THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 24th DAY OF APRIL IN THE YEAR TWO THOUSAND SIX OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING AT 6:00 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 meeting to order at 6:00 p.m.

IN RE: COMMUNITY NEWS

Mr. Hill reported on a serious injury recently sustained in Iraq by Sgt. 1st Class John Teets of Barhamsville. The Board members solicited the prayers of the community for his speedy recovery.

IN RE: JOINT MEETING WITH THE FARMS OF NEW KENT ECONOMIC DEVELOPMENT AUTHORITY

Chairman Sparks yielded the chair to Ronald Jordan, Chairman of the Farms of New Kent Economic Development Authority, who called that body to order. Members present were Mr. Jordan, Alan Files, W. R. Davis, Jr., Steve Miles, and Richard Ellyson.

Bonnie France of McGuire Woods, bond counsel, reviewed the latest version of the proposed Memorandum of Understanding (MOU), an agreement between the County, the CDA, the developer and the landowners. She explained that the CDA would need to adopt a resolution approving the MOU and thereafter the Board of Supervisors would be asked to approve the MOU by Ordinance following a public hearing scheduled for May 9. She advised that in the MOU, all landowners agree to the proposed assessment and the CDA agrees to issue bonds and use the proceeds for the specified purposes. Ms. France indicated that they would be working with the County Treasurer in an effort to minimize the impact upon his office resulting from collection of the assessments. She pointed out that a specific amount would be retained to reimburse the County for its administrative costs and that if the specified amount was not sufficient, the County would be able to bill the CDA for any excess.

Keenan Rice of MuniCap, special tax consultant, reviewed the Rate and Method of Apportionment of Special Assessment and Special Assessment Report. He explained that it would be necessary for the Board of Supervisors to approve the special assessment and formula at the beginning of the process; thereafter, the only action required by the Board would be the annual appropriation of the assessments, as requested by the CDA Board.

He indicated that if a property owner failed to pay the assessment, then it could be paid from the mandatory debt reserve fund (sufficient to pay one year's debt service) until such time as legal remedies could be pursued against the delinquent landowner. Mr. Davis explained how the County currently used outside counsel for delinquent tax collection; Mr. Rice indicated that attorney fees would be added to any assessment amount due from a landowner.

Mr. Rice emphasized that in most cases, the builder would pay the assessment at the time that the home was sold to the first homeowner.

He explained that "administrative expenses" could be construed to cover any costs of the CDA. He confirmed that there would be no cost to the County or to its citizens, other than to those landowners within the PUD.

Mr. Rice reviewed the two classes of equivalent units, explaining that Class 1 would be residential dwelling units (at 1.00 per unit) and all others would be Class 2 (at 0.67 per 1,000 BSF).

Mr. Rice also reviewed the formula for determining the special assessments, explaining that the CDA Board could re-apportion the special assessment if there was a change in the estimates of the total of the equivalent units of a parcel, or if the initial estimates of build-out should change. He indicated that upon the subdivision of a parcel, the special assessment of the parcel prior to the subdivision would be reallocated to each new parcel. If there was a reduction in the costs, the CDA Board would then reduce the special assessment so that only the amount required was collected. He confirmed that once the bond was paid off, the special assessments would no longer apply.

He described how the CDA Board would annually update the special assessment roll. He pointed out that they were proposing using a "per unit" value rather than an *ad valorem* so that each property "paid its fair share". He also reported that as prepayments were made, there would be reductions in the reserve fund.

Mr. Rice advised that should a parcel unexpectedly convert to public property, then the assessment would become due at the time of conversion. Additionally, there would be a mandatory pay-down required by the bondholders should the amount of development be less than what was anticipated. There was some dispute regarding what Equivalent Units (80% v. 71%) would trigger the pay-down, and Mr. Rice indicated that he would double-check those figures.

Mr. Rice reviewed the Special Assessment Report, including "peculiar benefit" which he reported should be equal to or greater than the cost of the special assessment. He stated that assessments were to be only in an amount sufficient to pay the bond and that the amount that each parcel paid would be based upon its use of the improvements. It was reported that the anticipated assessment would be $30,679 per residential unit and $20,555 per 1,000 square foot for commercial.

