

THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 26th DAY OF JUNE 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: CLAIM FOR ADDITIONAL COSTS BY GODSEY & SON, INC.

Before the Board for consideration was an appeal from Godsey & Son, Inc. of a denial by the Public Utilities Director of a claim for additional monies owed on the County's Bottoms Bridge water main project as a result of an unexpectedly large increase in the cost of material.

County Attorney Jeff Summers filed with the Deputy Clerk a copy of the contract documents for the Bottoms Bridge water main projects to be made a part of the record, as well as a copy of a letter from Godsey & Son, Inc., dated April 26, 2006, and attached summary sheets. He indicated that he had nothing further to add to the information previously provided to the claimant's attorney and the Board.

Attorney Christopher Hill apologized for his late reply to Mr. Summers' response. He dismissed Mr. Summer's prediction that the Board's granting of his client's claim would "open the floodgates" to similar requests from other contractors. He represented that Hurricane Isabel had "taken out" two PVC pipe suppliers, resulting in a substantial increase in the cost of PVC pipe, and that a disaster of that magnitude was not one that could have been reasonably anticipated by his client. He predicted that the Board's denial of his client's claim would result in local responsible contractors being reluctant to bid on New Kent projects and/or reluctant to submit low bids. He indicated that after the cost increase became known, it was his understanding that the County had approached the second lowest bidder who couldn't take the project. He stated that, at that time, his client was the only contractor ready and willing to proceed with the project, and he commended his client for "plowing ahead", despite the increase in costs, and saving the County from having to re-bid the project. Attorney Hill commented that there had been no complaints about his client's work on the water main project and advised that the contract permitted the County to grant a cost increase.

Mr. Trout expressed his concerns that if the Board granted the request, it would set a precedent where the low bidder on any project would expect to be compensated for any increase in costs.

Attorney Hill reiterated that Hurricane Isabel was a "once in a lifetime" disaster, and he did not think that this was a case that would set any kind of precedent.

It was reported that the bids were received in the summer of 2005 and contracts executed in October. The hurricane struck in between those events. Attorney Hill indicated that at

the time his client executed the contract, it was not aware of the storm's true impact on the price of materials.

Mr. Sparks asked Roger Hart, project engineer, if any other contractors had made similar claims. Mr. Hart indicated that he was not aware of any other claim.

Mr. Hart reported that there were two other contractors working on the utilities project that were also using PVC pipe, and that neither had asked for increases in the contract price. He indicated that it was his understanding that a local supply house was working with one of the contractors to mitigate the effects of the price increase.

Public Utilities Director Alan Harrison reported that after conversations with Mr. Godsey regarding price increases which were then thought to be in the \$40,000 range, he did talk with the next lowest bidder who indicated that he would be able to proceed with the project at the price that was bid; however, Mr. Harrison indicated there was no further conversation with the next lowest bidder because Godsey & Sons proceeded with the project.

Mr. Hill moved to deny the claim of Godsey & Son, Inc. and affirm the previous decision of the Public Utilities Director. 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: GENERAL SERVICES CONTRACT FOR THE AIRPORT

Before the Board for consideration was a request to approve a general services agreement for professional engineering, environmental and planning services at the New Kent Airport.

Airport Manager Bill Kelly explained that the County had a similar contract during the past five years. He indicated that each project would be covered under a separate addendum which would provide for a lump sum cost and require the Board's approval; the general contract merely set guidelines and provided for hourly rate. He reported that three responses had been received to the Request for Qualifications that was advertised, and that based upon the nature of the anticipated projects, staff had deemed Campbell & Paris to be the best firm. He explained that the rates were subject to FAA and Department of Aviation review, as well as peer review.

County Attorney Summers advised that he had reviewed the contract and was comfortable with it.

Mr. Kelly indicated that he had worked with Campbell & Paris before – it was the company that designed the runway rehab project as well as the pending hangar project, and had also helped develop the Airport's business plan.

