

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 10<sup>th</sup> DAY OF DECEMBER IN THE YEAR TWO THOUSAND SEVEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 6:00 P.M.

---

IN RE:            INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Burrell gave the invocation and led the Pledge of Allegiance.

---

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

The Chairman called the meeting to order.

---

IN RE:            CONSENT AGENDA

County Administrator John Budesky presented the Consent Agenda as follows:

1.    Approval of Minutes
  - a.    Regular meeting of November 7, 2007
  - b.    Work session of November 26, 2007
2.    Miscellaneous
  - a.    Abstract of Votes from the General Election held on November 6, 2007, for recording in the Order Book
  - b.    Proposed Franchise Agreement with Cox Communications
3.    Refunds
  - a.    \$65.61 to Jerome Cane for cancelled pool permit
  - b.    \$2,192.00 to Bel Arbor Builders for cancelled building permit
  - c.    \$71.23 to Simmons Electrical for cancelled electrical permit
  - d.    \$1,835.00 to Christopher Stone for cancelled rezoning application fee
4.    Appropriations FY07/08
  - a.    Funds donated to the New Kent Animal Shelter, \$327.00
  - b.    Funds donated for the Sheriff's Honor Guard, \$154.00
  - c.    Insurance funds received for a Sheriff's vehicle that struck a deer on Oct 27, \$2,635.00
  - d.    Insurance funds received for an unoccupied utility vehicle that was struck by a tractor trailer on Nov 1, \$1,275.00
  - e.    Funds received from New Kent Farms LLC and Hirschler Fleischer Attorneys at Law for recovered legal services expenditures, \$1,500.00
  - f.    Funds received from Chesterfield County for New Kent County's share of a regional grant managed by Chesterfield County for Mobile Data/In-Car Mapping, \$19,858.00
  - g.    Funds received from Revere Gas & Appliance for a credit/refund on the Fire-Rescue account, \$1,645.00
  - h.    Funds received for security at the Oct 12 and 20 football games, Oct 13 homecoming dance, and Oct 18-20 West Side Story productions, \$1,582.00
  - i.    Funds received from Emmaus Baptist Church for Sheriff personnel coverage for an Oct 26 event, \$82.00



Forbes as a member and past chairman of the New Kent Economic Development Authority (EDA). It was explained that Mr. Forbes had resigned from the EDA to relocate to Accomac County where he had accepted a position as Economic Development Director.

---

IN RE: NEW KENT UNIVERSITY 2007 GRADUATION

Certificates were presented to members of the first class of New Kent University (NKU), which included James Brabrand, Susan Brucker, Edward Chmielinski, Richard Cox, Lorraine Dismond, John Dismond, Laurie Fisher, Peggy Green, Deborah Harris, Timothy Harris, Kathie Hewitt, Fahamisha Jaramogi, Patricia Johnson-Smith, B. Ayars Lore, Barbara Lore, William O'Brien, Joanne Panek, Carter Perry, Percy Randolph, Rachel Randolph, Muriel Rodriguez, Edward Schell, Rudolph Sheets, John Sinclair, Joseph Talluto and Julia Taylor.

The graduates were invited to comment on the program.

Ms. Panek spoke about how she had lived in other places and how grateful she was to live in New Kent and been able to participate in NKU. She encouraged others to enroll in future sessions and thanked County staff for their efforts and long hours.

James Brabrand complimented New Kent about the "openness" of its local government and its employees.

Ayars Lore commented on the amount of effort put forth by everyone involved, including the Administrator and his staff, how the presenters were well-prepared. He said it was an incredible experience because of everyone's effort.

Mr. Budesky thanked the graduates for their participation and input, as well as the NKU committee and all presenters for the time and effort put into the program. He also thanked the Board for its support.

---

IN RE: RESIDENCY ADMINISTRATOR'S REPORT

Torrence Robinson, Residency Administrator with the Sandston Residency of the Virginia Department of Transportation, reported that maintenance activities included excavation of high shoulders for drainage relief; sweeping of intersections; improvement of sight distances; buildings and grounds maintenance at the Slatersville office; installation of driveway entrances; grading of graveled roads; clearing of brush and fallen trees and removal of hazardous trees; sign maintenance and repairs; brush cutting; clearing trees and debris from right-of-way fencing; pothole patching; and servicing of equipment spreaders.

He reported that VDOT had accepted the Eltham Bridge project on November 10, 2007, constructions signs had been removed, and the contractor was finishing up some landscaping issues. He also indicated that VDOT was looking into relocating the "Welcome to King William County" sign.

He advised that VDOT was working to accept Quaker Woods Drive into its maintenance inventory and the developer was anticipating using the bond to be released by VDOT to pay the required fees.

