

THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 28TH DAY OF NOVEMBER IN THE YEAR TWO THOUSAND SEVEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 4:00 P.M.

IN RE: ROLL CALL

Mark E. Hill	Absent (arrived at 4:06 p.m.)
David M. Sparks	Present
James H. Burrell	Present
Stran L. Trout	Present
W. R. Davis, Jr.	Present

The Chairman called the meeting to order.

IN RE: COURTHOUSE RENOVATIONS

Before the Board for consideration was a request for authority to negotiate and execute a contract for renovations of the Courthouse.

General Services Director James Tacosa explained that the Courthouse renovation project was put out for bid under the Public Private Education Act (PPEA). He indicated that of the three proposals that were received, one was "not good", one was "marginal", and one was outstanding as it had included full specifications and therefore was considered "most responsive". He advised that the base proposal from Harlan Construction, the most responsive bidder, was in the sum of \$1,343,384 not including thirteen alternate options. He conceded that the proposal was higher than the \$1,299,500 that had been budgeted, but indicated that he had reviewed the figures and they closely matched his own estimates.

It was explained that the proposal included the relocation of the Voter Registrar's Office as well as a second floor courtroom, neither of which had been considered when the budget for the project was developed.

He indicated that during the detailed phase, questionnaires were sent to the two bidders under consideration, and only Harlan Construction gave a good response, answering every question.

There was a discussion regarding the relocation of the office of the Voter Registrar. Mr. Budesky indicated that funds were budgeted last year to renovate the Historic Courthouse and that relocating the Registrar would free up space. It was confirmed that the Clerk's Office for the Juvenile & Domestic Relations Court (JDR) and Court Services would be located on the second floor along with the Commonwealth's Attorney.

Mr. Tacosa advised that the total projected cost of the project in the amount of \$2,085,571 (which included \$45,000 reserves for utilities and a 7% contingency) could be mostly met by the blending of funds from several budgets, including \$380,000 that was in reserve for a Courthouse generator. To meet the total budget, staff indicated that additional funds would need to be allocated in next year's CIP.

Mr. Tacosa explained that the main electrical panel in the Courthouse would be upgraded to 800 amps and that the generator to be installed would provide 100% back up to the building.

Mr. Tacosa further explained that when the project was originally developed, there were no plans to include a courtroom but only a hearing room for the JDR Court. He indicated that the need for a courtroom became apparent and as a result of a visit to York County's courtroom, security packages (\$130,000) and bullet proof benches were added, increasing the base cost of the project by \$225,000. He indicated that the security system would include duress alarms and cameras that would integrate with the system on the first floor and tie in with the new Sheriff's Annex. He advised that deputies would be able to monitor the second floor, first floor and the Annex from the security station at the entrance to the Courthouse as well as from the Sheriff's Annex.

Mr. Davis inquired if the proposed second floor courtroom would meet the needs of the JDR Court. Sheriff Howard said that it would, with the exception of the days when juvenile drivers' licenses were distributed, which occurred every two months. He reported that the JDR Court met on the first and third Wednesday and the fourth Monday of each month, and that it currently had to share a courtroom with the General District Court. He advised that the second floor courtroom would also be used for hearings, and he felt that it would be a big mistake not to include a courtroom at this time as it would cost much more to add one at a future date.

There were inquiries about access. Mr. Tacosa shared proposed design drawings of both floors of the Courthouse. He explained that a rear exit was required in order to meet the Code and that the opening already existed. He pointed out stairway and elevator placement, and explained about the special security and software controls that would be installed for the Judge's elevator, as well as the security for all of the offices located in the building. He indicated that they were still working on maximizing the available space but that there was not a lot of choice as to where the courtroom would be located.

It was explained that the magistrates would have offices on the first floor, and that the juvenile holding cell would also be on the first floor, with convenient access to the elevator.