Mr. Trout moved to authorize the County to enter into the proposed General Services Agreement with Campbell & Paris Engineers for professional engineering, environmental and planning services at the New Kent Airport. 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.

IN RE: FINANCE ITEMS

Before the Board were requests for approval of the following appropriations and interdepartmental budget transfers:

Appropriations:

- a. additional funds received for utility irrigation connection fees, \$2,850.00
 - b. funds received from AmeriGas for a refund on propane, \$1,913.00
 - c. insurance proceeds resulting from an accident on Apr 19 involving a Sheriff's Department vehicle, \$1,839.00
 - d. funds received from the high school for security administered at the prom on Apr 29, \$323.00
 - e. funds received from Jamestown 2007 activities through Jun 06 to Jamestown 2007 projects, \$76.00
 - f. year end funds from FY05 in the Capital account designated for schools, \$126,538.00
 - g. funds received from the Sheriff's Office for restitution from an individual as part of a guilty plea, \$1,350.00
- | | |
|----------------|------------------------------------|
| \$(134,889.00) | Total |
| \$ 8,351.00 | Money-in/Money-out |
| \$ 126,538.00 | From Fund 7 – Capital Fund Balance |

Interdepartmental Budget Transfers:

- a. Sheriff: \$7,900 from Salaries & Wages to Part-time Salaries & Wages
- b. Sheriff: \$400 from CAD System to Overtime
- c. Sheriff: \$245 from ADP Equipment to Computer Operations
- d. Fire, Rescue & Emergency Management: \$5,000 from VEPCO funds to Overtime
- e. Commissioner of the Revenue: \$2,611 from Travel, Mileage, Repair & Maintenance and Postage to Professional Services, Programming Consultant, Books & Subscriptions, Telecomm – Cellular, and Part-time Salaries & Wages

Mr. Burrell moved to approve the appropriations and interdepartmental budget transfers as requested and that they be made a part of the record. 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.

Mr. Davis made some inquiries about the appropriation of funds received by the Sheriff for restitution.

IN RE: INTERPRETATION OF THE SUBDIVISION ORDINANCE – SURVIVING SPOUSES

Before the Board for consideration was a request for affirmation of the Subdivision Agent's interpretation of the Subdivision Ordinance as it pertained to surviving spouses.

Community Development Director George Homewood explained that a situation had recently arisen whereby a property owner had applied to subdivide his property through a family subdivision, transferring a parcel to a daughter-in-law. When it was explained to the applicant that a daughter-in-law was not a permitted recipient under the Subdivision Ordinance, Mr. Homewood learned that the property owner's son was recently deceased and it was the owner's intention to provide for his widowed daughter-in-law and grandchildren. Although the property owner could have transferred the property to his minor grandchildren, such action would have required guardianship and other cumbersome legal processes. Mr. Homewood indicated that as Subdivision Agent, he was empowered to make certain interpretations and had interpreted that a surviving spouse would be a permissible recipient under the circumstances; however, he wanted to make sure that the Board was comfortable with his interpretation. He emphasized that this interpretation would cover only a surviving spouse (not necessarily with children) and he did not believe that it would open the door to any loopholes in the family subdivision ordinance.

There was some discussion regarding the proof necessary to establish the facts in such a circumstance. Mr. Homewood indicated that he would work with the County Attorney to establish a list of necessary documentation.

Mr. Burrell commented that he felt that this interpretation showed compassion and he did not expect it to often occur.

Mr. Burrell moved to affirm the June 13, 2006 interpretation of the Subdivision Agent as it pertained to surviving spouses. 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.

IN RE: IMPROVEMENTS AT THE ROUTE 618 TRANSFER STATION

County Administrator John Budesky and Maintenance Supervisor David Bednarczyk reviewed the completed and planned site improvements at the Route 618 transfer station. It was reported that about 21,000 square feet of additional space had been cleared, and that fencing would soon be installed.

