

THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 23rd 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.

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 and announced that John Montgomery, Attorney for Godsey & Sons, Inc. would be late and that Mr. Godsey's claim would be considered later in the agenda. Regarding those items that were not covered at the Retreat on October 21, Mr. Budesky suggested that the items regarding accomplishments and goals be deferred until the November work session.

IN RE: PAYMENT REQUEST FOR LIVESTOCK KILLED IN STRAY DOG ATTACK

Before the Board for consideration was a request for payment to a resident for the value of livestock killed in a stray dog attack, pursuant to Section 3.1-796.118 of the Code of Virginia and Section 10-67 of the New Kent Code.

Corporal Kevin Watkins, Animal Protection Supervisor, reported that on August 22, 2006, Danielle Clark of Hopewell Road had discovered that four sheep and two pygmy goats had been killed. Another sheep was seriously wounded and had since succumbed to its injuries. Corp. Watkins advised that the attack was not witnessed but, with the help of the office of the State Game Warden, they were able to reasonably conclude that it was a stray dog attack. He explained that there had been little rain at the time but that he had been able to find canine tracks in some of the sandy areas around the scene.

There was discussion regarding whether the livestock might have been attacked by coyotes and it was surmised that coyotes would have eaten the livestock and not just attacked it.

Corp. Watkins indicated that there had been no similar reports received from other residents. He advised that traps had been set in an attempt to catch the dogs and that the Clark family had enhanced security by improving fencing and the use of a dog trained to protect livestock from other animals.

It was confirmed that the pertinent Code sections only provided for payment for livestock killed by stray dogs, and would not cover property damage or death of pets.

Mr. Burrell moved to approve payment to Danielle Clark in the amount of \$646.00 as compensation for livestock killed in a stray dog attack on August 21 – 22, 2006. The members were polled:

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

The motion carried.

It was arranged that Ms. Clark would be able to pick up the check at the end of the week.

IN RE: ENVIRONMENTAL DIVISION BRIEFING

Environmental Programs Manager Chris Landgraf gave the Board an overview of the Environmental Programs Division. He reported that Matt Venable, the new Environmental Code Compliance Inspector who would begin work on October 30, would be able to help with single family plan reviews because of his experience. He also thanked the Board for adding the position of Environmental Permits Tech, commenting that Adriane Marshall was a good addition to his division.

He warned the Board that he would be requesting another inspector at budget time in order to be able to meet the staffing requirements established by the Department of Conservation Resources (DCR) that limited the number of inspections per inspector to 15 per day. He explained that this number was established for rural localities in light of the distance that inspectors had to travel between inspection sites. He indicated State Code required inspectors to inspect a site every two weeks throughout the project, which averaged out to 12 – 13 inspections per house. He reported that there were currently about 400 active home construction projects in New Kent requiring inspections. He advised that developers paid an inspection fee of \$75 per acre and that his department's revenue from fees totaled approximately 95% of his budget. He indicated that an alternate inspection schedule was permitted for localities that had a low number of projects and high bonds, but that New Kent did not fit into that category and was subject to the every two-week requirement.

Mr. Landgraf noted that about 95% of the time, environmental inspectors would find something wrong. He advised that in such event, the builder was notified of the violation and given two weeks to correct it, unless it was a large violation at which time a Notice to Comply and/or Stop Work Order would be issued. If the condition was not repaired within the two-week period, a \$100 fine was imposed. If there was still no repair two weeks after that but the fine had been paid, he would issue a Notice to Comply. If a Stop Work Order was issued, there would be a \$1,000 per day fine imposed until the violation was repaired.

He reported that inspectors needed to be State certified or be enrolled in a certification program, and that those classes were only offered quarterly, which would make it difficult for interns to be used for inspections.

Board members suggested the possibility of a part-time inspector. Mr. Landgraf described the amount of paperwork that was required for each inspection and stated that he did not think that a part-time position would be enough to fill the need.

There was discussion regarding improved technology. Mr. Landgraf admitted that upgraded technology might help in that an inspector would be able to complete his paperwork in the field, but he noted the high cost of the rugged laptops that would be required.

Mr. Landgraf reported that they were currently averaging 20 – 25 inspections per day. He advised that they had set a goal to process all single family land disturbing permits within ten business days (State law allows 45 days for turnaround) and should reach their goal of 90% this year.