Mr. Robinson reported that VDOT still had not received a request from the Board to rescind a prior letter dated January 31, 2006, in order to certify its reserves of \$586,448.30 in Revenue Sharing Funds. He noted that the FY09 allocation letter had been mailed out and applications were due by March 20, 2008.

He advised that VDOT needed to schedule a work session with the Board to discuss the Secondary System Six Year Plan FY09-FY14, including priorities, status of current projects, and future projects. He stated that the process needed to be completed by June 1, 2008.

He indicated that VDOT anticipated performing remedial sight distance and drainage work on Homestead Road to prepare for a Rural Rustic paving project that should be conducted next year.

Mr. Robinson reported that VDOT was investigating drainage issues along Tabernacle Road and that environmental reviews would need to be completed before work could proceed.

He advised that VDOT was anticipating being able to repair portions of Route 613/Dispatch Road within the near future, weather permitting.

He indicated that as soon as the speed study of the area of Route 249 in front of the Food Lion was completed, he would submit the findings to the Board.

Mr. Robinson reported that all campaign signs of which VDOT was aware had been removed from the rights-of-way.

He advised that a reported pothole on Route 627 had been repaired and that VDOT was still awaiting environmental permits in order to continue ditch cleanup in Chickahominy Shores, at which time a survey of the entire subdivision would be ordered. He pointed out that VDOT was investigating and monitoring South Waterside Drive during each rainfall event.

He indicated that VDOT would be filling potholes along Route 60 at Rescue Drive and would add sand and shoring materials around the existing drainage structure.

Mr. Robinson reported that VDOT staff was working with County staff to develop a database of the streets remaining to be accepted and to formulate action items for acceptance.

Mr. Davis welcomed Mr. Robinson and spoke about the difficulty the Board and County had experienced because of the turnover of Residency staff, noting that there had been six administrators in the past two and a half years. He cited problems with unfulfilled promises made by Residency staff and how that resulted in distrust by the citizens.

He inquired about a previous request for a speed study on Route 60 in Providence Forge, suggesting that the 45 mph zone be expanded at least one-half mile east in order to encompass the area where the Rescue Squad, funeral home and storage units business were located.

Regarding Tabernacle Road, he indicated that the area of the road that was maintained by the Williamsburg Residency was well-paved and smooth in comparison with the New Kent portion of the road which was rough.

Mr. Davis requested that VDOT consider the installation of guardrails on Egypt Road in the area of New Kent Primary School, noting that the gymnasium and sidewalk were less than 40 feet from a road that was heavily travelled by construction vehicles and high school student drivers.

He reported that trees were overgrowing the stop sign on Route 646.

Mr. Davis inquired as to what would be done with the access road to the old Eltham Bridge, expressing his concern that it would be abandoned and become an eyesore. Keith Rider, Land Development/Preliminary Engineering Manager with VDOT, advised that the construction plans called for removing all existing asphalt and then abandoning the road. Mr. Davis shared his doubts that there was any way for removal equipment to get to the old road.

Mr. Davis expressed his satisfaction with the flow of traffic along the new Eltham Bridge, but again requested "steep grade" signs be placed on the bridge going into West Point, commenting that some log truck drivers may not have ever driven to the mill and may have problems braking their vehicles. He also suggested that the 40 mph zone posted for the bridge be extended into Eltham to where the highway became divided or to the stoplight at Farmers Drive, in order to improve safety along that corridor. Mr. Rider reminded that speed limits were determined by federally set standards.

Mr. Davis referred to a recent newspaper article regarding VDOT's ability to restrict the number of driveways entering State roads and inquired whether VDOT would still install driveway pipes if they were purchased by the landowner. Mr. Rider reported that the practice was still in effect and that he did not anticipate it to change. Mr. Robinson added that the practice would continue for approved driveway entrances only.

Referring to Mr. Robinson's report that trees and debris had been removed from right-of-way fencing at Route 33 and I-64, Mr. Burrell inquired if the fencing had been repaired as well. Mr. Robinson agreed to check into that and report back.

Mr. Burrell thanked Mr. Robinson for the marking of trees to be removed.

Mr. Sparks welcomed Mr. Robinson and asked if the repairs to Route 613/Dispatch would be a patching or a repaving. Mr. Rider reported that the pavement would be patched where it was "popping up" but they were still considering repaving the area next year if there were any funds left over.

Mr. Sparks asked for details on the speed study requested on Route 249 in front of the Food Lion shopping center. Mr. Rider clarified that the speed study was underway and results should be available by the next Board meeting.