Mr. Budesky advised that staff was requesting authority to begin negotiations and enter a contract for an amount not to exceed \$1,907,076. It was explained that with the funds budgeted for the project (\$1,299,500) as well as the funds budgeted for renovation of the jail cells (\$205,000), generator (\$380,000) and HVAC (\$45,000), only the difference of \$156,071 would have to be budgeted for in the next budget cycle, which would include a 7% contingency of \$133,495.

The Board discussed the project. Mr. Davis commented that the JDR Courts were growing faster than the others, and indicated that this might delay having to build another courthouse in five years.

Mr. Burrell inquired if moving costs had been considered. Mr. Tacosa advised that he had not factored those in, but pointed out that what was driving the cost of the project was the fact that the Courtrooms were in use on many days during the week which would result in construction crews having to work longer hours on the days they could work, as well as on nights and weekends, all at premium time. He indicated that staff would continue to constantly evaluate and would do everything possible to control costs but that he did not anticipate that the project would exceed the estimated base cost.

Mr. Davis moved to authorize staff to negotiate and execute a contract with Harlan Construction Company for renovations to the Courthouse in an amount not to exceed \$1,907,076. The members were polled:

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

The motion carried.

Mr. Davis asked about the completion date. Mr. Tacosa advised that he had not yet prepared a timeline but that he would expect to be under contract within the next six to eight weeks and that he anticipated that the project should be completed by mid-2009. He reminded that the Sheriff's Annex was expected to be ready for occupancy by the end of April 2008, but that some things could be started immediately, including the infrastructure work. He commented that the security plan would be very extensive and complicated.

There was inquiry about the status of the HVAC system in the Courthouse. Mr. Tacosa advised that they had worked out the problems, been proactive with maintenance, and had not had any recent shutdowns. He indicated that staff had stockpiled some of the major parts so that repairs could be done in a matter of hours.

Sheriff Howard commended Mr. Tacosa for a fine job.

IN RE: ECONOMIC DEVELOPMENT INCENTIVES GUIDELINES

Economic Development Consultant Mark Kilduff reviewed with the Board proposed Guidelines for the Economic Development Incentives Policy. He advised that the Economic Development Authority (EDA) had, at its November meeting, adopted the following Guidelines:

- 1. The EDA will manage and be responsible for funds appropriated for use as business development incentives.*
- 2. The EDA will create on its books a separate New Kent County Business Development Incentive Fund (currently \$168,750.00; \$100,000 from EDA sources and \$68,750 in FY 08 appropriations).*
- 3. Of this amount twenty-five percent (approximately \$42,000) will be placed in a "sub-fund" to be used to assist existing New Kent businesses move from home-based operations into commercial buildings.*
- 4. Total incentives from the "sub-fund" for any one project are limited to \$5,000 and require the formal approval from the EDA Board and the concurrence of the County Administrator. In offering assistance from the "sub-fund" the EDA will consider fiscal impact, however, other factors, such as, the movement to a commercial environment, the growth of supporting business services and the filling of existing commercial space will be given great importance.*
- 5. The balance of the New Kent County Business Development Incentive Fund, seventy-five percent, (after the subtraction of the "sub-fund") is approximately \$127,000 and shall be known as the "main fund".*
- 6. At the beginning of each fiscal year, available resources will be divided into two funds on a twenty-five percent/seventy-five percent basis.*

