

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

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IN RE:            INVOCATION AND PLEDGE OF ALLEGIANCE

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

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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.

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IN RE:            CONSENT AGENDA

County Administrator John Budesky presented the Consent Agenda as follows:

1.    Approval of Minutes
  - a.    Regular meeting of September 6, 2006
  - b.    Work session of September 25, 2006
2.    Miscellaneous
  - a.    Approval of Community Use of Facilities Rental/Use and Regulations
  - b.    Award of contract to Hughes Supply in the amount of \$99,460.66 for FY07 installation of radio read meters and authorization for County Administrator to sign contract subject to review and approval by County Attorney
  - c.    Road Name Additions:
    - i.    Bassett Farm Road
3.    Refunds
  - a.    \$315.41 to Precision Builders for permit fee
  - b.    \$234.02 to G. E. Payne Electrical Co., Inc. for permit fee
  - c.    \$50.00 to David Brondas (Patriot Hauling) for zoning certificate
4.    Appropriations FY2006-2007
  - a.    Reduction of appropriated funds for Public Service Utility Tax after receive actual assessment figures from the State Corporation Commission, \$95,390.00
  - b.    Funds received from insurance proceeds for damage to door and generator at Fire Station 1 during Tropical Storm Ernesto, \$4,066.00
  - c.    Funds received from the national Recreation and Park Association, inc. for a youth basketball grant, \$100.00
  - d.    Funds received from various Parks & Recreation fundraising events for the development of Quinton Community Park, \$607.00
  - e.    Funds received from donations to the Animal Control Shelter, \$125.00
  - f.    Funds previously used as a cash fund at the Animal Control Shelter before official petty cash fund was established, \$100.00
  - g.    Excess funds over \$1,000 previously accumulated by the Sheriff's Office for a petty cash fund before official petty cash fund was established, \$358.00
  - h.    Adjustments/reductions to the FY07 adopted appropriation for the Victim Witness Program budget, \$20,899.00
  - i.    Funds received from Colonial Downs for law enforcement services through the month of August 2006, \$26,665.00

- j. Additional State Fire Program funds received over the amount budgeted for FY07, \$2,149.00
  - k. Additional Funding due to increased demand for View Jobs purchased Services & administration, \$2,822.00
  - l. Funds received from Jamestown 2007 activities through September 2006 to Jamestown 2007 projects, \$45.00
  - m. Funds received from the high school for security administered at the Sep 8 06 football game, \$129.00
 

\$ (79,123.00)	Total
\$ 79,123.00	Money-in/Money-out
5. Carry-Forward Appropriations FY2007
- a. Unspent FY06 funds in the Treasurer's budget for a computer programming modification approved at the Bright Treasurer Users' Group meeting on Sep 26 06, \$821.93
  - b. Additional funds received in FY06 in School Capital for the vehicle maintenance facility, \$173,806.03
  - c. Funds remaining in School Capital for FY06 for the elementary school project, \$2,230,854.17
  - d. Additional meals tax funds for Schools, Economic Development and Parks & Recreation not used in FY06, \$11,173.03
  - e. Unspent FY06 funds for the Airport hangar project, \$762,211.65
 

\$ (3,178,866.81)	Total
\$ 660,000.00	Money-in/Money-out
\$ 821.93	From General Fund – fnd bal
\$ 2,404,660.20	From Fund 3 – School Cap fnd bal
\$ 102,211.65	From Fund 7 – Capital fnd bal
\$ 11,173.03	From Fund 20 – Meals Tax fnd bal
6. Inter-Departmental Budget Transfers
- a. *Social Services*; \$126,789 from Eligibility and Service Administration Pass Thru to salaries items for new positions and upgrades
7. Treasurer's Report: Cash in Bank as of August 2006: \$26,258,269.34

There was some clarification of items in the Community Use of Facilities Rental/Use and Regulations. Staff confirmed that the document reflected those changes requested by the Board at the previous meeting.

Mr. Davis moved to approve the Consent Agenda and that it be made a part of the record. 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.

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IN RE: COMMISSIONER OF THE REVENUE

Before the Board for consideration was a request from the County Attorney for authorization to file a Writ of Election.

County Attorney Jeff Summers explained that in light of the resignation tendered by current Commissioner of the Revenue John Crump effective December 1, 2006, and the requirements under State statute, the Board would need to petition the Court to set a special election to fill the vacancy. He indicated that a special election date of January 9,

2007 had been coordinated with the Court, General Registrar and Board of Elections as the earliest date thought prudent, in that it would allow sufficient time for the voting machines to be returned in the event of a challenge to the November general election.

Mr. Hill moved to authorize the County Attorney to file the Petition for Writ of Election for the office of Commissioner of the Revenue, 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.

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IN RE: CITIZENS COMMENT PERIOD

Chairman Sparks opened the Citizens Comment Period.

Pat Bower spoke about flooding problems at her home in Chickahominy Shores, the most recent being during the previous weekend's nor'easter. She indicated that the drainage ditches needed to be addressed and she also reported that it was her information that one of her neighbors had dedicated an easement for the installation of a culvert to help alleviate the flooding problem, but the work had never been performed. She confirmed that she had spoken with representatives from VDOT as well as Mr. Trout about the problems.

Mr. Trout acknowledged the problem and spoke about the flooding problem on some of the cross streets in the Chickahominy Shores subdivision. VDOT representative Richard Wood reported that they were looking into the easement issue as well as the drainage problems and that VDOT would do what it could.

Mr. Davis indicated that a similar situation on Farmers Drive had been corrected by VDOT's working with landowners to locate a place to divert storm water, but warned that the process could take a while.

V. F. Walsh, Sr., a resident of Chickahominy Shores, spoke about recent flooding of Fannie's Creek during the prior weekend's storm, relating questions that had been raised by some of his neighbors. He reported that one resident had damaged her vehicle when trying to use the railroad tracks access road, and the residents had questioned whether or not tickets would be issued by the Sheriff's Department for using that illegal access. He also asked about estimates on correcting the problems, as well as the availability of federal funds. Sheriff Howard agreed to meet with Mr. Walsh in order to address his concerns regarding use of the railroad access road.

Delvin T. Greenleaf, Jr. complained to the Board regarding a violation notice that was erroneously issued to him by the Planning Division, as well as misinformation provided by that department. He spoke about the lack of oversight of that department, as well as the lack of a courtesy telephone call prior to issuance of the notice. He expressed his thanks to Mr. Hill and Mr. Budesky for their help in resolving the issue.

Chairman Sparks commented that the County needed to make sure it was correctly applying the laws and assured Mr. Greenleaf that the matter was being investigated and steps were being taken to make sure it did not happen again.

There being no one else signed up to speak, the Citizens Comment Period was closed.

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IN RE:           RESIDENT ADMINISTRATOR'S REPORT

Richard Wood, Assistant Residency Administrator with the Sandston Residency of the Virginia Department of Transportation, reported on issues raised at previous meetings.

Regarding the acceptance of Quaker Woods Road into the State system, Mr. Wood reported that there was still a small "punch list" of items to be addressed by the developer and that once those items were corrected, a final inspection would be made. If the work was found to be in order, it would then be appropriate for the Board to approve a Resolution requesting VDOT to accept the road.

Regarding Route 607, Mr. Wood indicated that there was no longer an issue with nesting eagles and work would begin as soon as weather permitted.

Regarding Route 33, he indicated that sweeping and mowing had been done, and that mowing would soon begin along Route 30.