Mr. Sparks invited Mr. Robinson to join him for a drive through his district and referred to some sight distance issues existing in some of the older neighborhoods. Mr. Robinson accepted the invitation and offered to take similar drives with the other Board members as well.

After recognizing District One Board Member-Elect Thomas Evelyn in the audience, Mr. Hill commented about the lack of a shoulder along Route 611 and spoke about a recent vehicular accident involving a senior citizen. He asked if VDOT would look at the area with an eye towards providing and/or expanding the shoulders.

Mr. Hill asked Mr. Robinson if the monthly reports could be provided in writing a week before the Board meetings, suggesting that they be forwarded to the Deputy Clerk to be included in one of the weekly Board packets.

Mr. Trout spoke about problems on Route 627/South Waterside Drive dealing with both tidal flooding and storm-related flooding, noting that the road was the only access in and out of subdivisions beyond the area and could become a life safety issue for emergency vehicles.

He stated that any ideas for the area would be appreciated. He also added his welcome to Mr. Robinson.

Mr. Davis asked for clarification as to who was responsible for snow and ice removal on County roads. Mr. Robinson confirmed that VDOT had hired a contractor for snow removal on I-64 but that VDOT would continue to take care of the bridges and overpasses. It was confirmed that citizens with road complaints should continue to call the Sheriff's Dispatcher who would contact VDOT.

Mr. Burrell commented about the recent hazardous conditions on I-64 west of Richmond, where nine accidents occurred in a three-mile stretch, wondering if that portion of the interstate was the responsibility of the same contractor. Mr. Robinson commented that they routinely monitored weather conditions and tried to be proactive, but the unfortunate event referred to by Mr. Burrell had been unanticipated and had affected travel in the areas covered by the Sandston, Petersburg and Fredericksburg Residencies.

---

IN RE: GENERAL REASSESSMENT UPDATE

Andy Lankford of Tri-County Appraisers reported to the Board on the reassessment project, advising that they had completed the general reassessment field work and were in the process of "crisscrossing" the County, visiting new construction and finishing up some other items. He advised that the project was on track and that notices were scheduled to be mailed out to property owners at the end of February or early March.

---

IN RE: ELECTED OFFICIALS' REPORTS #1

Mr. Davis encouraged everyone to have a safe and happy holiday season, to watch out for bad weather, and to refrain from drinking and driving.

Mr. Sparks conveyed his wishes for a Merry Christmas and safe holiday season to all.

Mr. Hill echoed those comments.

Mr. Trout spoke about how as a member of the Providence Forge Volunteer Rescue Squad he often saw people "in not the best of circumstances" and about how depression was not an unusual manifestation of the holiday season. He urged everyone not to over-indulge.

Chairman Trout also indicated that a Board retreat had been suggested for some time between the first meeting in January and the January work session. He recommended that perhaps it be scheduled for a day during the week rather than on the weekend, and asked the Board members to review their calendars for prospective dates.

---

IN RE: STAFF REPORTS

County Administrator John Budesky reminded about the upcoming meeting to review New Kent's legislative agenda with State Senator Tommy Norment. He noted that other legislative issues might arise and be appropriate as additions to New Kent's agenda. He referred to pending legislation which might be detrimental to New Kent's local towing businesses, requiring them to expand far beyond what was needed and that it would be important to keep a watch on that. He recognized the presence of representatives from two local companies that might be impacted.

Mr. Budesky reported that the Treasurer brought to his attention an Abandoned Vehicle Program through the Division of Motor Vehicles (DMV) which would compensate local companies as well as complement County efforts in the removal of inoperable vehicles. He advised that participation in the program could generate annual revenue of anywhere between \$1,500 and \$2,000 as well as assist residents without resources to have these cars towed away. He indicated that participation in the program did not require Board approval and that if there were no concerns from the Board, the County could apply and implement the program fairly quickly.

Mr. Davis commented that it sounded like a program that was in effect some years before. Mr. Budesky advised that the package received from the DMV reflected that the program was introduced in 1975 and was currently funded. There was consensus to proceed with the program.

Mr. Budesky again thanked staff for its efforts, participation and commitment to NKU and thanked the Board for its past and continuing support of the program.

Mr. Burrell recognized Mr. Budesky's recent graduation from the Leadership Metro Richmond Program.

---

IN RE:            APPOINTMENTS

Appointments were deferred until the January meeting.

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

---

IN RE:            AMENDMENTS TO CHAPTER 58, SOLID WASTE, REMOVING TRUCK & TRAILER  
RESTRICTIONS

Before the Board for consideration was Ordinance O-22-07 to amend Chapter 58, Solid Waste, of the New Kent County Code to remove truck and trailer restrictions.

