

THE NEW KENT COUNTY BOARD OF SUPERVISORS JOINED THE PLANNING COMMISSION WHICH WAS ALREADY IN SESSION, FOR JOINT PUBLIC HEARINGS ON THE 17th DAY OF JANUARY IN THE YEAR TWO THOUSAND SIX OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING AT 7:00 P.M.

IN RE: ROLL CALL

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

Chairman Sparks called the Board of Supervisors' meeting to order and yielded chairmanship of the meeting to Howard Gammon, Chairman of the Planning Commission, who briefly explained the rules that would apply during the public hearing.

IN RE: PROPOSED REVISION OF THE ZONING ORDINANCE

Chairman Sparks addressed the audience. He indicated that the proposed zoning ordinance had been developed in response to public comments and concerns expressed during the Comprehensive Planning process. Citizens had indicated that they felt that the current zoning ordinance was subjective and left too much to the discretion of staff, and that they felt that growth should be orderly and planned and that the rural character of the County should be preserved. He stated that the Board of Supervisors supported the effort to have the zoning ordinance re-written to reflect those goals and emphasized that the public hearing process was intended to solicit comments from the citizens. He stated that the members of the Board of Supervisors were very interested in hearing from the public and that was the reason for the six joint public hearings. He indicated that at the conclusion of the first round of hearings, the Planning Commission would review the comments and make changes. Once the Board received recommendations from the Planning Commission, it would most likely direct staff to make further revisions. He reiterated that the Board was very open to receiving comments from the residents of the County.

Mr. Burrell commented that the vast majority of landowners in New Kent would not be affected, and that the proposed changes were in response to the citizens' requests to keep the County rural. He indicated that if some action was not taken to manage growth, development would continue to take place "helter-skelter". He stressed that the Board was soliciting and welcoming comments.

Chairman Gammon indicated that the Planning Commission also wanted comments and input from the citizens.

Mr. Evelyn announced that he, Mr. Hill and Mrs. Townsend would be hosting an upcoming Town Hall meeting and invited the public to attend.

Chairman Gammon turned the meeting over to Public Hearing Chairman Patricia Townsend, who explained the procedures for the public hearing. She indicated that the Board and Commission members would not be providing answers during the public hearing but would take note and later provide comments.

Community Development Director George Homewood reiterated that this was just the beginning of the public phase of the process and that decisions would not be made any time soon. He indicated that the process had been taking place for about a year and a half in the drafting of the basic framework, and that all comments and questions were welcome. He recounted how the Planning Commission's subcommittee was formed and that there would be more work sessions of the Planning Commission and most likely many changes to the proposals. He stated that the zoning ordinance revision was the single most important piece of the implementation of the Comprehensive Plan, and there were no reasons to either rush or delay the process. He indicated that a summary of Article I was available, and that summaries of the remaining articles would soon be available.

Mr. Homewood undertook to review Article I which contained definitions of approximately 600 terms and he described it as primarily "boilerplate". Most of the terms would be used in the chapters or in comments, and would establish a common vocabulary or jargon that was defined. He indicated that it also contained the processes for zoning text amendments, zoning maps amendments and conditional use permits, would establish civil penalties (instead of criminal penalties as in the current ordinance), and would provide for zoning certificates and certificates of zoning compliance, as well as conservation easements.

He stated that he believed that definitions should define, but should not regulate. However, some definitions were required by State Code.

He indicated that the zoning and rezoning process was largely determined by the Code of Virginia, and that text and pictures were included in the proposed draft. He stated that the CUP process would not change and that permits, once issued, would run with the land but would expire within 2 years if not implemented or not used at all for a continuous period of two years.

Regarding zoning certificates, he stated that site issues would be able to be separated from the building issues, so that there would be no delay in the issuance of certificates of occupancy because of weather-dependent site work.

Regarding enforcement, he reported that there would be civil penalties for seven violations, which would be treated "more like a parking ticket" than a criminal case.

Mr. Homewood stated that the proposed draft would provide for conservations easements, and that State Code required that all conservations easements must be deemed to be in conformance with the adopted Comp Plan before they could be established.

He advised that the proposed draft did not call for any fee changes, as those would be determined annually by the Board of Supervisors. It would provide for the use of development agreements and commented that New Kent County was the sole locality in the State that was authorized by the State Code to use development agreements.