Mr. Burrell recommended the addition of another compactor, maintaining that it would save the County money by not pulling half-empty containers.

Mr. Budesky reported that the plan included a third compactor, as well as a compactor for recycled cardboard. He indicated that the improvements were designed to make the site more user friendly, improve the flow of traffic, include installation of improved signage, and

make it easier to recycle. He reported that the County was starting to receive increased revenues from the recycling of propane containers, metals, oil and batteries.

Mr. Budesky reported that plans were to make traffic into the site one way, with vehicles exiting at what was previously the truck entrance. He pointed out that the brush field had been redesigned to help the County better control dumping by developers. Furthermore, staff was in the process of developing a Request for Proposals to solicit a host site to handle brush and debris, which would be more cost effective for the County. Once those proposals were received, he indicated that staff would likely be making a recommendation to the Board to remove debris collection from the Route 618 site.

He reported that, in the near future, the Board would also be asked to consider a change in the ordinance to give the County more authority in controlling contractors from using the site for dumping of construction debris. He emphasized that the transfer stations were designed to handle household refuse and not for business use, and indicated that the County should not be using taxpayer money to dispose of contractor debris. In addition to changes to the ordinance to make it more difficult for contractors to dump at the sites, staff would also be asking for ordinance changes regarding illegal dumping throughout the County.

Mr. Budesky reported that improvements at the Route 618 site would also make it easier and safer for staff assigned to the site.

There was discussion regarding recycling and efforts to promote it.

Mr. Burrell reported that some localities charge contractors to dump construction debris at municipal sites, and that might be an alternative for New Kent to consider.

Mr. Davis also asked that staff set up a meeting with the Brickshire homeowners to discuss the possibility of a recycling center in that subdivision.

IN RE: APPOINTMENTS

Mr. Sparks moved to appoint Joanne Panek as District Two's representative to the Purchase of Development Rights Committee to serve a term ending June 30, 2009.

The members were polled on the motion:

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: ANNOUNCEMENTS

Mr. Budesky reported on an economic development undertaking with the Timmons Group wherein properties in the Economic Opportunity areas were being identified and their owners contacted to determine if they were interested in marketing assistance. He indicated that once it was determined that the property was available and the owner was interested, the property would be included on the Virginia Economic Development

Partnership website. Mr. Budesky distributed a list of potential properties as well as a proposed letter to the homeowners and scripts to be used in making calls. He described the inquiries he received daily regarding available sites as well as complaints that the County was not helping its landowners market their property. He emphasized that the County had no interest other than to try to link those interested in selling to those with commercial interests. The County would not be involved in any way in negotiations.

There was discussion regarding the list. Mr. Budesky indicated that it contained a mix of properties in different zoning classifications, consisting of small, larger and very large parcels. He reported that there were some landowners not on the list who had expressed interest in the process and had completed and submitted their forms. He advised that more than half of the listed owners had been called.

Mr. Budesky further explained the process, whereby once an owner had agreed to market his property, the utilities would have to be identified, and the zoning and topography determined before the property could be added to the VEDP website.

Mr. Burrell stated that he thought it was a good idea.

Mr. Davis expressed his concerns, indicating that he had received complaints from his constituents asking why the County was paying someone to cold-call New Kent property owners in order to sell their property. He indicated that he was not happy with the way that the letter or script read, as it sounded like the County wanted them to sell their property. He emphasized that many property owners did not want to sell their property and did not like cold calls. He commented that many property owners did not even realize that their property had been classified as Economic Opportunity.

Mr. Sparks stated that he agreed with Mr. Davis on the issue of cold calling, and felt sending a professional letter was preferred.

Mr. Budesky indicated that the calls could stop, but that it had been determined that there was only 10% response to letters compared to a 60% response to calls. He further stated that the letters had been sent, and that the calls had been made as a follow up.