He reported mowing along Route 620; culverts scheduled for cleanout on Tabernacle Road, and a hole repaired on Holly Forks Road.

Regarding flooding problems on South Waterside Drive, he confirmed that a hydraulic engineer was in the process of evaluating alternatives and determining cost estimates, and that information would be shared with the Board as soon as studies were completed. Mr. Trout reminded him that the area was affected by tidal flooding as well as by storms, and requested that drainage problems along the cross streets be evaluated as well.

Mr. Wood reported that cleanup of storm debris resulting from Tropical Storm Ernesto had been 95% complete before the recent nor'easter, which produced additional damage that they were still working to clean up.

He advised that they were scheduled to address brush and tree cleanup in the area of Forest and Chestnut Drive.

Regarding signage along Route 249, he advised that as soon as they were able to verify the amount of right-of-way that existed in the area of Providence United Methodist Church, he should be able to give some direction; however, he indicated that he believed there was enough right-of way so that additional clearing could be done.

Mr. Wood reported that during the past month, crews had bladed dirt roads, repaired shoulders and washouts, removed fallen trees, repaired potholes, applied stone, swept bridges, and cleared sight distances in various locations around the County.

He reported that the Stage Road project was still on schedule and due for completion in November 2007.

He reported that the westbound I-64 rest area had closed on September 29; signs had been posted; and a preconstruction meeting held with the contractor who was to complete the project no later than June 9, 2007.

Mr. Wood advised that there were no delays reported in the Eltham Bridge replacement project, and acknowledged that there were recent problems with the current bridge which were being addressed by an electrical contractor.

Mr. Davis thanked Mr. Wood for the work done by VDOT during the past month, but commented that the dirt roads needed blading again. He expressed his concern about the dangers resulting from bicycle traffic along portions of Farmers Drive. Mr. Wood reported that bike riding was not specifically prohibited and he would meet with Mr. Davis to discuss the situation.

Mr. Trout commented that with the closure of the westbound I-64 rest area, the owner/operator of the Talleyville Travel Center was experiencing an increase in the number of customers using his restrooms, which had increased his pump and haul costs. He inquired whether the State was in a position to assist the business owner with these expenses. Mr. Wood indicated that he would explore that request with their project manager.

Mr. Burrell thanked Mr. Wood for VDOT's quick service. He commented on the flooding at Clarke's Bottom during the recent nor'easter which he described as an area in which he had never seen high water. Mr. Wood agreed to have their hydraulic engineer look at the drainage in the area.

Mr. Hill shared comments he had received from residents regarding the poor grading job recently performed on Steel Trap Road, as well as some concerns regarding water from ditches invading crops. He reported potholes in the areas of Routes 638/611 and Routes 640/611, as well as flooding problems in Ranch Acres and storm debris remaining from Hurricane Isabel. He complained about overgrown vegetation along Route 606 between Tunstall Road and the Hanover line, and the fact that crews only cleaned ditches along one side of Route 613.

Regarding Quaker Woods Road, Mr. Hill inquired of staff as to whether there was sufficient bond from the developer to address the items on the punch list. Planning Manager Rodney Hathaway indicated that he doubted the amount of the bond would cover the items. He reported that the developer had not yet received a copy of the punch list but appeared anxious and willing to address the items so that the road could be accepted by the State.

Mr. Sparks expressed his concern about the large amount of brush clearing remaining to be done, as well as his frustration with the safety concerns along Route 249 near Providence United Methodist Church.

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IN RE: INTRODUCTION OF NEW STAFF

Virginia Extension Unit Director Paul Davis introduced Barry Atkins, the new 4-H Agent for New Kent & Charles City County.

Planning Manager Rodney Hathaway introduced Kelli Zittergruen, new Planner I.

The Board welcomed the new staff.

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IN RE: ELECTED OFFICIALS' REPORTS

Mr. Davis thanked the citizens who helped their friends and neighbors during the recent nor'easter. He commended Public Safety staff and VDOT crews for staying on top of the

situation. He also announced the recent death of a brother of Planning Commissioner Eddie Pollard.

Mr. Trout described the recent visit by those walking the Washington-Rochambeau route from Rhode Island to Yorktown. He reviewed upcoming events in the County, including a Bowl-a-thon to benefit the New Kent Education Foundation; Spirit of New Kent health and fitness expo; a Chamber of Commerce event; TransAtlantic Golf Tournament, and the Lanexa Studio Tour.

Mr. Burrell extended his condolences to Mr. Trout on the recent death of his 100-year old mother. He encouraged attendance at an upcoming Arts Alive event in West Point, and announced an upcoming Board Retreat. He also thanked County staff for their updates during the recent storm.

Mr. Hill reported on his recovery from recent kidney surgery and expressed his thanks and appreciation for the many cards, phone calls and prayers. He reported a donation of \$4,600 from Emmaus Baptist Church for Habitat for Humanity, and indicated that they were still searching for land upon which to build the first home in New Kent.

Mr. Sparks echoed the comments made by Mr. Davis regarding response to the recent storm, and thanked the Sheriff's office, VDOT and County staff for their efforts.

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IN RE: STAFF REPORTS

There were none.

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IN RE: ARGENT/ISGETT REZONING

Before the Board for consideration was Ordinance O-12-06 regarding a request filed by The Argent Group, LLC and property owners W. O. and Shirley Ann Isgett to rezone from *A-1, Agriculture* to *B-1, General Business* approximately 2.5 acres of land located in the southwest and southeast quadrant of the intersection of Pocahontas Trail (Route 60) and New Kent Highway (Route 249/33).

Planning Manager Rodney Hathaway reported that this property was the current location of a Texaco gas station and Patriots Landing real estate office. He advised that staff found the proposed rezoning to be consistent with zoning on adjacent and surrounding parcels. He indicated that the area was designated as commercial in the Comprehensive Plan Future and staff was recommending approval of the application.

There was discussion regarding the history of the use of the property.

The Chairman opened the Public Hearing.

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

Mr. Burrell moved to adopt Ordinance O-12-06 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.

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IN RE:           HORSLEY TREOLO HOLDINGS CONDITIONAL USE PERMIT

Before the Board for consideration was Resolution R-34-06 regarding a request filed by Horsley Treolo Holdings, Inc. for a conditional use permit for the expansion of an existing convenience store, Talleyville Travel Center located on Route 106 near the Talleyville I-64 interchange, to be operated as a truck fueling station.

Planning Manager Rodney Hathaway explained that the business was currently classified as a convenience store, which included "any retail establishment that sold prepackaged food, household and similar items, as well as fuel for motor vehicles". He indicated that the proposed plan for the property, that included a game room, showers, laundry facility and additional truck parking, proposed a use that was not defined in the New Kent Code, which had resulted in staff's interpolating between existing defined uses. He reported that staff was of the opinion that the proposed use would exceed the maximum intensity of a convenience store or automobile fueling station, and although the proposed use was not a truck stop *per se*, the land use to which it was most similar was a truck stop, which would require an M-2 zoning classification to be permitted by-right, or a CUP within an M-1. He indicated that although staff found that the proposed use should have the same zoning requirements as a truck stop, it had proposed to define the use in the conditions of the CUP as a truck fueling station.