General Services Director James Tacosa reviewed that the proposed changes would eliminate the restrictions on personal trucks and trailers.

Mr. Davis spoke about how when it was agreed that the restrictions should be rescinded, it had been suggested that additional education of the staff would help to differentiate between citizens and commercial collectors. Mr. Tacosa advised there was constant communication with the site staff, who had been able to stop most of the commercial construction, demolition and landscaping (CDL) waste disposals.

Mr. Burrell commented that the Board had adopted the restrictions in an effort to eliminate CDL waste disposals, not realizing how many residents had similarly-sized vehicles which they used to transport their household trash to the sites, and that he would not have any objection to the proposed amendment as long as staff could control the disposal of CDL waste.

The Chairman opened the Public Hearing.

William O'Brien advised that his questions had been adequately addressed and that he now understood that restrictions on personal vehicles were being removed but restrictions would remain on the disposal of commercial waste. He expressed concerns on how that determination would be made and whether the County Attorney would be involved. County

Attorney Jeff Summers advised that his only participation was in the drafting of the ordinance and that determinations would continue to be made by the General Services Director and staff.

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

Mr. Davis commented that this was an ordinance where the Board had "messed up", not realizing that so many residents had trailers longer than ten feet that they used to haul their trash to the refuse sites, and the Board had been trying to keep contractors from bringing in CDL waste that they charged residents to haul away. He called the situation "sticky" and noted that the Board had "heard from the citizens" about it. He indicated that the County would have to rely more on staff to recognize commercial haulers. He advised that he had been to the Route 618 site recently and noted an improved appearance since the debris collection had been relocated and other areas rearranged.

Board members asked questions regarding specific items that would be allowed into the compactors. Mr. Tacosa advised that twigs shorter than 4 feet could be put into the containers, but that larger limbs would need to go to the Brush Collection site on Stage Road or to the temporary brush collection trailer at the 612 site. He advised that any brush meeting the specifications at the Stage Road site, including Christmas trees, would also be accepted at the 612 brush collection trailer. He advised that the 6" diameter size limit was to accommodate the grinding operation. He indicated that one 2x4 could be put into the compactors at any of the sites, but that a truckload of 2x4s would have to be taken to the 618 site.

Mr. Trout commented that the size restrictions for trucks and trailers had been adopted to provide an objective measure between commercial and non-commercial, and he clarified that commercial CDL waste was not accepted at any of the sites in New Kent. Mr. Tacosa advised that it was a constant enforcement issue for the site staff but they had improved their abilities to differentiate between commercial CDL and residential wastes.

Mr. Hill moved to adopt Ordinance O-22-07 as presented. 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.

---

IN RE: PERFORMANCE STANDARDS FOR ALL NEW AND EXPANDED PUBLIC, SEMI-PUBLIC, INSTITUTIONAL, EDUCATIONAL AND RECREATIONAL USES AND FACILITIES

Before the Board for consideration was Ordinance O-24-07 to amend the Zoning Ordinance to establish performance standards for all new and expanded public, semi-public, institutional, educational and recreational uses and facilities.

Planning Manager Rodney Hathaway reviewed the proposed ordinance which would set minimum standards for landscaping, lighting, noise requirements, architectural guidelines, traffic controls and operating requirements for public, semi-public, institutional, educational and recreational uses. He reported that staff-prepared standards had been reviewed and

recommended by the Zoning Ordinance Rewrite Committee (ZORC), and that only minor revisions had been made by the Planning Commission. He noted that changes suggested by Board members at a prior work session had been incorporated into the ordinance under consideration, which included language changes regarding energy efficient lighting and the exclusion of cemeteries owned by charitable entities from the 20-acre minimum requirement.

Mr. Burrell expressed his concern about the proposed hours of operation for archery ranges, noting that the times of sunrise and sunset changed from season to season and did not always fall at 7 a.m. and 7 p.m. There was discussion on proposals for alternate language.

Mr. Burrell also asked about the requirement to remove embedded rounds from shooting ranges. Mr. Summers explained that the current best practice was to have the lead slugs removed periodically in order to prevent lead runoff from getting into the ground.

The Chairman opened the Public Hearing.

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

Mr. Davis asked about shooting ranges where one shoots into a culvert. Mr. Summers advised that issue had not been raised in any of the discussions or found in any of the research.

Mr. Davis asked if establishing these standards would affect the Sheriff's shooting range. Mr. Summers advised that although it might be advisable to update the Sheriff's range, it would not be required because it was a pre-existing use and the standards would only apply to new and expanding uses. Mr. Davis spoke about complaints that he received regarding the County's not following its own ordinances, commenting that the Sheriff's range may not even be properly zoned and that it was important that the County meet the same standards that it was imposing on everyone else.