Mr. Homewood admitted that the document as drafted was not perfect, and he asked for the public's help to make improvements, and find the errors and unintended consequences. He emphasized that economics and market forces would drive the growth rates – the ordinance would be able to help direct the growth and its impact. He displayed information that reflected that the proposed changes would impact only 7% of the parcels in the County (1,051 out of 15,306) or 9% of the acreage (12,018 out of 132,959).

Public Hearing Chair Townsend opened the Public Hearing.

Charles Harwood, a resident of Goochland who indicated that he owned property on Route 106, spoke about the 100-foot buffers that would be required in the overlay districts. He stated that it was wrong for the County to control how property owners manage their timber, or to require approval of the neighbors. He stated that the Forestry Department should be the governing authority.

Frank Konier asked about the certificate of zoning compliance, and whether it would be retroactive.

Ms. Townsend reminded speakers that their comments should focus on Article I. Mr. Hill disagreed, stating that speakers should be able to address any of the six articles. Mr. Burrell agreed with Ms. Townsend that comments should be about Article I, as the staff presentation on the other articles may address many of the questions. Mr. Gammon agreed with Mr. Hill and stated that it was not fair that Mr. Homewood had not addressed the other articles. Mr. Sparks recommended that all questions and comments be accepted, and that responses be made available on the website and in paper form.

W. O. Isgett, a resident of District One and operator of a business in District Two, commented on the aggressive time schedule of the process, comparing it to a speeding train passing through Providence Forge. He stated that the public had not been given sufficient time to absorb the document, and he urged the Board and Commission to slow down.

David Ruslander commented on the timetable, stating that the citizens needed time to try to understand the document. He stated that when the Comp Plan was being considered, there was no mention of changing the zoning or that the Director would be the final arbiter. He talked about the lack of checks and balances in the process, as well his concerns that horses would not be considered livestock or domestic animals, and therefore existing wells may not be in compliance.

David Burks, a resident of Providence Forge, spoke about the speed of the process and the document's "lack of clarity". He stated that he was unsure what impact the change would have on his property or where to go to get the answer, and that he was not the only landowner having a problem understanding the document. He asked if existing uses would be "grandfathered".

Beverly Heath, Sr., owner of an industrial park in Barhamsville, commented that there were a lot of questions that needed to be answered. He mentioned concerns that owners of land along Polish Town Road would not be able to afford the additional taxes that would result if their property was rezoned.

David Adams, owner of Adams Sports Mart in Providence Forge, spoke about his concerns regarding the village zoning and how it would affect his business, in that auto fueling and selling of farm equipment would not be a permitted use in what was a commercial crossroads in the County. He stated that he considered the changes to be "throwing up roadblocks" to existing businesses rather than trying to help them. He indicated that Mr. Homewood had expressed to him that he would "have concerns" about selling fuel in the villages.

Sharon Taylor Jordan, a local business owner, stated that she had tried to read the document, and talked about the responsibility that the County owed to its citizens.

Chester Alvis, a realtor and business developer, stated that the document was "contrary to what any businessman would want to see come to the County". He spoke about the difficulties he had experienced in trying to attract businesses to New Kent and how the proposed changes would increase those difficulties because many uses would require conditional use permits. He spoke about how hamlets were designed for vehicle traffic but businesses located there would have to have use permits to sell gas or have a car wash. He indicated that many parcels would be "down-zoned" which would result in increased taxes. He commented that these changes were not about bringing more businesses to New Kent and that, if they were adopted, the County would remain a "bedroom community". He called the changes "onerous" and accused the County of trying to "shove it down the throats" of the citizens. He stated that it would have a dramatic impact on the taxpayers, was disgusting, and was being done for personal gain.

Fred Kuester, a horse owner and landowner on New Kent Highway, stated that he had not been aware that there was a "horse problem" in New Kent and questioned if the "person who came up with this" was an elected official.

George Philbates, Sr. stated that all of the property he owned seemed to be impacted by the proposed changes. He talked about his difficulty in trying to understand the document, and that Mr. Homewood had attempted to explain it to him, but didn't seem to understand it himself. He spoke about the time and money he spent in having his business property rezoned to M-2 and stated that the proposal would undo that process. If passed, his business would not be permitted to have a used car lot, even though the State requires it of a wrecking yard. He urged that if the changes were adopted, then the County should issue conditional use permits that run with the property. He stated that Mr. Homewood had advised that he would be able to continue to operate his business, but he'd like that in writing.

Becky Philbates stated that the zoning needed to be left the way it was.

Isabel Davis White stated that the County was taking away the rights of the property owners and she blamed the increased development on the County's adoption of PUDs and five-acre subdivisions. She stated that the proposed changes were not fair to the farmers.