Mr. Davis stated that no one with whom he had spoken had mentioned receiving a letter and that this was the first time that the Board was aware of what was happening. Mr. Budesky stated that it was not a new practice, and that he called people on a daily basis on behalf of prospects.

Mr. Sparks suggested that if calls were made, that the caller not leave the script on voice mail but call back at a later time.

Mr. Trout indicated that he also had a problem with cold calls.

Mr. Budesky reported that the calls had been discontinued earlier in the day, once he had received notice of some of the Board members' concerns.

There was discussion regarding the language in the letter and script, and changes were suggested to both.

There was also discussion regarding the EDA's knowledge of the project. Mr. Hill suggested that, in the future, the EDA members should approve any proposed letters. Mr. Davis stated that in such circumstances, the Board needed to be made aware ahead of time that

letters were being sent out in order that they could be prepared to answer questions from constituents. Mr. Sparks agreed.

IN RE: BOND FINANCINGS

Before the Board for consideration was Resolution R-24-06 wherein the County declared its intention to reimburse itself from the proceeds of one or more tax-exempt financings for certain expenditures made and/or to be made in connection with capital improvement projects for the County and the County school system, as well as Resolution R-25-06 to authorize the undertaking of certain preliminary actions with respect to the issuance of bonds by the Economic Development Authority of New Kent County, Virginia.

Financial Consultant Ted Cole of Davenport & Company, and Bond Counsel Dan Siegel of Sands Anderson Marks & Miller, were present to explain the requests.

Mr. Cole distributed and reviewed an updated Funding Options Analysis for the School and Sheriff's Office projects. He identified the three funding options as 1) EDA lease revenue bond; 2) VPSA financing pool; and 3) VML/VACo financing. He explained that all of the options were based upon the same set of assumptions; were consistent with the County's capital plan; and were more favorable than the scenario that the Board considered earlier. All three options also took into account that the County would be borrowing \$7.5 million for each of the school projects through the Literary Loan Program (a 4% guaranteed 20-year loan), which had a two year wait.

Mr. Cole stated that on the surface, it appeared that the VPSA was the best option; however, the VPSA only sold bonds twice a year and would not be selling again until October 2006. He indicated that any time that passed represented a risk or opportunity for interest rate fluctuation. Furthermore, only financing for school projects would be available through VPSA, and financing for the Sheriff's complex would need to be secured separately.

He reported that the VML/VACo plan also issued bonds only twice a year and was not projected to issue again until November.

He indicated that EDA financing could happen within 30 – 60 days and would have a fixed rate for the life of the loan. He reported that he had met with the EDA who was willing to move forward.

Mr. Cole pointed out how even a change of 25 basis points (1/4 of 1%) in interest would have a meaningful impact on the cost of debt.

He indicated that under the circumstances, they were recommending the EDA lease revenue financing. He pointed out the advantages of the option as being: it was a frequently used financing vehicle; the County would have total flexibility/control over the bond sale; the County would have the ability to restructure debt; and non-school projects could be included.

There was a discussion regarding bond rating. Mr. Cole reported that this would also give the County the opportunity to get a truly independent assessment of its credit.

He indicated that if the Board adopted the resolution, electing to proceed with the EDA lease revenue option, then he and bond counsel would be back at a future meeting with further information on structures of the bond issue.

Mr. Hill moved to adopt Resolution R-24-06 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. Hill moved to adopt Resolution R-25-06 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: AMENDMENT TO THE NEW KENT FARMS PUD ORDINANCE

Before the Board for public hearing was Ordinance O-08-06 to approve an amendment to the PUD ordinance to allow New Kent Farms LLC to exceed the annual cap on non age-restricted residential units in exchange for additional cash proffers.