Mr. Hill stated that he did not agree and that the County was not requiring any existing businesses to upgrade. Mr. Trout clarified that this applied to only new activities.

Mr. Davis advised that even though the Sheriff's range was a pre-existing use, it was on land that was not zoned for a shooting range. He indicated that he had received several calls and letters from people who had noticed that the County was not following requirements on County-owned property, such as setbacks, and that unless the Board adopted an ordinance setting forth that public property was exempt, then the County needed to abide by the same rules as everyone else.

Mr. Davis asked how the proposed standards would apply to turkey shoots. Community Development Director George Homewood confirmed that turkey shoots would not be affected at all by the proposal under consideration.

Mr. Hill moved to adopt Ordinance O-24-07 with the following change: on page 6 paragraph M shall read: "shall not begin before 7:00 a.m. or sunrise, whichever is later, and shall end no later than 7 p.m. or sunset, whichever is earlier". 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.

---

IN RE: AMENDMENTS TO CHAPTER 94 TO MANAGE CLEARING WITHIN RESOURCE  
PROTECTION AREA BUFFERS

Before the Board for consideration was Ordinance O-23-07 to amend the Chesapeake Bay Preservation Areas ordinance, Chapter 94, Article II, to manage clearing within the Resource Protection Area (RPA) buffers, to conform the definition of "noxious weeds" to that contained in the Code of Virginia, and to add option to septic tank pump-out requirements already provided in Chapter 38.

Environmental Planning Manager Amy Walker reported that some issues had arisen with non-permitted clearing of a buffer, at which time staff realized that there were some inconsistencies in New Kent's ordinance. She advised that the Department of Conservation and Recreation (DCR) had reviewed and approved the proposed amendments. She indicated that all of the changes reflected State guidelines with the exception of three items: requirement for field verification by County staff prior to the work; statement from a professional that vegetation proposed to be removed was dead or dying; and that replacement vegetation be guaranteed for two years with a performance agreement and bond (which the guarantees often provided by nurseries would help to fulfill).

She explained that some of the confusion arose from the fact that the County's current ordinance conflicted with that of the State, and the proposed changes would help remedy that. She also advised that once the changes were made, she hoped to begin a homeowner education program.

Mr. Sparks asked why wait to begin the education program. Ms. Walker explained some of the inconsistencies between the County and State regulations and that those needed to be corrected first.

Mr. Davis commented that the State did not require the 20-foot setback from the 100-foot buffer that the County had previously adopted. Ms. Walker explained that the setback was already in place and was not one of the items under consideration. She reported that four other localities had adopted a similar setback and three others were in the process, with Gloucester requiring a 15-foot setback although it wasn't "on the books".

There was discussion regarding the most recent DCR requirements which had enlarged the non-tidal RPA areas. Ms. Walker reported that the latest requirements came out on June 18, 2007. Mr. Davis expressed his dismay that DCR had included property in the RPA that had never had a stream on it, thereby reducing the ability of landowners to use their property.

Mr. Burrell expressed his approval of the requirement that replacement vegetation be guaranteed and referred to an incident that had occurred in the past where a property owner was required to install a buffer, but that the vegetation later died and became an eyesore and there was nothing in place to require him to replace it.

Mr. Davis asked what would happen if an insurance company advised a property owner that they could not get insurance unless a particular tree was cut down. Ms. Walker indicated that there would be exceptions when there was a safety issue involved and that there was

always a buffer around a home where one could remove trees. She also confirmed that fallen trees could be removed.

Ms. Walker clarified that driveways and septic drain fields (if approved by the Health Department) could be located in an RPA. She indicated that there would always be exceptions to locate utilities in an RPA, and that if a homeowner had an established yard in an RPA, they would be permitted to maintain it; however, if it had been ignored for years and a homeowner decided to cut down tall vegetation, she would recommend a permit be obtained first. She emphasized that the proposed changes were to protect the health of the buffer and that the County's ordinance needed to be changed in order to conform with that of the State.

Mr. Davis asked if there were any avenues of appeal to the wetlands delineations made by DCR. Ms. Walker explained that the DCR had an "enormous amount of power" and little oversight, and other than working through the State legislators, she felt there was little recourse.

The question arose as to when New Kent adopted the Chesapeake Bay Act. Community Development Director George Homewood reported that the regulation came out in 1989 and it took New Kent until 1992 to become fully compliant with the adoption of a permanent ordinance. He advised that 75% of New Kent was either in the RPA or the Resource Management Area (RMA) with 25% of the County in neither.