Mr. Hathaway further explained that the subject property was designated as Economic Opportunity in the Comprehensive Plan Future Land Use Plan, which refers to mixed centers of commerce including retail, office, lodging, research & development, distribution, recreational, and resort-type uses. He indicated that Economic Opportunity areas were established around the County interstate interchanges where they would have the highest likelihood of success, and were envisioned to encompass uses such as hotels, conference centers, offices, restaurants, and retail establishments. He indicated that staff was concerned that a truck fueling station in the proposed location would discourage potential businesses from locating within the area and would adversely impact the ability of adjacent properties to be developed in accordance with the Comprehensive Plan. He stated that staff felt that the negative perception of truck stops, including noise, air pollution, and illicit activities, might discourage potential use in the area, pointing out that the County had invested funds to provide public utilities to the area in order to encourage commercial growth. He stated that the proposed use could impact County revenue as well as impact how the County paid for its infrastructure improvements.

Mr. Hathaway reported that staff anticipated that the proposed expansion would result in only a marginal increase in the sales and food tax generated by additional truck traffic, and that the additional truck traffic could deter some of the regular automobile traffic from patronizing the facility due to the hazardous traffic conditions and the other concerns previously raised by staff. He stated that the proposed use would deter retail and commercial development on surrounding property and would have a negative impact on the County.

He indicated that the applicant had expressed an interest in constructing a hotel and restaurant on the property in the future, and staff encouraged the applicant to do so because the expanded uses were allowed with a hotel. Those uses would have a positive impact and would be consistent with the Comprehensive Plan.

Mr. Hathaway reported that on June 19, the Planning Commission had considered a request to rezone the property from M-1 to M-2 for the proposed expansion. He indicated that staff's recommendation and Planning Commission's recommendation was to deny the application due to the fact that the M-2 zoning classification would permit many uses that would not be consistent with the Future Land Use designation. He advised that staff was concerned that uses permitted by-right in M-2 would have an adverse impact on surrounding property and the character of the area.

He indicated that the CUP application was considered by the Planning Commission on September 16, of which staff recommended approval with conditions that gave the County some assurance that the remainder of the property would develop in compliance with the Comp Plan. He noted that the proposed parking expansion was not in conformance with existing parking requirements in the zoning ordinance, but would conform to those standards if considered as shared parking between the existing business and the future hotel and restaurant. However, the condition guaranteeing construction of the hotel and restaurant were removed by the Planning Commission, at the request of the applicant, and the additional spaces were not allowed by County Code and could not be authorized through the CUP process.

Mr. Hathaway emphasized that staff was committed to promoting economic development and being "business friendly", and had the responsibility of encouraging properties to reach their potential and develop in accordance with the Comprehensive Plan. He indicated that staff felt that this responsibility involved protecting those targeted areas from inappropriate development that would have adverse impact on surrounding, existing and potential businesses. He reported that during the initial review of the application, staff voiced concerns about the increased truck traffic and its impact on surrounding property. He stated that staff had attempted to work with the property owner to develop conditions that would ensure that this property and the surrounding properties would be able to be developed according to the Comp Plan. Staff felt that this was accomplished with the proposed conditions that were presented to the Planning Commission, but during that public hearing, the applicant asked that a majority of the conditions be removed, and the Planning Commission complied with his request. Mr. Hathaway stressed that the conditions that gave assurances that uses would be consistent with the Comp Plan, had been removed and therefore staff was recommending denial of the application.

Mark Kilduff, Economic Development Consultant, addressed the Board regarding the impact of the proposed use on economic development. He commented on what businesses generally looked for when choosing a location, and how important it was for a locality to have a history of following its Comp Plan. He stated that companies had an interest in who its neighbors would be – even at an interstate interchange that had public utilities.

He stated that an expansion of the site into a truck fueling area or truck stop would define how the interchange would be used and would establish the character of the area and impact the whole quadrant. He stated that the heavier use would limit the ability to market property at the Farms of New Kent, and that it would result in the County-owned property in the area being more difficult to sell. He said that businesses relied on planning and zoning and adherence to the Comp Plan in that it gave them the confidence to make a heavy investment in an area. He emphasized the importance of trust that the Plan would be followed and that changes in land uses be consistent with the Comp Plan. He indicated that a change to the land use in the subject area would raise questions in the minds of prospects. If a locality had not followed its plan, businesses would wonder if it was a true exception or the norm.

Applicant David Horsley clarified that he was not asking for a zoning change.

Pam Horsley, wife of David Horsley, read a statement on behalf of the business.

She advised that at least four documents from County staff had indicated that because the development plan was not a currently defined use, that staff had to "interpolate" between existing defined uses. She then read definitions of "interpolate" from the dictionary.

Mrs. Horsley emphasized that Talleyville Travel Center was not requesting a CUP in order to build a truck stop, but to provide showers for its customers and to add additional parking. She maintained that the applicant had no desire to be a truck stop as defined in the New Kent Code. She indicated that they allowed their trucker customers to stay for up to four hours, not overnight. She described the activities of the truck drivers who used their business, all of which uses were permitted under their Certificate of Occupancy. She stated that the New Kent Code did not specifically prohibit showers, and she felt that the presence of showers would be a convenience and service to their customers, and would not make the business a truck stop. She commented that showers were not the "norm" in convenience stores and, that because they were not the "norm", it should be an entrepreneurial decision and not a staff decision.

Mrs. Horsley questioned the concerns raised about crime. She reported that the applicant had conversations with the Sheriff who indicated that he did not have an opinion regarding the expansion.

Regarding the overnight parking, she advised that there was a system in place to monitor the parking issue with a four-hour shift log that was open to County review. She indicated that there were also security cameras that enabled employees to monitor any suspicious behavior on the premises.

Mrs. Horsley addressed some of the other concerns raised by staff. Regarding the designation of the property as Economic Opportunity, she indicated that the property had been zoned *M-1, Warehousing & Light Industrial* since they purchased it in 2000, which was prior to the time that the current Comprehensive Plan was adopted and the Economic Opportunity designation made, and they were unaware that the rights of M-1 had been taken away. She stated that it was their belief that the existing business and its proposed expansion would not be detrimental to Economic Opportunity in the area, and she commented that adding showers and more parking would not change what already existed.

She spoke about staff's comments that Route 33 was a more appropriate place for a truck stop.

Mrs. Horsley disputed staff's claims that Route 106 was not able to handle the extra truck traffic. She reported that Route 106 had been improved in the late 1970s and early 1980s after the completion of I-64, to facilitate truck traffic. She argued that their business was not the only destination of trucks traveling along Route 106. She advised that when the fueling station was being considered, it was their understanding that staff was excited about a facility at that location because it would relieve some of the truck problems at Bottoms Bridge.

She advised that staff gave them only two options for accomplishing their proposed expansion – either rezone or obtain a CUP. She indicated that during one of the many meetings with staff, they were asked about their plans for the remainder of the property. She commented that they gave the staff what they thought they wanted – guarantees that

the surrounding property would not be developed in a way that would conflict with Economic Opportunity. She admitted that they agreed to develop a hotel and restaurant and even went so far as to agree to put down pad sites; however, staff wanted a deadline that they could not agree to in that it threatened financial disaster for their company. She advised that they had investigated some national brand hotels and found opinions that the area would not be ready for a hotel for at least two years. Therefore, they found it economically impossible to comply with the conditions required by staff.

She indicated that after they received the draft conditions for the CUP, they attempted to schedule an appointment to meet with staff, along with their attorney; however, staff advised that they were not open to any changes. She advised that they meanwhile learned, and not from staff, that when a CUP was issued, the use must be available and in use within at least one year of its issuance, or the permit would expire.