Floyd Philbates stated that all five parcels he owned would be affected by the proposed changes. He spoke against the changes because of the limits that would be placed on landowners and the red tape that would result.

Randy Caldwell stated that he had not been able to obtain information that would explain the economic impact that the proposed changes would have on his property, or on the County and/or its budget over the next three years. He indicated that he had concerns about existing businesses whose uses would become nonconforming if the changes were made. He stated that it seemed practical that where uses were currently permitted, either by conditional use permit or special use permit, but would become non-conforming, those uses should be grandfathered and made legal.

William Hodges, owner of South Garden Estates, talked about the lawsuits that would result if the County adopted the proposed changes. He suggested that the process be slowed down and that the public be involved in the decision, rather than those with "political interests". He spoke about the problems that Goochland was having with a similar process, and suggested that the County get advice from other localities.

Bill O'Keefe indicated that he and other members from the Brickshire Homeowners Association had reviewed Article I and he stated that it was too large a document to review and digest in the time allotted. He spoke about benchmarking, smart growth, the importance of having a good foundation to achieve the goals of the Comp Plan, and the proposal having too much detail that would increase bureaucracy. He urged that the Board and Commission consider starting with the minimum amendment, and allow changes to take place with experience. He cautioned about the authority that would be given to the Zoning Administrator, and the need for checks and balances. He wondered how Thomas Jefferson would view the proposed document.

Charles Jones of North Waterside Drive commented on trust, the process, and the concerns shared by many about the changes. He suggested that the process be slowed down. He said the document was hard to understand and he made a comparison to "setting up chairs on the deck of the Titanic". He urged that the process start over and allow input from citizens from the beginning.

Wayne Hayden, president of the Chamber of Commerce, stated that the process was too important to rush through, and the County needed to take its time to make sure it was done properly the first time. He indicated that many landowners were just becoming aware of the process. The Chamber was concerned that there was too much information, too much emphasis on villages, and that citizens needed more time to understand what was being proposed.

Mark Daniel indicated that he had a problem believing the claim that only 7% of the parcels would be affected, when 20% of the property in New Kent was included in the Diascund Reservoir overlay. He talked about his concerns with dispensing with the Business and Manufacturing zones. He stated that he had spent time and money in rezoning his property, and if the changes were adopted, some uses would only be permitted with a conditional zoning permit. He stated that businessmen were scared and many were contemplating hiring attorneys to protect their interests. He stated that the County needed to be careful, and that there were too many changes being made too quickly.

Julian Lipscomb stated that he was around when the first zoning ordinance was written, and he found the proposed changes confusing and hard to compare with the existing ordinance. He complained that a landowner would have to consult five different articles to determine what was permitted in a particular zoning classification. He criticized the format and stated that it was hard for the general layman to understand it. He suggested that it would be preferable if each classification had its own article. He stated that Article I is "okay" but he had many comments about some of the other articles. He urged that the process be slowed down.

George Simmons, a businessman, stated that he had a problem with rules. He indicated that he was looking at purchasing some property in Providence Forge that was now zoned A-1 but would become "village" if the changes were adopted. He asked if this was a "cover up" attempt to raise taxes or bring in a landfill.

Lloyd Christian commented about the 22 times during the recent presentation to the Chamber of Commerce that Mr. Homewood referred to "things he'd like to see". He spoke about the poor results of villages in Colonial Williamsburg and the lack of tourist sites in New Kent, and urged the County to be more realistic. He also spoke about the legal

ramifications of adopting the proposed changes and the class action lawsuits that might result.

George Pinelli, owner of Taylor & Harrison in Providence Forge, stated that he agreed with many of the comments that had been made. He stated that he had seven full-time employees, and his business would become noncompliant on two uses if the changes were adopted. He indicated that he understood the need for some changes, but that the proposal would have a dramatic impact. He asked if anyone involved in the process had considered the demographics of the County. He suggested that the County take its time, and commented that every landowner would be affected, either directly or indirectly. He stated that the process needed to be "evolutionary" rather than "revolutionary".

Jack Crane stated that he was a member of the review group referred to by Bill O'Keefe that had come up with many questions and comments. He agreed with many of the earlier comments and emphasized the need to slow down the process. He asked that someone provide a summary and comparison of the changes.

There being no one else voicing a wish to speak, the Public hearing was closed.