Mr. Homewood pointed out that the 20-foot setback was intended to apply only to the main structure on the property and that somehow, when the ordinance was previously adopted, the word "principal" had been removed and needed to be added. He confirmed that a homeowner would be able to build accessory structures within the setback and that the ordinance actually provided a homeowner the opportunity to have a backyard.

Mr. Hill asked if mitigation of the RPA by a developer was allowed in the form of purchasing credits. Ms. Walker advised that it was not allowed, but Mr. Homewood indicated that if the Army Corps of Engineers had permitted a developer to fill in wetlands that were part of an RPA, then mitigation was sometimes permitted.

Mr. Trout noted that "forester" was included in one section but not in another as one of the professionals who could verify the health of vegetation proposed to be removed from a buffer. Staff agreed that it was advisable to add it in both locations.

Ms. Walker advised that there seemed to be a "huge disconnect" in the public's understanding of the need to obtain a permit in that there were over 31,000 acres designated as RPA in New Kent and only seven permit applications last year.

She advised that since 2002, 64 new segments of streams in New Kent had been added to the list of "impaired".

The Chairman opened the Public Hearing.

Sam Snyder spoke in favor of the changes to the ordinance. She related that she had recently attended the Hampton Roads Water Quality Planning and TDML or Total Maximum Daily Load Workshop in Williamsburg where she learned that more than 90% of the waters of Virginia were "impaired," a term that really meant polluted, and the Chesapeake Bay itself had many dead areas. She indicated that the State, recognizing that this was a huge problem, had begun a mandatory clean-up of the rivers and tributaries of the Chesapeake

Bay watershed and noted that the new State Transportation/Land Use bill mandated the "preservation of natural areas" and "satisfaction of requirements for storm water management." She predicted that the proposed ordinance would soon become mandatory across Virginia, and emphasized that the rivers and streams and the Chesapeake Bay must be saved. She suggested that it would be a good idea, just once, for New Kent to be out front on these issues and be a model for the rest of the State, before the mandates were put in place. However, she said that the more important reason to adopt the changes was that it was the right thing to do "for our environment, for our children, and for their children". She asked if it really mattered how much money one made if one didn't have water to drink or air to breathe. She stressed that "we must promise to give our children clean water and clean air" and not continue to say that New Kent was just a little part and it wouldn't matter what was done here. She stated that it did matter and that "each of us left our footprint on this earth and it was incumbent on us to make sure that we do as little damage as possible".

Jay Hubbard expressed his concerns with the language, and urged the Board to use some common sense and to "get it straight" before it was passed.

F. L. "Jerry" Benson stated that it was everyone's obligation to do a better job of looking at water quality. He spoke about the history of the Chesapeake Bay Act and how in 2000 the states surrounding the Bay had agreed to make improvements and had devised a "report card" and set a goal of reaching a score of 70 (with 100 being the water quality back in the days of Captain John Smith when oysters filtered the water in the Bay every few days). He referred to recent newspaper reports that showed a score of 29 last year and one of 28 this year, which showed that the condition was deteriorating. He spoke about the effects of the ever-growing population as well as the need for education and laws for mitigation.

Sam Howard advised he'd been involved in the road construction business for the last 25 years and had witnessed firsthand the "scare tactics" used by DCR and the Department of Environmental Quality for "their own arguments" and how they could "bend the facts any way they wanted". He warned that if the County and its citizens continued to give up their rights, such as their ability to make decisions about their land, they might never get them back. He stated that the County didn't need setbacks and that the 100-foot buffer was sufficient. He commented that it wasn't necessary to have arborists and that taxpayers paid taxes on their property and they should be compensated if they were not able to use their property as they wanted. He asked that the Board not pass the ordinance.

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

Mr. Davis noted that the ordinance did not have any monetary penalty for those who destroyed wetlands. Ms. Walker pointed out that if one cleared in an RPA, they would have to replant with native plants of a certain size and the cost of that would be the penalty.

She clarified that there was no cost to apply for a permit and that the landowners with whom she had had an opportunity to work had enjoyed the process. She reiterated that homeowner education "would cure a lot of ills".

Mr. Davis again spoke about how DCR had "put more land in the RPA than before". He said that he felt that people who destroyed RPAs should be made to pay for it, but that he would have to agree with Mr. Howard that the Board should not adopt the proposed changes. He said that "we are taking people's property" and he suggested that the Board reconsider the 20-foot setback that it previously adopted.

Ms. Walker clarified that previously DCR had only included perennial streams in the delineations but had recently included the adjacent wetlands of those streams. Mr. Davis stated that DCR had gone overboard, in some instances "taking old road beds and calling them streams" and that New Kent was penalizing landowners even more by adding a 20-foot setback from the buffer.