She advised that for those reasons, they had asked the Planning Commission to remove the conditions regarding the hotel and restaurant from the CUP, and the Planning Commission did. She pointed out that the Planning Commission was comprised of members of the community appointed by the Board of Supervisors to represent the citizens, and they too could not understand the requirements for a hotel and restaurant tied to the proposed expansion.

She indicated that there had been a misunderstanding on part of the staff when they indicated that the expansion of the convenience store was needed to allow future hotel and restaurant development. Mrs. Horsley clarified that the restaurant and hotel could use and share the parking spaces at the Talleyville Travel Center so that additional truck parking would not have to be built on the other property. She insisted that the additional parking was greatly needed for the travel center and that they had maximized the number of parking spaces that the 6.8 acres would hold -- they did not want trucks parking along the street or on the side of the building, but safely in the rear of the business.

Mrs. Horsley spoke about the professionally prepared parking study that the Code required in order for the Zoning Administrator to approve additional parking. She indicated that rather than require them to spend money on such a study, staff needed only to lunch at their facility to personally witness the need. She indicated that staff had also advised that since the Planning Commission had removed the hotel and restaurant from the conditions, the additional 25 parking spaces were not allowed by Code to be authorized by a CUP. She stated that documents received from staff stated that the CUP must be obtained prior to additional parking, but did not state that the Zoning Administrator needed to approve them.

Mrs. Horsley represented that they did not have a contract to sell their business, but admitted that there had been interest expressed by others and one company had put that interest in writing, but reiterated that there was no contract.

She reminded that they were not building a truck stop, but expanding an existing business, and the only parts that could not be done by-right were the showers and the additional parking, which would not make them a truck stop.

Mrs. Horsley asked the Board to approve the CUP. She also asked that "truck weighing facility" be added to the definition of truck fueling station.

She thanked the Board and others for their attention and then introduced the applicant's attorney, Jack Wilson.

Mr. Wilson thanked the Board for listening to Mrs. Horsley and spoke about the frustration his clients had suffered because of the many hurdles and procedures that they had been asked to deal with. He indicated that this was a simple request for additional parking and showers for the convenience of his clients' customers. He insisted that his clients' business was not a truck stop because customers were limited to a 4-hour stay and were not allowed to stay overnight. He dismissed the "litany of horrors" predicted by the staff and questioned why truck traffic would no longer be an issue if his client agreed to develop a hotel and a restaurant. He stated that the staff had "over reached" in trying to force his clients to develop a hotel and restaurant regardless of whether or not the market would support such development. He indicated that the Planning Commission had recognized that and had removed the conditions with no "no" votes. He stated that his clients would not do anything on this 6.8 acre parcel that would harm the surrounding property that it owned. He challenged the assertion that the staff was "business friendly" and asked the Board to follow the recommendation of the Planning Commission and to approve the application.

Mr. Hathaway advised that staff had not referred to the business as a truck stop, but found that its uses were more intense than a convenience store, and they were left in a dilemma of finding a proper zoning class for the proposed use. Staff tried to find and compare to uses similar and found the uses to be most similar to those of a truck stop.

Regarding parking, he advised that the Code stated that in order for the County to grant expansion of parking over 10%, the property owner must clearly demonstrate that it was needed. The Code did not permit parking expansion with a CUP, but staff worked with the property owner and thought it had an agreement wherein if the applicant gave assurances that he would construct the hotel and restaurant, the County would count the additional parking spaces as shared spaces with those future businesses. Mr. Hathaway indicated that in light of the concerns of the applicant and the changes in conditions, the Code would not allow the parking expansion.

There was some confusion regarding the size of the property owned by the applicant. It was clarified that the applicant owned 20 acres – 6.8 of which was the site of the Talleyville Travel Center, and that property surrounding those 20 acres was owned by another entity. It was also confirmed that the applicant had submitted application for approval of a subdivision of the 20 acres which was pending with the County since September 19. There were complaints about how long that process was taking. Mr. Hathaway reported that it was staff's goal to process applications within ten business days and that in this particular case, the County was waiting for comments from State agencies, who can take up to 60 days to return comments. County Attorney Jeff Summers advised that because the subdivision had not yet been approved, then the property was not yet subdivided.

Mr. Hill requested confirmation that the applicant would have to obtain a traffic impact analysis, and the County could arrange for a second traffic impact study and then, based upon both studies, determine whether or not to approve the additional parking. Mr. Hathaway confirmed that was correct.

Mr. Hill inquired whether staff had been able to find any travel or fueling stations in the State that had showers; Mr. Hathaway said they had not, but had found truck stops with showers.

Mr. Hill asked the applicant the same question. Mr. Horsley indicated that he had not looked. He stated that he made his station what he wanted it to be, and he didn't want a truck stop.

Mr. Hill asked Mr. Horsley if he acknowledged that with showers, his business would become a truck stop. Mr. Horsley disagreed, stating that according to the County's Code, it would not be a truck stop.

Mr. Hathaway indicated that the expansion plans called for the addition of 25 new truck parking spaces and the removal of 10 automobile spaces, for a net increase of 15 spaces.

He recapped that the Code did not allow showers as an accessory use for convenience stores, and they have had to use "what best fit", and that the proposed expansion was most similar to a truck stop. He explained that the current zoning ordinance presented a challenge in these situations and that was why the zoning rewrite process was underway.

Mr. Burrell questioned the need for a parking study. He also questioned why traffic would be a problem with the expansion, but not a problem with the development of a hotel or restaurant. Mr. Hathaway explained that the 25 additional spaces could be considered as "shared" among the three uses. He repeated that the additional parking could not be added through the CUP process since the hotel and restaurant requirements had been removed from the conditions.

Mr. Trout noted that fueling was allowed at convenience stores, although the definition did not distinguish between auto and truck fueling, or between truck and car parking spaces, nor did it specify that a restaurant was permitted. Mr. Hathaway agreed, stating that they had been flexible in interpreting the Code and that there would be those who would argue that a sit-down restaurant was not allowed.

Mr. Trout expressed his concerns that if the County went beyond the maximum parking that was allowed, it would be in violation of its own Code, and that he felt that one of the reasons for the hotel and restaurant was that they were additional uses and would allow so many parking spaces to along with them. If a hotel were on the way, then certain additional parking could be included and could be co-used and would comply with the zoning code. He indicated that the County could not justify additional parking spaces, even with a CUP, and would be in violation of the zoning ordinance, and action of the Board could not add additional parking.

There was consensus among the Board that it could not approve additional parking spaces, according to the current ordinances.

Mr. Summers recapped that the proposed ordinance was an artifact of modification by the Planning Commission who, after reviewing the parking issue, did an incomplete revision, not realizing the impact on parking calculations that would result with removal of the hotel and restaurant conditions. He indicated that the original idea of additional uses was a method of increasing the parking calculations - what those additional uses might be came from the applicant. He advised that the proposed ordinance was a residue of compromise but what was withdrawn by applicant changed the parking calculations, and therefore approval of the CUP would violate the parking permitted in County ordinance.

The Chairman opened the Public Hearing.

Paul Treolo, partner in Horsley Treolo Holdings, advised that he operated the business on a daily basis and he spoke highly of Mr. Horsley and his reputation of honesty and civic responsibility. He contended that Mr. Horsley would never do anything to hurt his community or the County, and always "took the high road" and spent extra money because he wanted something to be proud of. He knew that Farms of New Kent, an upscale

community, was coming and wanted to fit in with his fueling/convenience store/restaurant. They had no idea there was any problem with the perception of their facility until they applied for the expansion. He insisted that they were not trying to attract more business, but to take care of their existing customers. He stated that the truck traffic was already there.