IN RE: CUP APPLICATION FOR FARMS OF NEW KENT WATER SYSTEM

Under consideration by the Planning Commission and the Board of Supervisors was Application CUP-06-05 filed by New Kent Farms LLC to construct and operate a water system consisting of a storage tank, well, pumps and distribution system to serve the Farms of New Kent PUD and property in the nearby vicinity.

Planning Manager Rodney Hathaway reported that the proposed location for the water system was on the east side of Olivet Church Road/Route 618, approximately 3,000 feet south of New Kent Highway/Route 249, on property identified as tax map parcel 22-11. He indicated that the proposed elevated water tank would be about 170 feet in height with a storage capacity of 1 million gallons, and would be dedicated to the County for operation once it is constructed. He noted that the site was zoned A-1/Agriculture, and was adjacent to the Farms of New Kent PUD as well as A-1 zoned property on all other sides. He indicated that Section 98-213 (28) of the New Kent County Code allowed water storage facilities with a conditional use permit. Furthermore, PUD Ordinance O-09-05 approved by the Board on May 23, 2005, required that the Farms of New Kent PUD be served by public water and sewer systems.

Mr. Hathaway indicated that a visibility study was conducted on January 7, 2006, and resulting photographs showed that the proposed water tank will be well-screened. He stated that staff found the requested CUP to be consistent with the current zoning classification and Future Land Use Plan, and the proposed water tank to be consistent with the approved PUD ordinance. He represented that staff was recommending approval with the conditions that were set forth in Planning Commission Resolution PC-02-06 and Board of Supervisors Resolution R-06-06.

Mr. Hathaway was asked to elaborate on the conditions. He indicated that the applicant would be required to comply with the Development Agreement entered into with the County on May 23, 2005, which set out the provisions relating to public utilities. The applicant would be required to submit a site plan in accordance with the lot layout as depicted on the plan prepared by Resource International dated August 2, 2005.

Ms. Townsend asked about a bonding requirement to protect the County. Mr. Hathaway reminded that the water tank would be dedicated to the County for operation once it was constructed and therefore there was no bonding requirement.

Ms. Snyder asked how many people lived on Olivet Church Road near the tower, and had they been notified of this proposal. Mr. Hathaway estimated five to six homes surrounded the site, and that adjacent property owners had been notified and none had provided comments.

Mr. Chalmers asked if any homes were within 750 feet of the tower. Mr. Hathaway reported that those restrictions did not apply to water towers.

Ms. Snyder asked why the applicant was not placing the water tower on its own property. Chuck Rothenberg, attorney for the applicant, reported that the site was selected with the guidance of the County's Public Utilities Director, and that the applicant did own the property even though it was not located within the PUD.

Ms. Snyder commented that there were other available sites for the tower that were not where people live. Mr. Rothenberg stated that this was the best location according to the Public Utilities Director.

Mr. Smith asked if fire trucks would be able to obtain water at the site. Charlie Riedlinger of Resource International reported that fire truck tanks could be filled at any of the system's fire hydrants that would be located 800 feet apart and there would be a fire hydrant near the tank itself.

Chairman Gammon turned the meeting over to Planning Commission Public Hearing Chair Patricia Townsend who opened the Public Hearing.

Beverly Heath, Sr. indicated that he owned adjacent land and expressed his concern as to whether there would be enough water to service his property.

Mr. Rothenberg displayed a map and pointed out the site which was represented to be about 1,500 feet from the daycare center, about a mile from I-64 and about halfway between Route 249 and I-64.

Mr. A. Christian, who indicated that he lived on property adjacent to and about 600 feet from the proposed site, stated that there were a lot of people in his neighborhood who were not aware that a water tank was proposed to be built there, and only found out when they saw the crane out there. He spoke about the residents' concerns as to whether they'd be required to purchase flood insurance for their protection in the event of a break in the tank. He submitted that there was other land where the water tower could be located.

Mr. Rothenberg stated that the applicant had sent out notices to 26 – 27 property owners and advertised the visibility tests for two weeks, and that the County had sent out notices as well.

Mr. Heath noted that the Public Utilities Director, who was not available, was the person that needed to answer those questions. He again expressed his concern whether the 20% capacity allotted for adjacent users would be sufficient.

William Hodges spoke about the visibility of the tank. He suggested that the application should not be approved until it was certain where the tank was going to be located. As with the zoning ordinance process, he indicated that it was important to look into every aspect before making a decision.

There being no one else voicing a wish to speak, the Public Hearing was closed.