He noted that New Kent had 37 active commercial sites under construction (which included subdivisions and business developments), and had set and were meeting a goal to process those within five business days (State law allows 45 days for turnaround).

He reported that New Kent had received the Initial Compliance Evaluation Report from DCR and had passed the evaluation with two minor recommendations – septic tank pump out and Chesapeake Bay Exceptions for parcels platted after 1989 (which might require a change to New Kent's Code).

Regarding Resource Protection Areas (RPAs), he advised that DCR was evaluating the definition of wetlands contiguous to perennial flow, and if it clarified the definition to include all upstream wetlands that contributed to the perenniality of the stream, it might require New Kent to change its RPA definition. It would also require that the maps be updated which would be beneficial because it was last done about four years ago.

Regarding Water Quality Impact Assessments, which were tied to development, he reported that based on a Richmond Regional Planning District Commission report, the percentage used in the method of calculating water quality had been reduced from 16% to 8% since the Richmond region had an average impervious cover of 7.74% (New Kent had 2.64%).

Regarding septic tank pump outs, he reported that those were still being handled by his office and they were working with DCR and Chesapeake Bay Local Assistance to obtain a grant that would pay for newspaper ads reminding homeowners to have their tanks pumped or inspected and to file the results with the County.

Mr. Landgraf reported that all members of the Wetlands Board were active and it rarely if ever had a problem with quorum. He indicated that the Board met on issues about twice a year (on the first Thursday of the month) and usually had one other meeting for training or update. He advised that he did not see a need for alternates on this Board. He noted that they had set performance goals to review and respond to all VMRC permits within five days and schedule Wetlands Board meeting within 30 calendar days instead of the permitted 60 days. Regarding permit fees, he indicated that New Kent had the highest in the area but also had the fewest number of cases.

Mr. Landgraf explained that the County's Clean County Commission (CCC) handled the Recycling/Litter Control grant program and that they were having a problem with poor attendance and an inability to have quorums at their meetings. He anticipated that the Chairman would again ask for the Board's help with the attendance problem. He noted that the CCC had purchased a picnic table and display case made from recycled materials which had been installed at the Wahrani Nature Trail.

Mr. Landgraf reported that there were recycling programs in the Courthouse, School Board office and the Administration Building, as well as in the elementary, middle and high schools. He spoke about efforts to expand the program, working with General Services, and reported that currently being recycled were white paper, cardboard, aluminum, glass and plastics. He also indicated that staff was looking at the possibility of collecting aluminum separately and bailing it for more revenue. He explained why recycling was not possible at the primary school, but that they were encouraging the formation of recycling clubs at the high school and middle school. He also advised that staff was looking at curbside recycling but it was difficult because of the nature of the County, although it might be feasible in some of the contiguous subdivisions. He added that they were also looking at perhaps providing recycling bins to homes as a reminder and convenience to homeowners.

There was a discussion about current recycling, costs and revenues. Maintenance Supervisor David Bednarczyk reported that the County made money on the recycling of used motor oil, batteries and scrap metal. Mr. Burrell reported that recycling corrugated cardboard was lucrative for the County as well.

IN RE: PAYMENT REQUEST FROM GODSEY & SON, INC. FOR RESTORATION COSTS

Before the Board for consideration was a request from Godsey & Son, Inc. for payment of the sum of \$17,600 for costs for reseeding in Patriots Landing.

John Montgomery, Attorney for Godsey & Son, apologized that the Board had to re-arrange its agenda to accommodate his schedule. He reported that the claim arose from soil stabilization work that his client did while installing County water lines in Patriots Landing and which was required of him by State law. He advised that State regulations required that any area that was denuded must have such measures in place within 30 days of the work. He described his client's struggle with relying upon the County's assertion that such measures were not required because curb and gutter work would be performed in the area, when State law clearly required for it to be done. Mr. Montgomery referred to language in letters from the County's engineer stating that they could not "relieve his company of the responsibility to adhere to the requirements set forth by local, state and/or federal laws" and that based upon that language, his client had performed the stabilization work and should be paid for it. He recounted the timing of the work and the timelines involved.

Environmental Programs Manager Chris Landgraf explained that inspections were coordinated through DCR and performed on Patriot's Landing as a whole project. It was his understanding that there were two State inspections during this time, and although the results were recorded with the developer and not with the County, it was his understanding that there were no problems reported.