7. *As part of their deliberations, the EDA must consider among other factors, the fiscal impact of the project on county revenues and the conformity with the County's Comprehensive Plan. Based on their analysis of the project and with the concurrence of the County Administrator the EDA may approve incentives totaling up to \$50,000 per project from the "main fund."*
8. *Incentive packages greater than \$50,000 and all projects utilizing the Governor's Opportunity Fund or similar state [and federal] programs needing local approval will be brought to the BOS for final review after following the steps in 7 above.*
9. *Resolution R-17-07 will be the guiding philosophy in the utilization of incentives. However, if in the judgment of the EDA a project is of significant importance to the County then the EDA Board, with the concurrence of the County Administrator, may waive specific requirements for good cause shown. Examples would be projects which positively impacted public health and welfare, businesses which brought major improvement in services to the County residents or the location of specific businesses which would naturally attract additional commerce.*
10. *When utility hook-up waivers are used as an incentive, the utility fund will be reimbursed from the incentive funds. The EDA may negotiate the payment of these fees either up-front or over a period of time.*
11. *Prior to any incentive payment the EDA will enter a written performance agreement with the incentive recipient.*
12. *The EDA will notify the Board of Supervisors each time incentives are offered indicating the type of incentive(s); the amount offered; project parameters (jobs and investment) and other information as appropriate.*
13. *The EDA will notify the Board of Supervisors when either fund balance reaches forty percent of its starting amount.*
14. *A summary of incentive utilization will be published annually.*
15. *The EDA sees a specific incentive need and believes the following is consistent with Resolution R-7-07 and these Guidelines:*

Vacant Building Incentive

Vacant commercial buildings, whether an eye-sore or not, detract from an area's image and make marketing surrounding properties more difficult. From a business standpoint vacant properties call into question an area's economic viability and often can be the stumbling block in locating other businesses to adjacent properties. The negativity associated with unused buildings, if prolonged, can jeopardize public investment made in infrastructure for the purpose of promoting the area's development.

It is proposed, therefore, the County establish an incentive program to encourage vacant building use, especially in areas experiencing or poised for quality development. The incentive could be any from the Board approved resolution, such as, utility or permit fee forgiveness, grants or training assistance for employees, but should be aimed at easing the process of placing the property in productive use.

The project would still be required to meet the investment threshold of New Kent's incentive program, however, the original building cost plus new up-fitting, inventory and other expenditures required to open the building would be included as part of the threshold number. Additionally, to qualify the building would have to be substantially completed, vacant and actively marketed for a minimum of one year.

As with any project, reduction of start-up expense is foremost in the mind of the business. To assist with this concern and to encourage the reuse of vacant buildings, an incentive grant to businesses occupying vacant commercial buildings is proposed. The grant would equal to the following and be spread over three years:

- *100% of business license tax first year*
- *75% of business license tax for second year*
- *50% of business license tax for year three*

Grants would become payable when at least 50% of the building is occupied and the reimbursement will occur the year following the tax payment. Should the building be subdivided the grant is payable to each of the businesses provided the business is started within one year after the building reaches 50% of capacity. In addition for such vacant buildings permit and utility hook-up fees waivers may be used as appropriate to help place the building in productive use.

The above are suggested amounts, but the actual amounts and time period would be established through negotiations with the prospect, following the over-arching policy guidance of using the minimal amount necessary to close the deal.

It was pointed out that the FY08 appropriations referred to in #2 were from Meals Tax revenue.

Mr. Kilduff advised that the incentives would be performance-based and would require the signing of a performance agreement. He indicated that the business would have to perform before a reimbursement was made and that he anticipated that payments would be pro-rated over a term and designed in a way that there would never be a negative cash flow to the County.

Mr. Hill asked if the sub-fund could only be used for home-based businesses moving into a commercial location and if it would be available to farmers who might want to set up a vegetable stand somewhere other than on their own property. Mr. Kilduff indicated that the program was not envisioned to be used for agriculture and that a vegetable stand would be a part-time seasonal venture that would likely not qualify.

Mr. Davis asked about someone in a village area who might want to move out of their home and convert the structure into a business, such as a house into a lawyers' office. Mr. Kilduff advised that such a situation might qualify for assistance from the sub-fund, if the property were properly zoned.

Mr. Kilduff advised that #9 would cover those instances where a business might not have the \$2 million needed to qualify for the main fund.

He indicated that the need for a vacant building incentive was deliberated on many occasions. Mr. Hill commented that he felt that the recommended threshold was too high. Mr. Kilduff reminded that the original investment and upgrades would count towards the

threshold. Mr. Hill indicated that he still felt that the vacant building threshold should be lowered.