Community Development Director George Homewood emphasized that this was not a request to expand the project, to add more units, or to remove the caps, but a request to allow flexibility in the program so that if at any time the annual caps were seen as interfering with the market absorption of the units, the applicant could make a choice to pay additional proffers in order to build additional units. He pointed out that the caps as they existed might create some distortion in the market, and if staff had thought more about it when it was being proposed and the Board decided to remove caps on the age restricted and affordable homes, they would have recommended removing all caps. He explained the problems that caps imposed on the development in Land Bay III wherein a builder might be required to leave the residential part of a mixed use building unfinished.

Mr. Homewood reported that to his knowledge, neither staff nor the Planning Commission had received any responses to the letters mailed to adjacent property owners. He indicated that both staff and the Planning Commission had recommended approval.

Charles Rothenberg, attorney for the applicant, stated that his client was requesting that the annual cap be amended in consideration for an additional \$2,500 cash proffer. He repeated that it was not a request to increase the number of homes, and it would not change the requirement for commercial construction. He pointed out that his client's prepayment of \$39 million in connection fees was conditioned upon the successful sale of CDA bonds, and that their consultants had advised that caps would make it more difficult to sell the bonds. He indicated that homes in Land Bay I were estimated to have a value of \$850,000 and would generate fewer school aged children, and that removing caps would do no harm to the County in that regard.

Regarding caps in the village area, he indicated that builders were reluctant to commit to constructing only a part of an area, and then have to re-mobilize in a following year to

complete it. He predicted that caps would delay completion of the village area by 5 or 6 years. He represented that the village area was designed to provide services to the age-restricted homes in Land Bay V and that the tax-generating commercial portion could not move forward without the residential components. Affordable housing units would be delayed as well. He maintained that the caps would limit the "attractiveness" of the project and limit the ability of the developer to be able to make payments on the CDA debt. He requested that the Board approve the application, as recommended by the Planning Commission and staff.

Mr. Rothenberg indicated that they were asking that the caps be removed in Land Bays I, III and IV; however, he understood that there was resistance to removing the caps in Land Bay IV, and his client would be content to have the caps removed only in Land Bays I and III. He confirmed that in that event, the additional cash proffers would still apply for any units in excess of 63 per year.

Mr. Homewood confirmed that the PUD ordinance provided that the applicant could build 63 units per year, beginning on January 1, 2006 and as of January 1, 2007, would be eligible to build 106 units, and that all of those units could be built in Land Bay IV.

Chairman Sparks opened the Public Hearing.

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

Mr. Hill expressed his concern that in seven years, Land Bay IV could be built out, resulting in an additional 225 school-aged children.

Mr. Trout indicated that he was concerned that building was being shifted away from Land Bays I and III, and that all 63 units could be built in Land Bay IV and not result in extra proffers.

Mr. Rothenberg represented that according to the current project structure, a large portion of the permitted units were allocated to Land Bay IV, leaving few for Land Bays I and III. He said that it made sense to remove the restrictions from those land bays.

Mr. Sparks stated that he had some concerns but believed something would happen in Land Bays I and III, and did not anticipate build-out only in Land Bay IV.

There was discussion on how to amend the proposed ordinance.

Mr. Hill moved to go into Closed Session for consultation with legal counsel pursuant to Section 2.2-3711A.7 of the Code of Virginia involving consultation with legal counsel and a zoning matter. 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. Davis 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, as amended, 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.

There was further discussion regarding proposed amendments to the ordinance in order that the caps remained in effect in Land Bay IV only. Mr. Rothenberg reviewed the suggestions with his client and advised that they would be amenable to the proposed amendments. Mr. Summers advised that the proposed amendment would be legally sufficient.

Mr. Burrell moved to adopt Ordinance O-08-06 with the following change: addition of a sentence at the end of paragraph c. to read *"The foregoing sentence shall not apply to Land Bay IV"*. 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: MEETING SCHEDULE

Chairman Sparks announced that the next regularly scheduled meeting of the Board would be held at 6 p.m. on Monday, July 10, 2006, in the Boardroom of the County Administration Building.

IN RE: ADJOURNMENT

Mr. Hill moved for adjournment. 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 9:00 p.m.
