

A SPECIAL JOINT MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS AND THE NEW KENT COUNTY PLANNING COMMISSION WAS HELD ON THE 23RD DAY OF JUNE IN THE YEAR TWO THOUSAND FOURTEEN IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING, NEW KENT, VIRGINIA, AT 7:00 P.M.

IN RE: CALL TO ORDER and ROLL CALL

Board Chairman Evelyn called the Board of Supervisors' meeting to order.

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

Commission Chairman Jack Chalmers called the Planning Commission's meeting to order.

Roger Gregory IV	Absent
Patricia E. Townsend	Present
Katherine C. Butler	Present
Michael B. Lane, Sr.	Present
Charna Moss Gregory	Present
Joyce B. Williams	Present
Richard Kontny, Jr.	Present
Jack Chalmers	Present
Edward W. Pollard	Present
Howard Gammon	Present
C. Thomas Tiller, Jr.	Present

Mr. Chalmers determined that there was a quorum.

IN RE: VIRGINIA STORMWATER MANAGEMENT PROGRAMS

Before the Board and Planning Commission for Joint Public Hearing were Ordinance O-09-14 repealing, amending, restating, and readopting Chapter 82 "Environment" to the New Kent County Code of Ordinances, and Ordinance O-10-14 amending Chapter 94, Waterways, Article II, Chesapeake Bay Preservation Areas to the New Kent County Code Of Ordinances, to comply with the Stormwater Management Programs, Section 62.1-44.15.27 of the Code of Virginia.

Mr. Evelyn thanked the Planning Commission for participating in the joint public hearing as well as for their leadership and time spent on Planning Commission business, and then turned the meeting over to Mr. Chalmers.

County Attorney Michelle Gowdy explained that the latest version of the proposed ordinance contained some changes recently received from the Virginia Department of Environmental Quality (DEQ) that were substantial enough to require an additional public hearing. She advised that after advertising, some minor changes in cite references had been received, and the State had advised that once the changes were made and adopted, New Kent's ordinance would be in compliance with State Code. She indicated that the proposed changes to the County's Chesapeake Bay ordinance was also a recommendation from the State.

There was discussion regarding the proposed stormwater permit fees. Ms. Gowdy confirmed that 28% of all fees collected by New Kent would be paid to the State, with the County retaining the remainder to help fund the program.

Mr. Chalmers turned the meeting over to Public Hearing Chair Patty Townsend, who opened the public hearing on Ordinance O-09-14.

Douglas Schuler spoke against the ordinance changes, and made references to the banning of charity car washes in another locality because of new stormwater regulations.

James Poole spoke about numerous citation errors in the proposed ordinance, as well as the fact that the program administrator could have up to four months to issue stormwater permits, and suggested that this might be more about collecting fees than protecting the environment. Ms. Townsend asked Mr. Poole to provide a list of the errors that he referenced.

John Phelps advised that he supported Mr. Poole's comments and also made reference to errors as well as definitions for features that did not pertain to New Kent. He urged the Board to continue to review the proposal and make the necessary corrections, remarking that he did not understand why citizens had to point out these things when it was the staff's responsibility.

Sharon Phelps agreed with the comments made by previous speakers and spoke about how it was in the best interest of New Kent for the Board not to pass the ordinance.

There being no one else signed up to speak, the public hearing was closed, and the meeting was turned back over to Mr. Chalmers for Planning Commission discussion.

Commissioner Kontny commented that the County had been dealing with this issue for some time and although he had some concerns, it was his understanding that much of the language was verbatim from the State Code and not something that the County could change. Ms. Gowdy explained that there were some very specific definitions that had to be included, and although she didn't know what cites the speakers were referring to, if there were mistaken cites found, the ordinance could be amended and readopted in the future.

Commissioner Lane remarked that it was his understanding that if New Kent did not adopt the ordinance, control over the process would rest with the State. Ms. Gowdy confirmed that if the County did not have an approved and compliant ordinance in place on July 1, 2014, then the State would manage the program for New Kent and it would likely take longer for applications to be reviewed and permits issued. She advised that the Board had made a decision for New Kent to manage its own program; however, even if the State managed the County's program, New Kent would still have to have an ordinance that was compliant with state regulations.

Commissioner Pollard spoke about how he had concerns about the program all along and how it was "a lot to get our heads around", and asked if it would be more expensive for the County to manage the program itself.

Environmental Planning Manager Matt Venable explained that even if the County opted out of handling its own program, it would still have to review and process those applications for land disturbance of less than one acre, and would not be collecting any fees even though County staff would still have to meet all of the technical criteria.