Mr. Jordan pointed out that the MOU did not require pre-payment of the assessments. He indicated that the CDA Board felt that pre-payment should not be required for commercial but would be preferable for residential; however, IRS regulations required that everyone be treated the same and did not allow for differing requirements. Either everyone had to prepay or everyone had the opportunity to pay over time. He indicated that both the financial advisor and counsel had been working with the developer to explore available options.

Ted Cole of Davenport & Company, financial advisor, and Dan Siegel of Sands Anderson Marks & Miller, legal counsel, reviewed the payment options that had been developed. The payment options that were determined not to be viable included a) prepayment required at the first sale for both residential and commercial and b) no prepayment ever required.

He outlined options that were reported to "strike a balance". Option 1 provided that there be no prepayment language required for any property type; however, the developers would pledge their moral obligation that they would contract with builders to provide that assessments on residential lots be prepaid before being sold to "end users", and to enforce the prepayment at or prior to sale. Assessments on commercial properties would not be required to be prepaid but prepayment would be permitted. This option would require a contract between the builder and the developer. Pete Johns, Partner with Farms of New Kent, reported that a contract providing for prepayments had already been entered into with the single builder in Land Bay V. It was reported that, in this option, there would be no legal way for the County to enforce the developer's moral obligation to either require prepayments in contracts with builders or to enforce the prepayment requirement. If prepayment were not made, then the homeowner would be required to pay annual payments until the assessment was fully paid.

Option 2 would require prepayment of all assessments, but the County, through the Economic Development Authority, could offer to finance all or a portion of the assessment on a commercial property for a preferred industrial industry, and subject to appropriation by the Board of Supervisors. Advantages of this option included the EDA's control over the potential incentive to assist certain businesses, but it was pointed out that it would come at a cost to the County and may slow commercial development.

There was discussion regarding how assessments were paid in other CDAs around the State.

Mr. Davis inquired if Option 1, which depended on the moral obligation of the developer, would affect the bond sales. Mr. Cole stated that it would not. Mr. Cole emphasized that neither the County nor the CDA could be a party to the contract between the developer and the builders, and that the developer would be the only party that could enforce the assessment prepayment. Mr. Rice indicated that under securities law, the developer would have to make a statement to the bondholders that they would be requiring prepayments and if they did not follow through, it would not be an honest disclosure.

There was discussion regarding the assistance that would be offered to commercial landowners through the EDA. It was reported that criteria would need to be established by the EDA but that the program would have to be open to all commercial parcels.

Mr. Jordan commented that there was an element of trust needed, but that the CDA Board felt that it was in the best in interest of the County to encourage commercial by not requiring prepayment, and that Option 1 was preferred.

Mr. Hill indicated that he believed that the Board had sufficient information and he felt it was in the County's best interest to endorse Option 1.

Mr. Jordan stated that if there was consensus on the Board of Supervisors to support Option 1, then the CDA Board would be voting on the adoption of a Resolution approving the MOU and requesting the Board to levy the assessment.

Mr. Burrell expressed his concern about the County's lack of enforcement authority. Mr. Jordan advised that in the event there was no prepayment by the builder and annual assessments due by the homeowner, then disclosure of that fact to the homeowner would be required.

Mr. Davis inquired about lots that were purchased but not built upon. Mr. Johns indicated that most of the lots in Land Bay I would be sold directly to the homeowners who would then select a builder to construct a home. He stated that although homes in that bay would likely take longer to build, there would be some construction deadlines.

Mr. Johns emphasized that if a lot was sold to the ultimate homeowner, then the assessment would be paid at closing. Contracts between the developer and builder would only apply to lots that are sold to builders for speculative homes, and that would only be in Land Bay I.

Mr. Burrell stated that he would like to see it "in black and white". Ms. France indicated that she would be providing a letter of intent from the developer.