Mr. Sparks noted that #9 gave the EDA the ability to address situations where needed. Mr. Kilduff agreed.

It was clarified that neither the Business Incentive Policy nor the Guidelines were a part of any ordinance. Mr. Summers reminded that the EDA and the Board of Supervisors were two independent public bodies, that the Board had previously adopted a resolution authorizing the EDA to come up with guidelines for the Incentive Policy and that this was what they had devised. Mr. Kilduff commented that the members of the EDA were "prudent people". Mr. Budesky added that the County would learn quickly what the need was and could revise the policy as needed, and that the purpose was to attract and expand business.

Mr. Hill asked if property owners would have access to the funds to improve their property to make it more attractive to prospects. Mr. Kilduff advised that if there was a specific tenant that would rent or buy if the property were improved, then they might, but that the funds could not be used to finance speculative property investment.

Mr. Hill commented that if a vacant building detracted from the County's image, why not give some incentive to the property owner to improve the building to make it more attractive. Mr. Summers advised that concept would push the policy towards economic development which had recently been limited by the General Assembly.

The Board members commended Mr. Kilduff and the EDA for its work on the Guidelines.

Mr. Kilduff briefed the Board on a recent visit by a delegation from Korea who was interested in looking at New Kent Vineyards with an eye towards techniques to relieve congestion in Seoul.

IN RE: CABLE FRANCHISE AGREEMENT WITH COX COMMUNICATIONS

Mr. Budesky reported that he, the County Attorney, IT Director Jonathan Stanger, and a dedicated group of citizens had over the past two years been working on a new franchise agreement with Cox Communications. He indicated that they had sent out a survey and drafted a model agreement, after which time legislation was enacted which limited franchise agreements. He advised that Cox was no longer in a position where they had to negotiate a franchise agreement and staff had been working to get commitments where it could.

He clarified that the draft Agreement only pertained to cable television services and did not apply to internet or telephone services.

Mr. Budesky explained that they had tried to get commitment from Cox in the area of service expansion, but Cox insisted on language that they would expand where "technically and economically feasible". He also noted that in some instances, they could pass on the costs to extend service into a new area to the new users.

He indicated that they also tried to get Cox to commit to keeping a service center in New Kent. He stated that although Cox did not indicate that it had any plans to close the local service center, there was some concern that other providers were not required to have a local service center and again they would not make any firm commitment in that area.

Mr. Budesky advised that there had been some negotiation regarding the location of cable wires and cables, as well as system maintenance and tree trimming, but the only commitment that Cox would make was that they would "do the best they could within their control".

Mr. Davis noted that most cable was attached to poles owned by Dominion Virginia Power and asked if rights-of-way were addressed anywhere in the proposed agreement. Mr. Budesky indicated that section 4.5.3 of the agreement set forth that *"The grantee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible and consistent with the design of Grantee's cable system. The grantee may not erect or emplace poles, conduits or other facilities in public rights-of-way, on public land, or public easements without obtaining appropriate permits where necessary. Any permits from the County shall not be unreasonably withheld"*. Mr. Davis commented that during the last bad ice storm, nearly one-third of the utility poles in the County came down because of ice-encrusted Cox cables.

Mr. Davis also inquired about the required depth for buried cables, noting that cables were sometimes cut when non-paved roads were scraped because they were not buried deep enough, and that he felt that Cox should be required to bury its cables to the same depths as Verizon. Building Official Clarence Jackson advised that there was no depth requirement from the Building Development Department but he felt that there should be some standard somewhere.

Mr. Summers suggested that staff could try to determine if there was an industry standard and perhaps Mr. Budesky could renegotiate with Cox on that issue. He also pointed out that Verizon was a Type 2 carrier under the Federal Communications Commission (FCC) Act and that Cox was a Type 3 carrier, which were regulated differently. Mr. Davis pointed out that Cox and Verizon were now in competition and providing the same services and should be held to the same standards.

Mr. Sparks suggested that staff determine the standard and continue to negotiate with Cox.