County Attorney Jeff Summers advised that there were two issues: what was required of Mr. Godsey, and did the County owe him any money. He pointed out that Patriots Landing had perimeter erosion controls which were in effect and therefore there was less concern about the interior controls. Mr. Summers entered into the record a copy of contract documents for the project which set forth that the contractor would be paid \$86,432 for mulching and seeding of upland easement areas based on 21,608 linear feet at \$4 per foot. Mr. Summers maintained that it had been deemed unnecessary because of the exterior controls that were in effect.

Mr. Landgraf explained the exterior controls that were established by both East West Partners and the sewer contractor, and advised that the State had no concerns about Mr. Godsey's work because it was considered to be a part of the road construction that was in progress in the area.

Kris Edelman, Project Manager, R. Stuart Royer, was asked if information as to why he didn't need to do the work was passed on to Mr. Godsey. Mr. Edelman advised that he met with Mr. Godsey in early May and agreed to seek confirmation, but that Mr. Godsey performed the work before he was able to obtain that clarification. He further explained that the contract was uni-priced so that the County could adjust it up or down as field conditions determined what was needed and he confirmed that close to \$60,000 was deducted from the original contract price because of items that were not needed. Mr. Montgomery advised that the only deduction that his client was contesting was the \$17,600 for the seeding and mulching work.

Mr. Montgomery also pointed out that nowhere in the correspondence or documentation was it set forth that there were exterior controls in place that would relieve Mr. Godsey of his responsibility to perform the stabilization work. He maintained that the work was done and that his client was owed the money.

Mr. Trout pointed to Exhibit A which was a letter written to Mr. Godsey advising that the restoration work was done on May 10, the day after their May 9 meeting, in direct contradiction to what had been discussed. Mr. Montgomery repeated that Mr. Godsey was also advised that the County could not relieve him of his responsibility to adhere to the State's requirements. Mr. Trout noted that the statement was made after the work had already been done. Mr. Edelman questioned why, if Mr. Godsey was so concerned about doing the work within 30 days, he waited until May to express his concerns when the work had begun in February and there were no concerns expressed in either March or April. He reiterated that this was an area that was still under construction, was not being scrutinized, and there was never any notice that Mr. Godsey's work was not in compliance.

Mr. Godsey stated that the County was not authorized to tell him not to do work that was required by State law. He further offered that he was cited in Deer Lake for the same thing on either May 8 or May 9 and that was what prompted him to do the work in Patriots Landing.

Public Utilities Director Alan Harrison advised that the E&S Code was subject to more interpretation than other government regulations and that Mr. Godsey first noted his concerns at the May 9 meeting at which time they advised that they would check into it and get back with him. Mr. Harrison further stated that the seeding work performed by Mr. Godsey did not meet the definition in the contract and that he was not due the money.

Mr. Godsey admitted that he did not do permanent seeding which required grading.

Mr. Trout again pointed out that Mr. Godsey did not voice his concern about compliance with the Code until May when the work had begun in February.

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. 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. Burrell moved to come out of Closed Session. 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 the following certification:

Whereas, the New Kent County Board of Supervisors has convened in a closed session on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by the Board that such closed session was conducted in conformity with Virginia law;

Now there be it resolved that the Board hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from open session requirements by Virginia law were discussed in closed session to which this certification resolution applies and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Board.

The Chairman inquired whether there was any member who believed that there was a departure from the motion. Hearing none, the members were polled on the certification:

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

The motion carried.

The Board advised that the matter was being deferred until later in the meeting in order to obtain some additional information.

IN RE: BIKE TRAILS AT WAHRANI NATURE TRAIL

Parks & Recreation Manager Matt Spruill advised that Eastern Virginia Mountainbike Association (EVMA) had contacted him with a proposal that they would clean up and maintain the trails at Wahrani Nature Trails if the County would allow bike use. He advised that this group had similar arrangements with parks in the Tidewater Area.

He indicated that bikers and hikers would use the same trails; however, the trails would be widened so as to allow bikers to pass hikers, and new signs would be installed. He estimated that currently two to three walkers used the trails per day during the week, and five to six per day on the weekend. He advised that parking would need to be expanded.

Mr. Burrell expressed his concern with erosion on the some of the steeper hills. Mr. Spruill indicated that the County could require some erosion controls to be installed.