Jean Alvis spoke in support of the application and questioned why any business owner would have to get special permission for showers or extra parking.

Chester Alvis spoke in support of the expansion in light of the needs of the business. He stated that government should not prevent businesses from expanding. He alluded to businesses lost by New Kent and the problems that the County was having with business development, as well as the County's perception of being "business unfriendly". He also wondered, if Economic Opportunity property along Route 106 was so valuable, why the County wasn't installing public water and sewer there rather than requiring the businesses to do it themselves.

John Larroca identified himself as a truck driver, and stated that he felt a convenience store with showers was a truck stop. He stated that there were rest stops nearby that truckers could use.

Rose Marie Harris spoke about how much noise she could hear from the travel center when she was at nearby Emmaus Baptist Church, and she felt that it had turned into a truck stop.

George Philbates stated that David Horsley was also a citizen of New Kent and the Board owed him some consideration. He talked about his personal experience with truck stops and showers, and said that he didn't see anything in the Code that said showers weren't allowed and that Mr. Horsley should be able to have showers if he wanted them. He stated that moving the travel center would not impact the amount of truck traffic along Route 106, in light of the trucks en route to the Charles City landfill as well as log trucks. He commented that if the applicant needed more parking, the County should let him have it.

Becky Philbates stated that she saw nothing wrong with a truck stop, and referred to the development at the Doswell exit off I-95. She commented that the applicant had a nice place and the people from Emmaus Baptist Church should have raised their concerns before the travel center was built. She said that Farms of New Kent was on the other side of the interstate and shouldn't be impacted. Regarding the comments that Route 33 would be a better place for a truck stop, she reminded that a truck stop at that location had been denied in the past. She commented that Mr. Horsley was an honest businessman and the County should let him expand. Having more parking spaces would cut down on the trucks that were parking along the road and it was better to have them off Route 106 and not blocking traffic.

Melvin Belcher stated that the County needed to consider the safety issue and the fact that truckers had few places where they could safely pull off and refresh. He stated that it was a bigger hazard to have them looking for a place than to have a few extra spaces. He felt it would help the County and the owner and would be "business friendly".

Mike Lamberth expressed his high regard for the applicant but cautioned the Board not to vote on anything until it knew what it was voting on and what the impacts would be.

Steve Miles stated that he did not see how the Board could vote, based on the comments of the County Attorney, and agreed with Mr. Kilduff that the County needed to think about

what it wanted. He commented that with the current problem with trucks parking overnight, he urged the Board not to expand the business.

Sam Twiggs stated he didn't see anything wrong with having showers, and that drivers of automobiles might want to use them as well. Regarding the request for additional parking, he stated that it was safer to expand the parking than it was for the trucks to park on the shoulders.

Mark Clifford stated he was frequently delayed by truck traffic while trying to get onto I-64 from Route 106, but advised that the travel center already existed. He stated that this was part of growth and commented that New Kent needed to improve the way it treated its businesses in order to keep them from moving out. He indicated that Mr. Horsley's station was "the nicest thing on 106" and had made the area more appealing. He expressed his support of the application to add showers and parking spaces.

Tina Adkins indicated that she was in support of the application, and talked about the needs of truckers for a place to stop to rest up and shower. She called the applicant's business a fine establishment that "outshined" other gas stations in the County, and spoke about the things that Mr. Horsley has done for the community. She said she didn't see where New Kent was "business friendly".

Kevin Eddowes spoke against the application on behalf of New Kent United, saying that it was not good business development for that area. He wondered why the County would consider rewarding someone who was already operating his business outside of the scope of the Comp Plan and the zoning ordinance. He also spoke about a comment made by one of the Board members about being "unconstitutional".

Mr. Burrell clarified his comments, saying that he felt it would be un-American if someone were not allowed to file an application.

Pete Johns spoke on behalf of Farms of New Kent and New Kent Vineyards, requesting the Board not to approve the CUP. He indicated that the County should give the public water and sewer systems a chance to attract the kinds of businesses that it wanted in that area.

Gary Green agreed with Mr. Kilduff that the County needed quality economic development, and that a truck stop was not quality economic development. He said that adding 25 truck parking spaces and eliminating 10 automobile spaces would make the business a truck stop.

Fred Shaia, investor with SPF that owned land adjacent to the subject property, dismissed concerns that truck stops were a detriment to economic development, referring to the Carmel Church exit in Caroline County. He stated that this expansion would create economic development and jump start business development in the area.

Chris Kuhn stated that he was in favor of expansion of the business, and stated that sooner or later, New Kent was going to have to let businesses into the County and he urged the Board to stop rejecting businesses because they weren't ideal. He spoke about the investment made by the applicant and urged the Board to approve the application as well as change the perception that New Kent was not business friendly.

Matt Starr disagreed that truck stops negatively impacted areas, and urged the Board to approve the application.

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

Mr. Burrell stated that he respected everyone's opinion, commented on the freedom to express those opinions, and thanked everyone for coming out. He spoke about how important trucks were to the consumer and to the economy. He commented that a truck stop at the interchange with Route 16 and I-64 was the only truck stop between I-81 and Tidewater, and that there was an upscale development and other businesses at that interchange. He stated that this expansion would not stop development if it were done right and spoke about the need to be fair. He acknowledged the petition with 260 names that had been submitted by the applicant in support of the expansion, most of whom were businesses but some were citizens. He spoke of the need to be business friendly and the quality of Mr. Horsley's establishment. He stated that letting Mr. Horsley have the additional parking spaces and showers would not stop people from building at Farms of New Kent. He spoke about the predictions that Colonial Downs would bring crime to the area, and that never happened.

Mr. Davis asked about the timing of the Comp Plan and the Economic Opportunity designation as it related to Mr. Horsley's business. Mr. Hathaway stated that when Mr. Horsley purchased the property, the property had a designation of Industrial in the existing Comp Plan; however, the Comp Plan was changed prior to the construction of his fueling station. He stated that convenience stores were allowed in M-1 by-right.

Mr. Davis asked about the location for the new parking spaces. Mr. Hathaway confirmed that they would be behind the station and the scales and should not be visible from the highway.

Mr. Trout reminded that if the Board were to grant the additional parking, it would still be constrained by the zoning ordinance which did not allow additional parking. He further stated that he felt it would be improper and imprudent to approve the showers – the business was classified as a convenience store and showers were not an ordinary part of convenience stores, and showers would make it something other than a convenience store. He commented that what was approved for this property was a convenience store and he did not see how this could be approved and still stay within the definition. He stated that it didn't appear that the Board had any option but to disallow the application.

Mr. Burrell asked if the Board were to put the issue on hold, could it put it aside in order to amend the ordinance. Mr. Summers stated that he was not sure, and would like to time to review the matter.

Mr. Sparks stated that he was not comfortable with that suggestion and that there were some other issues he would like to see clarified. He indicated that he did not like the way the process has come about; he did not like the way the applicant had been treated; didn't like the Code because it wasn't clear and would like to go back and clean up the Code. He commented that he was very concerned that if the Board approved the additional spaces, it would not be legal. He also expressed his concern that the applicant might not be involved with the facility six months from now and about options or contracts on the property.

Mr. Horsley confirmed that he had received a proposal, which he had a right to have.