Nate Betnun of Stone & Youngberg, bond underwriters, stated that in the event that an assessment was not prepaid by the builder, then it would be due from the homeowner and collected by the County. The developer would have to represent to the bondholder that it was his intention to prepay assessments. Under security law, if he failed to do so then the bondholders could sue and the SCC could enforce it.

Regarding the proposed schedule, Matt Diamond of Stone & Youngberg, bond underwriters, stated that their goal was to have the bonds issued by the end of June, and in order to meet that schedule, there were some critical deadlines. He indicated that the Board would be asked on May 9 to approve the MOU and levy the special assessment. Thereafter, they will come back to the CDA Board for approval of a preliminary offering limit memo which was what they would use to solicit bond buyers. Assuming CDA approval, they would then move quickly, with a goal to have this occur before Memorial Day. It would then be sent out to a wide universe. He anticipated visits by interested parties and to close within 2 – 3 weeks thereafter. They will then come back to the CDA Board with an overview, outlining the interest and market rates, and report on how it was received. He confirmed that all of the bonds would be taken to the market at the same time. He anticipated that the bonds would be sold within 2 – 3 days after the site visits, although he admitted that there were things that could occur that could affect that. It was reported that the appraisal was underway.

It was the consensus of the Board to permit the attorneys to move forward to work out the details.

The Board members were provided with a copy of a proposed CDA "Resolution of the Farms of New Kent Community Development Authority approving a Memorandum of Agreement and Special Assessment and Requesting the Board of Supervisors of New Kent County to Levy Same".

Mr. Files moved that the CDA Board adopt the proposed Resolution. The motion carried unanimously.

It was reported that the next meeting of the Farms of New Kent CDA would be on May 10 at 7 p.m. in the Old Courthouse.

Mr. Miles moved that the CDA meeting be adjourned. The motion carried unanimously and the CDA adjourned at 7:36 p.m.

IN RE: QUINTON COMMUNITY PARK UPDATE

Before the Board for consideration was a new concept plan for Quinton Community Park.

Mr. Budesky recounted that the park had been through a number of different plans. Since the last concept (which included 3 baseball fields) was adopted a little over one year ago, the Parks & Rec Advisory Board had been working on standards for neighborhood parks and community parks, and had revised the plan for this park to a multi-use facility rather than a baseball-oriented park. The current concept provided for an open air park with graveled parking, playgrounds, a .6 mile walking trail, pavilion/restroom complex, one baseball field, and one multi-purpose field, with the options of adding additional fields in the future.

It was reported that the parking lot culverts were in and one-quarter of the walking trail finished, and they were in the process of smooth-grading and seeding as well as finishing the walking trail.

Mr. Budesky reviewed the budget and revenue figures. It was reported that they were anticipating the receipt of bids on the playground equipment and restrooms.

Mr. Burrell commented that the existing tennis courts beside the primary school were often empty, and he did not see a need for more tennis courts. Parks & Recreation Manager Matt Spruill indicated that the same concern had been raised at a recent Advisory Board meeting.

Regarding the pavilion, Mr. Budesky reported that it would be more cost effective to construct the pavilion and restrooms at the same time, and he would soon be meeting with the Rotary Club (who had pledged to build the pavilion) to discuss the possibility of a combination plan. He asked that the Board consider adoption of the revised plan and authorize staff to work within the budget.

Mr. Davis moved to accept the revised plan for Quinton Park dated April 24, 2006, and to move forward within the budget. 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.

IN RE: PURCHASE OF DEVELOPMENT RIGHTS PROGRAM

Planning Manager Rodney Hathaway reviewed staff's proposal for a Purchase of Development Rights (PDR) Program. He pointed out that this was a voluntary program for residents who wished to sell or donate their development rights, enabling the County to place the property into a perpetual conservation easement. It was reported that several things were happening in the State which would favor localities with PDR programs - the Governor had set a goal to preserve 400,000 acres in Virginia and created a task force that has a deadline of November 2006 to develop recommendations. The Board was advised that if New Kent were to adopt a program, it would not be locked in to funding it.