There were questions regarding one of the speaker's references to charity car washes. Mr. Venable explained that was a different permit that had to do with water quality in urban localities.

There was additional discussion regarding fees and staff confirmed that the fee schedule was set by the State. Mr. Venable explained that the new fees would be higher than the current fees; however, in cluster subdivisions, for example, there would be only one permit required, rather than a separate permit for each lot, and he felt it made more sense to manage stormwater as a whole rather than by lot.

Commissioner Pollard advised that it looked like it would make more sense for New Kent to manage its own program and if staff could fix any cite errors, then the ordinance could be amended.

In order to address, protect and promote public convenience, necessity, general welfare, and good environmental practices in the County, Mrs. Moss-Gregory moved to adopt Resolution No. PC-06-14 to forward Ordinance Amendment OA-03-14(R) to the New Kent County Board of Supervisors with a favorable recommendation, including the amendments sent to New Kent County by DEQ. Planning Commission members were polled:

Roger Gregory IV	Absent
Patricia E. Townsend	Aye
Katherine C. Butler	Aye
Michael B. Lane, Sr.	Aye
Charna Moss Gregory	Aye
Joyce B. Williams	Aye
Richard Kontny, Jr.	Aye
Jack Chalmers	Aye
Edward W. Pollard	Aye
Howard Gammon	Aye
C. Thomas Tiller, Jr.	Abstain

The motion carried.

Mr. Chalmers turned the meeting back over to Mr. Evelyn for discussion by the Board.

There was additional discussion regarding fees. Mr. Venable explained that the current fee for a permit was \$200 for a single family residence, but after July 1, 2014, the fee would be based on the amount of acreage to be disturbed. He also pointed out that after July 1, 2014, no building permits could be issued until the stormwater permit had been issued. He explained that currently it took about 30 days for the State to issue these permits, but as long as the application had been filed and the fees paid, other permits could be issued, with the exception of the occupancy permit. He spoke about how this could potentially hold up developers and economic development projects. He reported that he had participated in some training the week before, that the application form had not changed, and he anticipated that the turn-around time would be one to two days if the County managed its own program. He spoke about how a Stormwater Agreement in lieu of a Plan could alleviate a lot of the issues and how commercial projects already had engineers in place for that purpose.

Mr. Stiers commented that he felt that these fees were just another tax on the citizens. He also asked if Mr. Venable would be certified as of July 1. Mr. Venable explained that he would be "provisionally certified". Mr. Stiers suggested that the Board wait until staff was

fully certified and “got the ordinance right” before it moved forward with adoption. Mr. Venable explained that DEQ staff would help out if needed, but he felt that staff had the necessary expertise.

Mr. Stiers had issue with the July 1 deadline, and spoke about the power of the Environmental Protection Agency (EPA) and how the government was trying to force people into villages, not allow them to wash their cars, and wanted to “control every drop of water”.

Mr. Evelyn asked about the impacts from both legal and economic development standpoints.

County Administrator Rodney Hathaway explained that New Kent had the option of opting out of handling permits for land disturbances of more than one acre, but would continue to be responsible for permits for land disturbance of less than an acre, which constituted the majority of applications. He indicated that if the County managed its own program, it would retain 72% of the fees and remit the remainder to the State; if it opted out of managing its own program, then all fees would go to the State. If the County failed to pass an approved ordinance by July 1, 2014, then there would be no land disturbance allowed in New Kent, effectively shutting down every project and there would be no development. He emphasized that this was not something that staff agreed with but those were the rules with which the County had to comply.

He further explained that if the State handled the program, it could take up to 105 days to issue the permit, which was a critical issue for economic development prospects and he felt that the County was better suited to expedite the permits than the State would be.

Mr. Evelyn asked about the amount of currently active land disturbance permits in New Kent. Mr. Venable reported that there were over 200 residential permits and between 45 and 50 commercial permits. He added that a majority of the permits were for land disturbance of less than an acre.

As to the legal implications, Ms. Gowdy advised that if the County did not adopt an approved ordinance, after July 1, its current ordinance would not be legal, and DEQ would be running the County’s program.

Mr. Stiers asked about changing options in the future. Ms. Gowdy advised that there would be a program where a locality could change its option, but she was not sure whether that was annually or not. She added that would still not fix New Kent’s problem with its Code and without the Board adopting the amended ordinance, it would not be in compliance.

Mr. Davis spoke about how this was similar to when New Kent was required to adopt an Erosion and Sediment Control (E&S) ordinance and the State paid the salary for one staff person for one year and then stopped, and how he was worried about how long the County would share in the fees.

