after the adoption of prohibited uses in October 2006, SPF Investments, LLC had sued the County over the procedure in which the County adopted certain prohibited uses and that the ordinance under consideration had been prepared in response to SPF's claims. He stated that one of the changes included a second definition of "adult business" to include that it was prohibited to operate an adult business within three thousand (3,000) feet of "another adult business or use." He explained that this was an effort to prohibit a "red light district" or several adult businesses within close proximity to each other. Another change was to the definition of "municipal solid waste landfill." The list of definitions was stricken because it was found to be redundant. In the schedule of uses, "sanitary landfills" was also stricken. Under *Section 98-213, Uses permitted by conditional use permit only*, number 16 (Landfills or dump sites) had been stricken and all numbered items thereafter were changed accordingly. Mr. Summers said all changes addressed specific items in SPF's lawsuit.

There were no questions from either the Commissioners or the Supervisors.

Chairman Chalmers turned the meeting over to Public Hearing Chairman Sylvia Godsey, who explained the procedures for public hearings and then opened the Public Hearing.

Chris Kuhn, a resident of Quinton and owner of Virginia Recycling, said that he was "pro-industry and pro-business" and stated that all members of the Board and Commission should be as well. He asked if his business would be prohibited under the proposed ordinance.

Mr. Summers advised that since Mr. Kuhn's business already existed and because it was a recycling yard, it would be allowed.

Mr. Kuhn urged the Boards to look at industry for the future since reassessment was coming and property values could double. He commented that the Boards were not "helping the little people" in the County by approving prohibited uses.

Anne Bryant of 8400 S. Quaker Road said she strongly supported prohibited uses, stating that the County needed to look at the long-term effect of having a landfill in New Kent. She said the County should learn from the mistakes of other localities that had not been well-served by landfills.

Warren Cosby of Turkey Hill Lane referred to the advertised Notice of Public Hearing that had included in the proposed prohibitions the "manufacture, transformation, or distribution of biologically accumulative poisons." He said he was licensed to mix and/or manufacture insecticides and that the practice was already regulated by the federal government. He questioned why the Planning Department was trying to regulate something that the federal government already regulated.

Mr. Davis stated that he had previously expressed the same concerns and he clarified that what was advertised in the newspaper was not what is being considered. He questioned whether the bodies could act on the ordinance in light of the error in the Notice. Mr. Summers stated that the proposed ordinance less restrictive than what was advertised and therefore it could be considered.

It was clarified that all but "manufacturing" of biological accumulative poisons had been omitted from the ordinance under consideration, and a copy of the proposed ordinance with the correct wording was shared with Mr. Cosby.

Discussion continued concerning the definition of "manufacturing". Mr. Cosby stated that it was his belief that when one added water to a product, it was manufacturing. Mr. Summers thanked Mr. Cosby for his comments and noted that they disagreed on the definition of "manufacturing".

Mr. Cosby then attempted to speak about land being made available for affordable housing through the Farms of New Kent, at which time he was stopped by Planning Commission Chairman Chalmers for being off topic of the public hearing.

There being no one else to speak, the Public Hearing was closed and discussion followed among the Planning Commission members.

Ms. Snyder read from a written statement, indicating that she previously voted against the prohibited uses ordinance and would again vote against it because she did not feel that the County should prohibit anyone from making application.

It was confirmed that the ordinance was already in effect.

Mr. Summers clarified that the way the ordinance was written, if someone in the County wanted to create a spray for plants, they could do so.

Mr. Burrell asked about the manufacture of "meth" and how it was different from chemicals being mixed for crops. Mr. Summers indicated that the manufacturing of "meth" was illegal. He further clarified that with regard to a crop chemical, the base chemical was not being created, and the ordinance would prohibit manufacturing of the base chemical itself.

Mr. Smith moved to adopt the prohibited uses ordinance as presented. The motion was seconded by Ms. Godsey. The members were polled:

Thomas Evelyn

Nay

Patricia Townsend	Aye
Clarence Tiller	Aye
Sylvia Godsey	Aye
Charna Moss	Absent
David Smith	Aye
Brenda Snyder	Nay
Edward Pollard	Nay
Howard Gammon	Aye
Jack Chalmers	Aye
James Burrell	Abstained

The motion carried.

Chairman Trout opened the discussion up for comments from the Board of Supervisors.

Mr. Burrell read from a written statement and asked that his comment be entered into the record: *"I have been opposed to the Prohibited Land Use Ordinance since it was first mentioned. Refusing to listen to applications for any reason seems to me to be an abrogation of our responsibilities as Supervisors. We should listen, seek constituent input and then vote for what is in the best interests of the citizens of New Kent County on all matters coming before us. This statement in no way means that I support or do not support the items mentioned in this ordinance. I simply believe that in a free and democratic society everyone should be treated equally."*

Mr. Davis addressed Mr. Cosby's concerns about the mixing of pesticides and chemicals. He said he had researched this in the past and had reviewed it with the State and he emphasized that the "manufacturing" of a pesticide was the only action this ordinance addressed. He said that the ordinance should not affect Mr. Cosby and his licensing.

Mr. Davis also addressed some of Mr. Kuhn's concerns. He clarified that when a vote was first taken as to whether the County should have prohibited uses, he voted against it because he felt it was "un-American". He noted that New Kent was the only county in the State with prohibited uses.

Mr. Sparks pointed out that the County already had a prohibited uses ordinance in effect and that the Board was only voting on an amendment. He commented that staff needed to do a better job with advertising public hearings and he thanked Mr. Cosby for catching the error in the Public Notice. Mr. Sparks asked Mr. Summers if Mr. Cosby was covered under this ordinance and Mr. Summers said that it was his understanding that Mr. Cosby was just mixing and not manufacturing a new chemical. There was further discussion about the definition of "manufacturing".

Mr. Hill suggested that adding "manufacture for sale" to the ordinance might work better. Mr. Summers reiterated that Mr. Cosby was not creating a base compound – he buys something from someone else and that was not "manufacturing".

Mr. Trout commented that the intent of the definition of "manufacture" was something that created a new compound. He also noted that what was before the Board was less intense than what was advertised.

Mr. Summers again confirmed that the notice in the newspaper included terms that were more restrictive than what was being considered for adoption. Mr. Davis suggested including something in the motion that would reflect that the notice in the paper was not correct. Mr. Summers advised that would not be necessary.

Mr. Davis read aloud the proper wording in the ordinance for the record and those in attendance: *"Manufacture of biologically accumulative poisons or other poisons that are, or ever were, registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act."*

Mr. Hill asked if Mr. Kuhn's business would be affected by the ordinance. Mr. Summers stated that he did not think so because it was a recycling business.

Mr. Hill moved to adopt O-01-07 as presented. The members were polled:

Mark E. Hill	Aye
David M. Sparks	Aye
James H. Burrell	Nay
W. R. Davis, Jr.	Aye
Stran L. Trout	Aye

The motion carried.

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IN RE: ADJOURNMENT

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

Mark E. Hill	Aye
David M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye

The motion carried.

The meeting was adjourned at 7:45 p.m.

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