Ms. Walker countered that the 20-foot setback protected the resources as well as permitted future homebuyers to have a backyard in which they could build a shed or deck.

Mr. Burrell noted that most of what was proposed was mandated by State law, and referred to Mr. Benson's comments. He noted that the building of new homes, even with mitigation, caused more pollution and that if something wasn't done soon, the damage could not be undone. He added that everyone should remember that "earth does not belong to man, man belongs to earth and that each of us should have the desire to protect what we have and should do our part". He acknowledged that it would be costly, and that no law enacted would be perfect for everybody, but that it was important to look for what was best for all.

Mr. Trout noted that the concern tonight was adding the word "principal" and what regulations were needed to prevent people from stripping down healthy trees in protected areas.

Mr. Davis pointed out that it would cost money to hire an arborist. Mr. Sparks stated that he felt it would "penalize a lot of folks for the actions of a few".

Mr. Trout asked for other options on how to control those "few". Mr. Davis responded that he did not think that the proposed changes were the answer.

Ms. Walker reiterated that all but the three items pointed out earlier were changes mandated by DCR and would conform the County's ordinances to State statutes.

Mr. Summers advised that any citizen could challenge DCR through the Virginia Administrative Procedure Act and that the proposed changes would not constitute "takings". He explained that in order to be considered a regulatory taking, there had to be a "big loss" which was difficult to establish but that if an individual believed he had suffered a loss and deserved to be compensated, he could institute a suit. He observed that many of the concerns dealt with fraud where someone who had illegally cleared was trying to escape punishment. He advised that it was important for the Board to determine what level it was comfortable with in trying to "cut off avenues of fraud" and install that in the ordinance.

Mr. Burrell asked if the Board could have more time for consideration and it was confirmed that the vote could be postponed to a future meeting.

Mr. Sparks agreed that a postponement would make sense, stating that he was not comfortable with the changes which he felt penalized everyone for the actions of a few and assumed everyone would be cutting down trees, and did not include "common sense".

Mr. Burrell disagreed, stating that if something wasn't in place, then everyone would be free to cut down trees.

Mr. Sparks suggested that staff look at the issue again and bring the Board other options to consider.

Mr. Davis agreed, suggesting that he'd like to see some monetary penalties for offenders and would also be in favor of some education programs. Mr. Hill agreed that education was the key and that he did not see the necessity for New Kent to "strengthen" state and federal laws, stating that he felt that adding the requirement for verification by a horticulturist was doing that. He commented that citizens deserved the right to use their land for their own needs and that he felt that the 100-foot buffer was sufficient.

Mr. Summers asked for the Board's guidance regarding whether or not they wanted a monetary penalty in addition to the requirement to replace vegetation, or in place of it, and whether they wished the violation to be a civil or criminal one.

Mr. Trout pointed out that vegetation replacement was required by the State.

Mr. Davis asked if other jurisdictions imposed monetary penalties for violations. There was discussion about proceeding with the education programs before imposing monetary penalties.

Mr. Hill noted that plats reflected the RPA areas and asked how much effort it would take to tell the property owners that they had to stay out of the 100-foot buffer. Ms. Walker stated that owners knew about the 100-buffer but the problem was that they didn't know what they could and couldn't do because the County's ordinance conflicted with that of the State, and she emphasized that needed to be fixed before moving forward with homeowner education.

Mr. Sparks noted that the proposed changes included three items that would be different from what was required by the State. Ms. Walker advised that those were options needed for enforcement.

There was consensus among the Board members to send the matter back to staff for further recommendations and to defer a vote until a future meeting.

---

IN RE: AMENDMENTS TO CHAPTER 70 TO STRENGTHEN THE AUTHORITY OF THE  
COURT TO ORDER RESTITUTION OF EMERGENCY RESPONSE EXPENSE FROM  
THOSE CONVICTED OF CERTAIN TRAFFIC OFFENSES

Before the Board for consideration was Ordinance O-21-07 to amend Chapter 70 of the New Kent County Code to add provisions that strengthened the authority of the Court to order restitution of expenses incurred for an emergency response when a person was found to have committed certain traffic offenses.

County Attorney Jeff Summers reminded that the Board that, as discussed in a prior work session, the Judges had some reluctance to impose restitution of emergency response fees and had asked that the County add some language from the State statutes. It was confirmed that a flat rate of \$250 would be the amount assessed as restitution.

The Chairman opened the Public Hearing.

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

Mr. Davis noted that restitution was the Board's intention at the time that the original ordinance was adopted.