Mr. Hill inquired about the revenues from the 5% Franchise Fee. Mr. Budesky advised that the County was anticipating receiving around \$35,000 over the five-year term of the agreement, which funds were specifically targeted to the operation of the Government and Education channels and could not be spent in other areas.

Mr. Budesky indicated that he would ask that the wording regarding Educational and Government Access Channels read "a minimum of three" instead of "up to three". He advised that of the \$35,000 to be received from Cox, \$20,000 and a \$5,000 grant would be paid at the time the Agreement was executed, and that the remaining funds would be paid over the term and in fact a portion would be passed on to subscribers at \$0.20 per month. He indicated that since those funds would be used to upgrade and operate the Education and Government channels, the funds currently in the CIP for those purposes could be allocated elsewhere.

There was some discussion regarding service to government buildings. It was reported that service would eventually be available to all County buildings, including the fire stations, schools, airport terminal and Visitors & Commerce Center, but that it may be that in some instances Cox would install the drop to the building and the owner would have to run it to the desired locations within the building.

It was confirmed that the proposed agreement had a five year term with options for renewals.

Mr. Davis asked about the number of New Kent residents who had Cox "packages". Mr. Budesky advised that the only information that Cox would release was the total number of cable customers.

Mr. Budesky reminded that the current franchise agreement had been extended through the end of December 2007 and that staff had hoped to address any concerns with the new agreement so that it would be in a posture for approval at the December 10 meeting. Board members were requested to convey any concerns to staff as quickly as possible so that they could be addressed with Cox before the December meeting.

The Board members took a short break and then resumed the meeting.

IN RE: PUBLIC UTILITIES

Mr. Budesky expressed his thanks to staff in the Financial Service Department, notably Mary Altemus and Kathy Minter, as well as Public Utilities staff and R. Stuart Royer for their collective help in pulling together the information on the utilities projects.

He explained that when the project was initially assigned, no one realized that they would have to go back over the past three to four years, but he admitted that it had been a good exercise and staff had learned where improvement was needed and had done a good job in pulling the information together.

He reviewed the Bottoms Bridge Phases I and II Project, which included the Elevated Tank, Trunk Forcemain I and II, Bottoms Bridge Pump Station, Talleyville Pump Station, Chickahominy Pump Station, SCADA (will be on all new wells, not existing wells), Water Mains, Gravity Sewer & Forcemain, and Pump Stations (Route 60 East and West and Clint Lane), Bottoms Bridge Well – Phases I & II, Five Lakes Well Improvement (will be on SCADA because used for new system), and Chickahominy WWTP Modifications. He reported that the engineering and construction change orders, which included the addition of the water line from Talleyville well South under I-64 and then west to Route 106 as well as conflicts that resulted in changes in the original conditions of the plan, totaled \$181,733, or 3% of the total. He noted that there were savings in Phase I which balanced out the change orders in Phase II, and that expenditures through October 31, 2007, totaled \$24,917,335 of \$36,333,232 in estimated project costs.

He reviewed the Courthouse Area Utilities Project, which included Elevated Tank, Water/Sewer Lines, Pump Stations (Courthouse and Oaks), and Two Wells (will be taking some existing wells off-line). He noted that the engineering and construction change orders covered additional engineering for the water system from the original scope of the project, which had only included the wastewater collection system, as well as additional construction that resulted in field changes from the original plans related to construction of the new high school (designed completed after utility project under construction) and conflicts with private existing utilities that resulted in field changes from the original plans. It was reported that those change orders totaled \$431,771, 8% of total project costs, some of which the County would recoup from developers. He reported that total expenditures through October 31, 2007 was \$2,650,466, of an estimated project cost of \$6,930,756. It was explained that there was some billing still outstanding.