Mr. Sparks stated that the Board had the right to look into the future. He said that he had spoken with Mr. Horsley on several occasions and his business was what it was, but in his judgment, it was a truck stop. He indicated that he had hoped to find a better compromise than what was proposed, and stated that he was willing to continue to work on it. He commented that he did not want to make the business into a truck stop but did want to help

Mr. Horsley make his business the best that it could be. He said that he could not vote on this and would like to see staff continue to work with the applicant and that the Board wait until it knew what it was doing.

Mr. Trout stated that he was concerned about putting it off for 3 – 4 months while a zoning change was being considered.

Mr. Summers suggested that the proposed ordinance could be amended in paragraph 5.b. to say that “parking shall conform to the New Kent County zoning ordinance”. He stated that the shower issue was not debatable – except that it converted the business to something other than a convenience store.

Mr. Hathaway suggested that a change to 5.b. so that it read “should additional parking spaces be permitted under the terms of Section 98-902(8) of the New Kent zoning ordinance, such spaces shall be installed as shown on the plan of development titled ‘Horsley/Treolo Fueling Station, dated 14 June 2006, and prepared by Dereck Johnson with the Timmons Group, LLC.”.

Mr. Trout expressed problems with the proposed language change and stated that the Board was being asked to give permission for more spaces in anticipation of possible change in County zoning ordinance which could create a potential problem. He inquired if the applicant were to obtain a parking study that showed the extra parking spaces were needed, would action be required by the Board or could the Zoning Administrator grant the extra spaces administratively. Mr. Hathaway advised that the Zoning Administrator could grant the request administratively up to 10% without a parking study.

Mr. Davis commented that the business needed more spaces because business was growing.

Mr. Hathaway reported that the applicant had submitted a parking study.

Mr. Summers referred the Board to Code Section 98-902 (8) that stated that “the zoning administrator may permit parking beyond this limit if after the facility is in operation it is clearly demonstrated by the owner that additional parking space is required.” He suggested striking sub paragraph b and let the ordinance function.

Mr. Trout repeated his concern that showers were not within the general definition of a convenience store. He also commented about the addition of a game room/arcade in paragraph 1.f. “taking the convenience store to another level”.

Mr. Sparks expressed his concerned that if the Board approved the showers, it would become an option for convenience stores elsewhere in the County. Mr. Summers advised that the CUP had a truck fueling station definition in it - it was a site specific document that did not influence the rest of the County, although it might create a precedent.

Mr. Sparks suggested taking a break during which the County Attorney could meet with the Applicant’s attorney and draft something for the Board’s consideration.

There was a short break, after which the Board returned.

Mr. Summers reviewed the options open to the Board. It could table the issue and reconsider a zoning ordinance amendment in the larger sense about truck stops, and then bring it back off the table; it could amend the proposed resolution and vote on it tonight; or

direct staff to draft a new ordinance. However, he cautioned that the last option would require re-advertising for another public hearing at a future meeting. He advised that the speediest option was to amend the ordinance and vote tonight; the slowest would be to table it and revise the zoning ordinance.

Mr. Summers suggested that the subject ordinance be amended as follows:

In paragraph 1, on page 2, add paragraph *g. truck scales*

On page 3, strike 5.b. entirely

Add paragraph 10 to read "*This conditional use permit is applicable only to the 6.8 acres as shown on the master plan prepared by the Timmons Group and submitted with the application, except as provided in paragraph 3 of this ordinance*".

It was confirmed that the subdivision had not yet been finalized and approved, the entire 20 acres would be required to connect to public utilities, and that the CUP would only apply to the 6.8 acres. This was confirmed as acceptable by the applicant's attorney.

It was confirmed that the truck scales already existed at the business.

Mr. Trout stated that the proposed changes provided something that was workable, but the Board still needed to decide about the showers/game room facilities.

Mr. Davis moved to adopt Resolution R-34-06 with the changes read by the County Attorney.

Mr. Hill commented that he had known Mr. Horsley for five years and felt that everything that he did was first rate; however, that wasn't the issue. He stated that he felt the requested expansion would make it into a first rate facility; but he had concerns about the burden of balance, including what would happen if the uses were intensified, including drugs and prostitution, and the effect that it would have on Emmaus Baptist Church. He stated that the showers created an issue. He also spoke about the ten parking spaces that were being moved to the rear. Mr. Horsley indicated that was what staff told him to do, and that it wasn't his intention to do away with car parking.

Mr. Hill continued, stating that he had heard from a lot of folks, saw the petition and would like to make a substitute motion that the Board delay a decision for 30 – 60 days so that it could have more time to continue the discussion regarding the number of showers and parking spaces, and even a plan to deal with drugs and prostitution. He stated that he was not prepared to vote tonight and if asked to do so, he would vote to deny.

Mr. Trout asked for clarification of Mr. Hill's motion and whether it was to table consideration until the next meeting. Mr. Hill stated that his motion was to table it for 30 – 60 days.

Mr. Sparks stated that he agreed with Mr. Hill, and if something could be worked out, he wanted to try again.

Mr. Hill said that he was hoping to come to a more amicable solution, and he was not prepared to approve five showers.

Mr. Davis then withdrew his motion.

Mr. Hill stated that he'd like 30 – 60 days so that further discussion could take place between staff and the applicant. Mr. Summers suggested that it would be better to pick a date certain. Mr. Hill voiced his concerns that he didn't want to cut short the opportunity to reach a greater level of reconciliation with the applicant.

Mr. Summers stated that staff would work diligently to get the process done by November which would force everyone to work harder. Mr. Summers advised that it would not be necessary to conduct another public hearing, unless there was a material amendment to the CUP or some completely new condition of which the public had no notice.

Mr. Hill moved to amend Resolution R-34-06 with the changes that staff had recommended. 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.

Mr. Hill moved to postpone consideration of Resolution R-34-06 as amended to the November Board meeting. The members were polled:

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

The motion carried.

Mr. Budesky asked the Board to give staff a level of direction so that it could move forward and make sure that it was accurately representing the Board. Mr. Sparks asked the Board members to provide their feedback to staff as quickly as possible.

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IN RE: PROHIBITED USES

Before the Board for consideration was Ordinance O-13-06 regarding a request filed by the Planning Commission for a text amendment to add *Section 98-64, Prohibited Uses* to the New Kent County zoning ordinance to prohibit certain land uses that were entirely inconsistent with the Comprehensive Plan and for which no acceptable conditions could be established that would reduce the inconsistency. The requested text amendment also included changes to *Section 98-2, Definitions* to include new or revised definitions of certain terms.

County Attorney Jeff Summers explained that the proposed changes to the zoning ordinance would add a list of prohibited uses with the idea that there was no way these uses could be made compatible, and change some of the definitions to make sure that every term was properly defined so the Board knew what it was legislating.

As an overview, he reviewed that there had been past discussions as to whether the County could prohibit uses and it was his legal opinion that the County had ample authority to do so. He explained how prohibited uses could have been added to each zoning district, but it had been decided to list the prohibited uses in one place in the ordinance instead.

He explained that there were two decisions to be made by the Board: whether it wanted to categorically prohibit uses; and what those uses would be. He conjectured that many in the audience had concerns with landfills and he pointed out that the issue was not specifically about landfills but about several kinds of uses that were felt to be incompatible with the Comp Plan. He stated that the changes did not address the creation of things that would go into a landfill, but would prohibit their disposal in New Kent. He indicated that the Board had the power to amend the ordinance in the future, could add or subtract uses, or abolish the whole thing. As to adult businesses, he commented that whether or not one agreed with them, it was a right protected by the first amendment – the proposed changes would control where such businesses could be located.