Furthermore, Farms of New Kent had proffered $50,000 towards a PDR program to be paid within 60 days of the Board's adoption of a PDR program, together with 25 cents for each bottle of wine sold (to be paid one time per year).

Mr. Davis stated that the recommendations were pretty straightforward and that the Board needed to adopt this so it could receive the proffers. He inquired if people would be able to make charitable cash contributions to the fund. Mr. Hathaway stated that he thought that could be done and would check into it.

It was reported that this would require a public hearing.

It was confirmed that after property had been in a program for 25 years, its owner could make a request to swap other property.

Mr. Hathaway reported that he had studied existing programs in the Counties of James City, Albemarle, Fauquier and Loudoun, as well as the guidelines of the Va. Dept of Agriculture and Conservation Services.

Mr. Davis commented that developers should fund PDRs. Mr. Hathaway indicated that it could be suggested to a developer but not required.

Mr. Hathway stated that the next step would be to develop agreements and other legal forms. It was reported that County park property could be included in conservation easements.

Mr. Hathway described the method he used to develop the proposed ranking method, which he felt covered what the Board was looking for. He indicated that it would require the establishment of a PDR Committee. He suggested a seven-member group, consisting of five district appointments, one at-large, and one professional. His recommendations included an open application period from March 1 through April 30. Once applications were received, the PDR Committee would review and rank them using established criteria, and thereafter make recommendations to the Board of Supervisors. Once the Board made its decision, then the County Administrator would make offers to the landowners.

It was reported that 45,000 acres of farmland and 22,000 acres of forests were lost to development each year.

It was the consensus of the Board to proceed with advertising of a public hearing for May 9.

IN RE: ELTHAM PARK AND FISHING PIER

Before the Board for consideration was Resolution R-17-06, to acquire property for the proposed Eltham Park and Fishing Pier, and Resolution R-18-06, requesting Recreational Access funds from the Commonwealth Transportation Board for the proposed Eltham Fishing Pier.

Mr. Budesky reported that these resolutions were needed by VDOT in order to proceed with the application for recreational access funds. He indicated that bike paths were required by the Comp Plan and the County should be able to receive funding for them. In order to submit the application the following day, he conveyed VDOT staff's request for evidence of the Board's commitment to attempt to purchase property for the access road. He related

that the resolution indicated the Board's support but did not require it to actually buy the property.

The Board members reviewed the map. It was reported that the existing holding pond would not remain once the bridge construction project was complete.

Mr. Davis moved to adopt Resolution R-17-06 as presented. 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 moved to adopt Resolution R-18-06 as presented. The members were polled:

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

The motion carried.

IN RE: MEETING SCHEDULE

Chairman Sparks announced that a public hearing on the landfill application would be held at 7 p.m. on Monday, May 8, 2006, in the auditorium of New Kent High School. The next regularly scheduled meeting of the Board of Supervisors would be held at 6:00 p.m. on Tuesday, May 9, 2006, in the Boardroom of the County Administration Building.

IN RE: CLOSED SESSION

Mr. Burrell moved to go into Closed Session for discussion relating to real property pursuant to Section 2.2-3711A.3 of the Code of Virginia. 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 Board went into closed session.

Mr. Davis moved to return to open session. 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.

Mr. Burrell made the following certification:

Whereas, the New Kent County Board of Supervisors has convened 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.

Chairman Sparks 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:

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

The motion carried.

IN RE: TRANSFER OF PROPERTY

Mr. Burrell moved to schedule a Public Hearing on a land transfer with John Kinney for a right-of-way for the County maintenance facility. The members were polled:

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

The motion carried.

IN RE: UPCOMING MEETINGS

Mr. Budesky reported that the County Attorney had asked for a closed session with the Board on May 8 prior to the 7 p.m. hearing on the landfill application. The Board agreed to start the meeting at 6:30 p.m. for that purpose.

IN RE: ADJOURNMENT

Mr. Hill moved to adjourn the meeting. 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 8:35 p.m.