Mr. Budesky advised that the Parham Landing Wastewater Treatment Plant expansion was the biggest project to be done, and had to be on line by 2011 in order to meet nutrient discharge requirements. He reported that the project was still in the design phase with expenditures of \$386,652 through October 31, 2007, of estimated project costs of \$38,209,867. It was reported that the expanded plant would have capacity of 3 million gallons compared to the .5 million capacity of the current plant. He noted that the County would save money when it closed the Chickahominy Wastewater Treatment Plant, but would have increased costs when it expanded to 24-hour operations at the Parham Landing plant.

It was reported that expenditures for all projects, through December 31, 2007, totaled \$27,954,453, and that that change orders totaled \$613,504, only 1% of total estimated project costs of \$81,473,855.

Mr. Budesky also reported on revenue sources for utilities projects for FY05 through FY08, as of October 31, 2007, which included ad valorem taxes \$88,299; penalty & interest on ad valorem taxes \$1,111; interest on bank deposits and investments \$852,057; connection user fees \$712,056; and utility service agreement revenue \$352,469, for total Fund 198 revenue of \$2,005,992.

He reported that the funds were derived from VRA series 2004 water & sewer revenue bond, \$16,621,040; interest/dividends/earnings on VRA series, \$773,787; Farms of New Kent CDA \$39,996,642; interest/dividends/earnings on CDA funds to date \$1,617,744; and future bonds estimated at \$22,464,642 which amount he indicated should decrease as users came on line. He pointed out that this was just capital and did not include operations.

He indicated that the utility project budget was solvent and some projections had been scaled back. He reminded that the Pro Forma was based upon an 8% annual increase in fees and that it was important to maintain that increase in order to keep from having to use General Fund monies for the utilities system. It was noted that New Kent's fees were in line with those from neighboring jurisdictions.

There was a discussion on how the upfront connection fees paid by Farms of New Kent were used to cover the utility costs.

Staff was again thanked for their efforts in providing the report.

IN RE: SECONDARY SYSTEM

Mr. Budesky distributed information regarding County roads awaiting acceptance into the State system. Planning Manager Rodney Hathaway reported that County staff had recently met with VDOT to compare information, and were scheduled to meet again, after which time they should have a final list to share with the Board.

Regarding Quaker Woods Road, Mr. Hathaway reported that VDOT had agreed to waive the annual bond and that the developer would only have to pay the initial fees which he had agreed to take care of when he returned to New Kent during the upcoming week. He indicated that there were no other roads awaiting acceptance that were connected to that developer.

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 December 10, 2007 in the Boardroom of the County Administration Building, New Kent, Virginia, and that there would be no December work session.

IN RE: CLOSED SESSION

Mr. Davis moved to go into Closed Session for consultation with legal counsel pursuant to Section 2.2-3711A.7 of the Code of Virginia for consultation with legal counsel and regarding actual or probable litigation. The members were polled:

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

The motion carried. The Board went into closed session.

Mr. Burrell moved to return to open session. The members were polled:

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

The motion carried.

Mr. Sparks made the following certification:

Whereas, the New Kent County Board of Supervisors has convened in a closed session on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by the Board that such closed session was conducted in conformity with Virginia law;

Now there be it resolved that the Board hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from open session requirements by Virginia law were discussed in closed session to which this certification resolution applies and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Board.

The Chairman inquired whether there was any member who believed that there was a departure from the motion. Hearing none, the members were polled on the certification:

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

Stran L. Trout

Aye

The motion carried.

IN RE: OTHER BUSINESS

There was discussion regarding potential additional residential development by Godsey & Son in Deer Lake, and how that development as well as the build-out of Greenwood Estates might impact any duty of the County to provide water storage facilities.

Mr. Davis reported that he had received a complaint from a constituent that New Kent was not complying with its own setback requirements regarding construction at school sites. There was also discussion about the 20-foot setback from the 100-foot RPA buffer that was previously adopted by the Board, and staff was requested to provide the Board members with copies of the minutes from the meetings that addressed that issue.

IN RE: ADJOURNMENT

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

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

The motion carried.

The meeting was adjourned at 6:25 p.m.