There was discussion among the members of the Board of Supervisors and Planning Commission regarding the proposed site, the lack of notification to the landowners that are within view but not adjacent to the proposed water tank, and the reason for an elevated tank as opposed to a ground tank.

Ms. Snyder asked about the visibility of the water tank from the PUD property. Mr. Rothenberg stated that the tank was visible from Land Bay V and from the winery. Pete Johns indicated that an elevated tank was required by the County's Public Utilities Director, that the capacity was more than sufficient, and that the system would be expandable.

There was discussion regarding water pressure, hydraulics, friction loss and fire flow needs, as well as the possibility of moving the water tank toward the rear of the parcel. Mr. Rothenberg stated that the applicant would be amenable to that possibility.

Photos resulting from the visibility test were shared with the Board and Commission members, who inquired why a crane was used instead of a balloon test. Mr. Johns reported that high winds prevented them from conducting a balloon test which would have been much less expensive than using the crane.

Ms. Snyder asked about the cutting of trees that would be involved. Mr. Johns reported that they would remove only those trees necessary.

There was discussion regarding setbacks. Mr. Homewood indicated that there were no setback requirements for utility uses.

Mr. Burrell suggested moving the tank to the west of the proposed site in order to make it less visible to the neighbors and that perhaps Mr. Harrison didn't take the input of the citizens into account when he designated where the site should be. Mr. Homewood indicated that Mr. Harrison had strong preferences for an elevated water tank in this particular area, based on hydrology and hydraulics.

Mr. Evelyn commented that he would like to hear from Mr. Harrison before making a decision. Mr. Rothenberg agreed, and stated that the applicant would be agreeable to moving the tank farther back on the site which would provide more screening.

Ms. Snyder moved that the matter be postponed until additional information could be obtained, that would include a map showing exactly where the tank was going. The motion was seconded. The members were polled:

Thomas Evelyn	Aye
Patricia Townsend	Aye
Clarence Tiller	Aye
Sylvia Godsey	Aye
Charna Moss	Aye
Louis Abrams	Aye

Brenda Snyder	Aye
David Smith	Aye
Jack Chalmers	Nay
Edward Pollard	Aye
Howard Gammon	Aye
Stran Trout	Abstained

Motion carried.

Mr. Burrell suggested that the members of the Planning Commission drive by and look at the site which would be better than looking at maps.

Mr. Trout clarified that no additional public hearing would be required unless there were significant changes to what had been advertised.

Mr. Hathaway asked if the Commission could consider this as an item on its agenda at the following week's joint public hearing. It was noted by members of the Board of Supervisors that there was already a full agenda for the January 23 meeting.

Chairman Gammon declared the Planning Commission to be in recess.

IN RE: OTHER BUSINESS

Under consideration by the Board was Resolution R-05-06 recognizing the 100th birthday of local resident Pauline Pemberton.

Mr. Burrell read aloud the proposed Resolution and then moved for its adoption. The members were polled:

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

The motion carried.

It was noted that a framed copy of the Resolution would be presented to Ms. Pemberton at the Board's February meeting.

IN RE: DISTRICT APPOINTMENTS

Mr. Trout moved to nominate William Chandler as District Four's representative to the Board of Zoning Appeals to serve a term ending December 31, 2008.

Mr. Davis moved to appoint Farron Cowles as District Five's representative to the Historic Commission to serve a four-year term beginning January 1, 2006 and ending December 31, 2009.

Mr. Davis moved to appoint Patricia Wallace as District Five's representative to the Social Services Advisory Board to complete a term ending December 31, 2009.

The members were polled:

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

The motion carried.

Mr. Davis thanked Nell Crump for her many years of service to the Historic Commission, and Faye Patterson for her services on the Social Services Board.

IN RE: APPOINTMENTS TO BOARDS AND COMMISSIONS NOT DELEGATED BY
DISTRICT

Mr. Burrell moved to appoint J. Lawrence Gallaher as New Kent's Coordinator of Emergency Management to serve a one-year term ending December 31, 2006, as required by Virginia Code Section 44-146.19.

Mr. Trout move to appoint Thomas Evelyn as New Kent's Planning Commission representative to the Richmond Regional Planning District Commission, to serve a one-year term beginning January 1, 2006 and ending December 31, 2006.

The members were polled on the motions:

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

The motions carried.

IN RE: ADJOURNMENT

There being no further business, Mr. Burrell moved to adjourn the meeting until January 23, 2006. The members were polled:

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

The motion carried.

The meeting was adjourned at 9:49 p.m.