Mr. Hill inquired if prohibiting smelting would keep a Remington factory that produced shot gun shells from relocating to New Kent. Mr. Summers stated that he doubted that such a factory would perform smelting on an industrial scale. He indicated that staff had been careful with the language so as not to impact certain kinds of trades, such as jewelers and silversmiths.

The issue was raised as to whether this action would prevent the County itself from owning a landfill. Mr. Summers stated that would be about use, not ownership, and who owned it wouldn't matter.

It was confirmed that for existing businesses such as Fast Mart or Video 2000, as long as their adult business did not exceed 20% of their gross sales, they could continue to operate as they were doing. Mr. Summers directed the Board to the paragraph regarding intensity of use and advised that staff had tried to set a limit of intensity to one that would not change the quality or character of a neighborhood.

There was discussion regarding the distance of 3,000 feet proposed in the ordinance. Mr. Summers indicated that 3,000 feet was chosen because it was large enough but not so large as to make it impossible for an adult business to locate in New Kent. It was over one-half mile and designed to put such a business a good distance away from designated buildings. He referred the Board to a map that had the allowed and non-allowed areas designated.

There were concerns expressed about how this might affect Virginia Bio-Diesel. Mr. Summers admitted that he did not know the details of that business, but didn't think that it did any of the things that would be prohibited, and what was essentially a fuel farm wouldn't fall into any of the categories.

There was a discussion on sludge. Mr. Summers clarified that although sludge was not a prohibited use, its definition had been included because it was mentioned elsewhere in the text.

There were concerns regarding how the ordinance might impact Virginia Recyclers. Mr. Summers advised that there was no restriction proposed on the recycling or shredding tires – only on disposal of the product.

Mr. Davis asked if the prohibition on products that had a FIFRA designation would prevent a Cabela's, Target or Wal-Mart Distribution Center from locating in New Kent, pointing out that all pesticides, including flea collars, and a wide range of household products had FIFRA designations. Mr. Summers suggested that concern could be addressed by striking the word "distribution".

Mr. Summer reiterated that the Board needed to decide first whether to prohibit uses at all, and then decide on the right uses.

The Chairman opened the Public Hearing.

Dave Ruslander requested that he be permitted to speak for five minutes as he was representing the Bottoms Bridge Property Owners. His request was denied. He spoke about the previous landfill that was located on Route 618 and closed in 1985 that had no liner at all. He reported that it had not been inspected since 1992 and commented that the County was not doing a very good job in protecting its citizens and had no idea what was leaching into the ground. He spoke about a "battle of classes", political freedom, the Declaration of Independence and the right of every man to pursue his own interests in his own way. He also complained that speakers were not given ample time to address their concerns.

Bill Leary identified himself as representing the New Kent Chamber of Commerce, speaking in support of Item 6 of the ordinance listing the operation of landfills as a prohibited use. He reported that a poll of their members reflected that a vast majority supported the Board's taking this action. He indicated that their support was a result of concerns over traffic, odor, and long-term environmental impacts and whether solid waste facilities were the best use of land in the County. He talked about the benefits of I-64 and Route 60, the availability of rail transportation, the water and sewer systems that would soon be operational, as well as New Kent's location between Tidewater and Richmond, and how the use of land for solid waste facilities would negate those benefits. He urged the Board to adopt the ordinance.

Mark Flynn identified himself as an attorney and a former county attorney for New Kent, and conceded that there would likely be litigation no matter how the Board voted; however, he felt that the Board would be in its best position if it approved the ordinance. He stated that prohibiting landfills was entirely consistent with the vision of the County and the Comprehensive Plan. He commented that New Kent was in a situation to continue to be a major player in the Richmond region for high quality commercial and retail business and that if the County had a landfill as a use, it could negatively impact development and by eliminating the use, the County would be protecting itself. Landfills could result in low cost homes, which would result in a loss of revenue for the County.

Chris Kuhn of Virginia Recycling asked for clarification of the definition of a "solid waste management facility", pointing out that tires were a "solid waste". He talked about corruption and elitist views, and stated that it was not the County's job to decide what was and wasn't to be allowed, considering that Virginia was a Dillon Rule state. He stated that the proposal would "condemn without recourse" and would negatively impact existing businesses, and that the homeowners would continue to suffer a heavy tax burden.

Olivia Chandler expressed her concern with having a waste management facility in the County. She admitted that Schiminoe Meadows made its proposal look very attractive but she wondered at what future cost. She stated that Charles City was having trouble attracting development because of its landfill, and she felt that good development would not

come to New Kent if Schimineo Meadows was approved. She indicated that she lived less than three miles from the proposed site and had concerns about a decrease in her property value. She spoke about the problems with sea gulls, odor, impact on wildlife, pollution, and health effects.

Mr. Sparks reminded that this was a public hearing on a text amendment for prohibited uses.

Leo Wells stated that when he moved to New Kent, there was no mention of any landfill. He expressed concerns that such a use would result in diminished property values. He spoke about greater staff efficiency with a blanket prohibition. He indicated that a properly constructed ordinance could withstand any suit and that the State Supreme Court had ruled that counties had the right to prohibit uses.

John Bryant, a non-resident property owner of land near the proposed landfill site, asked that the Board vote in favor of the ordinance that would prohibit the uses.

Mary Wyatt thanked the Board for its leadership and devotion, and asked the members to approve the banned uses.

Rose Harris asked the Board to keep New Kent on the right track by banning businesses it did not want and wait for those that would be good for the County.

Julian Lipscomb agreed with the proposed list of prohibited uses and asked the Board to approve the ordinance.

Delvin Greenleaf suggested that the language in the ordinance be rewritten to make sure that none of the existing businesses in the County would be affected and that the Board would know what it was voting on.

Alan Shaia stated that he was against the text amendment and was there to represent SPF who owned 1,600 acres on Route 106 south of I-64. He indicated that he felt that the proposed ordinance was directed at one particular land owner and that it was poor policy to pass blanket prohibitions. He commented that a use permit process was better and he spoke about the kinds of businesses that would not be able to locate in New Kent if the ordinance were approved. He stated that it would limit New Kent's possibility for the future, and that the County should evaluate each application on its own merit. He pointed out that applicants paid application fees and invoices for additional review, and that the County should remain in control over its land uses.

Fred Shaia stated that there was no doubt what the proposed changes were intended for and commented that the document had been hastily written in order to prevent the landfill application from going through. He talked about New Kent not being competitive with Henrico and the fact that it had higher taxes. He pointed out that there was a landfill in Short Pump next to a mall and housing developments and it had not destroyed land values there. He stated that a landfill would give the County a place to discard its trash and would provide green energy that would be attractive to businesses looking to relocate here.

George Philbates cautioned the Board to be careful what it prohibited.

Don Moser urged the Board to approve the ordinance.

Robert Kay spoke in support of prohibited uses.

Jeff Cimbalo spoke in support of the proposed ordinance, stating that a vast majority of the citizens opposed the listed uses and that it was entirely within the powers of the Board to prohibit them. He reminded that SPF had withdrawn its previous application and that there was no question about the large number that "came out against the landfill". He commented that it was unfair for Mr. Shaia to say that it was all about the landfill and reminded that the Supreme Court had ruled that counties could prohibit uses. He advised that that "if the Board took a stand, the citizens would stand with it".

Tom Torre spoke in favor of approval of the ordinance which he felt would reduce undesirable uses. He contended that the prohibition would not be un-American, and it was not right to call the action anti-economic development. He urged that the County solicit the right kind of economic development, and felt that the proposed prohibited uses were not the right kind for New Kent. He urged the Board to approve the ordinance.