Mr. Sparks moved to adopt Ordinance O-21-07 as presented. The members were polled:

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: EXCHANGE OF EASEMENTS WITH NEW KENT COURTHOUSE VILLAGE LLC

Before the Board for consideration was Resolution R-53-07 to approve an exchange of easements with New Kent Courthouse Village, LLC.

County Administrator John Budesky advised that the Board's approval of the proposed resolution would permit him to enter into negotiations to exchange easements for utilities and for access. He noted that the exchange would be mutually beneficial for both parties and would allow for overflow parking for both County and Court as well as for Mr. Crump's restaurant.

The Chairman opened the Public Hearing.

John Crump, managing partner of New Kent Courthouse LLC, was on hand to answer questions and agreed that the exchange was mutually beneficial to his company and to the County.

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

Mr. Burrell moved to adopt Resolution R-53-07 as presented. 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.

---

IN RE: ELECTED OFFICIALS' REPORTS #2

Treasurer Herb Jones, Jr. thanked the Board for approving the County's participation in the Abandoned Vehicle Program earlier in the meeting and indicated that he would work out the details with Mr. Budesky. He commented that it was a win/win situation, would help keep the County clean, and generate some revenue. He thanked Mr. Philbates for bringing the program to his attention.

Regarding tax collections, Mr. Jones reported that as of the previous day, a total of \$2,228,136 in personal property tax had been "processed" and \$6,607,314 in real estate taxes. He explained that if taxes had been paid at Citizens & Farmers Bank, the customer may have received their decals, but those payments were not yet showing up on the County's system and had not yet been "processed". He noted that there were two trays of mail yet to process as well. He indicated that he anticipated that all payments would be "processed" by the holiday break.

Mr. Jones spoke about the problems resulting from the County's requirement that decals be displayed on vehicles by December 5, and how it was impossible to process the mail quickly enough to mail decals out in time to meet that deadline. It was noted that the Sheriff did not write tickets for those not displaying decals until after the first of the year and he suggested that the County's ordinance be changed to conform to practice and move the deadline to January 1. Board members agreed that the change made sense.

Mr. Jones commended his staff for their hard work and good attitudes during the busy tax season. He advised that many citizens had used the new credit card system and online payments, and that he was still working out some technical issues regarding the issuance of decals in connection with those payments.

Mr. Trout noted that this meeting would be Mr. Hill's last as a Board member and he thanked him for his assistance during the meetings and presented him with a plaque and a binder of the meeting minutes from his term of office.

Mr. Davis stated that it had been a pleasure serving with Mr. Hill, that he had always been a gentleman, that he respected his decision not to run again and would miss him, predicting that Mr. Hill's life would probably improve.

Mr. Burrell asked Mr. Hill how he planned to spend his extra time. Mr. Hill announced that he had accepted a position as a lay leader in his church and had also accepted a new job that would begin January 1. He offered to be available to assist Member-Elect Thomas Evelyn on a regular basis and stated that he looked forward to working in other capacities in the County and community. He anticipated that the New Kent Habitat for Humanity would build two homes in 2008.

Mr. Sparks wished Mr. Hill the best, stating that it had been a pleasure working with him. He noted that the Board had some "interesting" and important things to work through and that Mr. Hill had been a part of those accomplishments and had a lot to be proud of. He predicted that the Board would be seeing Mr. Hill and he wished him good luck with his new endeavors.

Mr. Hill thanked his family for their love, understanding and support; God and his church, which he said was a safe haven where he had not been confronted with politics; the citizens of District 1 who elected him; the citizens outside of District 1 for their words of encouragement and, in the spirit of the season, those who didn't support him; his appointees on the various board and commissions who gave freely of their time without compensation; to County staff who made his term enjoyable and whom he admired and respected for the jobs that each of them did; the County Administrator, County Attorney, Deputy Clerk and Executive Assistant for their dedication, encouragement and tolerance; the Board members for the honor and pleasure of serving with them for the past four years; Mr. Burrell for his opening prayers and his ability to remain calm, cool and collected; Mr. Davis for his kindness and acceptance of leadership; Stran for always being the second lawyer in the room, for showing him what he had to look forward to in retirement, and for his commitment; and Mr. Sparks for his friendship and perspective.

---

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 14, 2008, in the Boardroom of the County Administration Building, New Kent, Virginia, and reminded that there would be no December work session.

---

IN RE:           CLOSED SESSION

Mr. Burrell moved to go into Closed Session for consultation with legal counsel pursuant to Section 2.2-3711A.7 of the Code of Virginia involving 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. Sparks 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. Hill 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:           ADJOURNMENT

Mr. Burrell 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 9:15 p.m.