Mr. Evelyn commented that it all came down to the Clean Water Act, and the fees were not going to be enough to cover the cost to run the program.

Mr. Davis agreed, predicting that the State would “come out ahead”, but that if New Kent didn’t do it the State would and New Kent would lose control over any permitting. Mr. Venable added that New Kent would have to stop all land disturbance until its ordinance was updated.

Mr. Venable advised that 72% of the previous year's permit fees totaled between \$70,000 and \$90,000.

Mr. Davis moved to adopt Ordinance O-09-14(R) repealing, amending, restating, and readopting Chapter 82 "Environment" to the New Kent County Code of Ordinances. The Board members were polled:

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

The motion carried.

Mr. Evelyn turned the meeting back over to Mr. Chalmers for the public hearing on Ordinance O-10-14.

Ms. Gowdy explained that this ordinance would make changes to Chapter 94 of the County Code regarding the Chesapeake Bay Act in order to make it compliant with the new stormwater regulations.

Mr. Chalmers turned the meeting over to Ms. Townsend who opened the public hearing.

There being no one signed up to speak, the public hearing was closed and the meeting was turned back over to Mr. Chalmers for Planning Commission discussion.

Commissioner Kontny had some questions about exemptions and agricultural operations and gardens, as well as gravel and paved surfaces. Mr. Venable advised that gardens would not have to be permitted, and explained that gravel and paved surfaces were treated the same. Mr. Kontny also asked about land disturbance necessitated by the repair or replacement of drainage pipes or culverts. Mr. Venable advised that if the work was in the VDOT right-of-way, then it would be the State's responsibility, and if it was on a private road, it would depend on the location and the amount of land to be disturbed, noting that if it was less than 2,500 square feet, no permit was necessary.

Mr. Davis asked if septic system drain fields were included. Mr. Venable advised that they were, if they were done at the same time.

In order to address, protect and promote public convenience, necessity, general welfare, and good environmental practices in the County, Mrs. Townsend moved to adopt Resolution No. PC-04-14 to forward Ordinance Amendment OA-04-14 to the New Kent County Board of Supervisors with a favorable recommendation. Planning Commission members were polled:

Roger Gregory IV	Absent
Patricia E. Townsend	Aye
Katherine C. Butler	Aye
Michael B. Lane, Sr.	Aye
Charna Moss Gregory	Aye
Joyce B. Williams	Aye
Richard Kontny, Jr.	Aye
Jack Chalmers	Aye
Edward W. Pollard	Aye

Howard Gammon
C. Thomas Tiller, Jr.

Aye
Abstain

The motion carried.

Mr. Chalmers turned the meeting back over to Mr. Evelyn for Board discussion. There was none.

Mr. Tiller moved to adopt Ordinance O-10-14 amending Chapter 94 "Waterways, Article II, Chesapeake Bay Preservation Areas" to the New Kent County Code of Ordinances. The Board members were polled:

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

The motion carried.

The Planning Commission meeting was adjourned at 8:02 p.m. on a motion made by Mr. Gammon.

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

IN RE: DMV SELECT

Before the Board for consideration was a request to authorize the County Administrator to execute a License Agent Pilot Agreement between the Department of Motor Vehicles and the office of the Commissioner of Revenue.

Ms. Gowdy explained that the Commissioner of Revenue was unavailable and had asked her to make this request on her behalf. She advised that she had reviewed the proposed Agreement that had just been received and did require execution by the County's chief administrative officer.

She reported that the DMV Select Office had opened in New Kent that morning and already several people with DMV issues had been able to be accommodated. It was noted that all vehicle-related transactions would be able to be conducted at the Commissioner's Office, as well as boat registrations for the Department of Game and Inland Fisheries.

It was clarified that this program was a one-year trial, after which time it would be reassessed to see if there was enough traffic to continue it. Board members commented that it was a great service for the citizens and should be promoted to the public.

Mr. Davis moved to authorize the County Administrator to sign the Commonwealth of Virginia Department of Motor Vehicles License Agent Pilot Agreement. The members were polled:

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

Thomas W. Evelyn Aye

The motion carried.

IN RE: MEETING SCHEDULE

Chairman Evelyn announced that the next meeting of the Board of Supervisors would be its regularly schedule work session at 9 a.m. on June 25, 2014, in the Boardroom, and its next business meeting would be held at 6 p.m. on July 14, 2014.

IN RE: ADJOURNMENT

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

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

The motion carried. The meeting was adjourned at 8:16 p.m.