Melvin Belcher indicated that he agreed with the amendment in spirit and hoped that it would not impact Virginia BioDiesel or Virginia Recycling. He urged the Board to make sure that existing businesses would not be affected.

Jack Crane indicated that he was in favor of the amendment and hoped it would pass. He stated that the County had been dealing with the landfill application for the past 6 months, and that he believed that the large majority that opposed the landfill would also oppose the other uses on the list. He stated that a blanket prohibition would save staff time that would be spent in considering applications on a case-by-case basis. He stated that a prohibition would also serve to attract the kinds of businesses that County wanted.

James Fiddler urged the Board to approve the ordinance. He spoke about problems with landfills in Henrico County.

Pete Johns on behalf of Farms of New Kent and New Kent Vineyards voiced his strong support and asked the Board to vote in favor of the ordinance prohibiting uses.

Kevin Eddowes on behalf of New Kent United spoke in favor of the ordinance. He stated that these were not the kind of uses that people wanted in the County. He asked the Board to approve the ordinance and not delay. He asked for a show hands from those in the audience who supported the ordinance.

Henry Dowdy, Jr. spoke in support of the amendment. He admitted that it might need some fine tweaking but was a good place to start. He spoke about the dangers of some of the uses and stated that New Kent could be left to deal with problems that resulted. He also referenced the recent explosion of a hazardous materials plant in North Carolina.

Brent Vogel asked the Board to approve the ordinance.

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

Mr. Trout reminded that counsel had advised that there were two decisions to be made – whether the Board wanted to prohibit uses and if so, what those uses were to be.

Mr. Davis complained that the documents were poorly written and the issue poorly studied. He questioned the prohibition of construction debris landfills. He commented that many of the proposed uses were covered by State or Federal laws and asked if a County ordinance would supersede those laws. Mr. Summers suggested that county ordinances controlled

land use and that the ordinance would not state that one couldn't do it - just that one couldn't do it here.

Mr. Summers said that staff had tried to be very specific in what was listed and that, as drafted, the proposed ordinance would not shut down any existing business, although it might make it a nonconforming use and limit any expansion. He indicated that the Notice had been deliberately over-inclusive and the Board could strike out but could not add any uses without additional advertising.

Mr. Davis wondered why, if it was legal, other localities hadn't prohibited uses. Mr. Trout pointed out the difference between "shall" and "may" and commented that New Kent had an opportunity to make its own decision.

Mr. Davis stated that no one else loved New Kent more than he did. He spoke about how the County's debt had increased from \$5 million to \$65 million over the past three years, about the more than 1,000 homes built in the past four years, 140 new students in schools this year, and the fact that more between 82% – 88% of the residents worked outside of the County because New Kent had no businesses to speak of. He commented that the School Board was the largest employer, that less than 20% of the teachers and deputies could afford to live New Kent, and that County government was the second largest employer. He expressed his fear that adoption of a blanket prohibition would be interpreted as saying that New Kent didn't want any businesses. He spoke about the need to be careful and the need to balance. He stated that he had listened to his constituents who didn't want a landfill and he would have voted against it. He worried about what uses would be prohibited next and spoke about New Kent's being on a "slippery slope".

Mr. Burrell echoed Mr. Davis' comments. He spoke about Connecticut's resorting to eminent domain for economic development. He talked about the need to have a place for the County's trash, poor participation in recycling, and the importance of supporting the rights of Americans. He pointed out that applicants paid for staff time and that everyone should have the right to file an application. He clarified that he was not supporting the landfill but the rights of Americans to apply. He cautioned the residents not to fear that a landfill would be approved, but pointed out that everyone produced trash and there had to be a place to put it. He indicated that the bottom line was that the County had the opportunity and responsibility to turn down what it didn't want, but that a blanket prohibition was the wrong way to do it.

Mr. Hill reported that County staff spent 2,970 man hours worth \$145,089, approximately \$41,000 of which was reimbursed by Schiminoe Meadows, spending over \$100,000 to review the landfill application.

Mr. Burrell pointed out that similar staff hours were spent in reviewing applications filed by the Farms of New Kent and Patriot's Landing, and it would be fair to let them apply.

Mr. Hill said that the Board had heard enough from the citizens who had plainly indicated that they felt it was a misuse of government and taxpayer dollars to spend time processing applications for uses that were not wanted.

Mr. Trout stated that the County had in the last few years felt a lot of pressure from businesses and had reacted by putting in sewer lines, and had created areas for business and first-class residences. He spoke about the need to make sure that development was compatible with New Kent. He stated that it was time to decide on a direction, and that if the County defined the kind of development and business it wanted and established that it

was willing to protect that decision, that it would be a big step in the right direction. He indicated that this ordinance would apply equally to all land in the County and was not singling out specific property owners.

Mr. Sparks stated that the Board had made some difficult major decisions, and that he had looked at and anguished over the issue and talked with a lot of people. He admitted that he had some philosophical concerns, but felt that the ordinance could be fine-tuned and that existing businesses could be protected. He indicated that he had arrived at the conclusion that citizens had the right to determine what they wanted in their community.

Mr. Trout moved that the New Kent County Board of Supervisors consider establishing countywide prohibited uses. The members were polled:

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

The motion carried.

The Board reviewed the list of uses proposed for prohibition. Mr. Summers advised that the Board could strike any of the uses that had been proposed, but the addition of any uses that were not advertised would have to be scheduled for another public hearing. He advised that the Board could adopt the list and revise it at a later date, and that there was no requirement that they vote at tonight's meeting.

There was additional discussion as to whether or not prohibiting smelting would prevent a Remington plant from locating in New Kent. Mr. Summers reviewed the definition of smelting and advised that he did not think that smelting on an industrial scale would be incorporated into a manufacturing process brought to New Kent by Remington.

Regarding the 3,000 foot distance from certain buildings required for adult uses, Mr. Summers advised that this distance was chosen because it was easily measured and greater than one-half mile. He admitted that it was subject to challenge, and that the Board could change it before adoption. He reiterated that existing businesses that fall within that distance would become non-conforming uses.

Regarding the manufacture of nuclear materials, it was reported that the manufacture of compasses would not fit into that category.

Regarding poisons, there was consensus to strike the language that would prohibit the "transformation or distribution" of these products, limiting the prohibition to the manufacture only.

In order to address the concerns of the existing tire recycling business, it was agreed that the definition of "solid waste management facility" should be enlarged to include a sentence to read "Recycling facilities are not solid waste management facilities".

It was clarified that to prohibit Transportation, Storage and Disposal Facilities would only prohibit the facilities themselves, and not the transportation of hazardous waste through the County. It was pointed out that the transportation of these products was regulated by the Department of Transportation.

Mr. Trout moved to adopt Ordinance O-13-06 with the changes noted. Mr. Burrell reminded that he could not support the motion as he did not support any blanket prohibitions. The members were polled:

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

The motion carried.

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IN RE: DISTRICT APPOINTMENTS

There were none.

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IN RE: NON-DISTRICT APPOINTMENTS

There were none.

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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 Wednesday, November 8, 2006, and the next work session at 6:00 p.m. on Monday, October 23, 2006, both in the Boardroom of the County Administration Building, New Kent, Virginia. He also announced that the Board would be meeting for a Retreat on Saturday, October 21, 2006, at 8 a.m. at Royal New Kent.

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IN RE: ADJOURNMENT

Mr. Burrell 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 12 midnight.