Mr. Davis pointed out that Wahrani was surrounded by privately owned land as well as a civil war battlefield site. Mr. Budesky advised that some battlefields had incorporated mountain bike trails, and although he admitted there might be the occasional challenge with some of the hikers, the bigger concern was that the park was underused. He indicated that if problems were to occur, the relationship with EVMA could be terminated and bikes banned from use.

Mr. Spruill reported that EVMA had 40 – 50 members, some from the Barhamsville area. He confirmed that the Parks & Recreation Advisory Board had reviewed this request.

It was noted that although the trails would be maintained by EVMA, they would be open to the general public and to clubs from other areas.

Mr. Budesky indicated that three-year contracts with one year extensions were standard. Mr. Trout suggested that the contract provide that the County could be released from the contract without cause, and Mr. Budesky indicated that he would work with the County Attorney on that.

Mr. Hill moved to authorize Parks & Recreation to work with Eastern Virginia Mountainbike Association to coordinate the addition of bike trails at the Wahrani Nature Trail and to authorize the County Attorney to negotiate a three-year contract with Eastern Virginia Mountainbike Association with one year extensions, with the stipulation that no new trails are to be established without County approval. 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: PAYMENT REQUEST FROM GODSEY & SON, INC. FOR RESTORATION COSTS
(continued from earlier in the meeting)

Mr. Hill moved to authorize the County Attorney to negotiate a settlement with Godsey & Son for work performed. 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. Summers left the meeting to confer with Mr. Montgomery and his client.

IN RE: NAMING OF CROSSROADS

Before the Board for consideration was the naming of certain crossroads throughout the County.

Mr. Burrell advised that he was waiting to hear from a descendant of James Armistead Lafayette, a professor at a university in Massachusetts, with information as to the general location of the family home in order to determine a nearby crossing to name in his honor.

Mr. Trout indicated that with the historical and tourism studies underway in the County, it would be best to wait until those studies were complete.

There was consensus among the Board members to defer action.

IN RE: PAYMENT REQUEST FROM GODSEY & SON, INC. FOR RESTORATION COSTS
(continued from earlier in the meeting)

Mr. Hill moved to settle the claim of Godsey & Son for erosion and sediment control work performed and to authorize payment of \$10,020.00 from Bottoms Bridge Land Acquisitions (198-91083-8400). 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: NEW POSITION REQUEST

Mr. Budesky reviewed the information that was provided to them at the recent Retreat regarding the need for additional staff in Financial Services.

Mr. Hill moved to approve a new position of Finance Manager, grade 26, step 3, to be effective December 1, 2006, to be funded from General Fund contingency. 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: PROFFER STUDY

Mr. Budesky reviewed that the Board had previously expressed interest in determining the cost of a Proffer Study. He reported that estimates ranged from \$25,000 to \$50,000. He recommended that the Board take no action but if it chose to authorize a study, he would recommend that it be funded out of contingency. He admitted that it was something that the County needed to determine but would be best considered at budget time.

The Board took no action.

IN RE: REVISED PPEA GUIDELINES

Before the Board for consideration was a request to adopt revised Guidelines & Procedures under the Public-Private Education Facilities and Infrastructure Act of 2002, as amended.

County Attorney Jeff Summers advised that the General Assembly had adopted changes effective July 1 and that the proposed revisions would bring New Kent's policy into compliance with those changes.

He indicated that the biggest difference was the requirement for a 30-day posting to permit public comment. He advised that the recent RFP on the Sheriff's Office Annex had followed the new guidelines.

Mr. Davis reported that the Board had adopted its first set of guidelines after the failure of a school bond referendum when it appeared that there were some groups interested in making a PPEA proposal, and the County had to have guidelines in place in order to accept proposals.

Mr. Burrell moved to approve the revised Guidelines & Procedures for the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, as presented. 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

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 at 6:00 p.m. in the Boardroom of the County Administration Building, New Kent, Virginia.

IN RE: CLOSED SESSION

Mr. Davis moved to go into Closed Session for discussions relating to real property pursuant to Section 2.2-3711A.3 of the Code of Virginia involving acquisition of real property for public purpose, and to discuss a personnel matter pursuant to Section 2.2-3711A.1 of the Code of Virginia. 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. The Board went into closed session.

Mr. Hill moved to come out of Closed Session. 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

Mr. Davis made following certification:

Whereas, the New Kent County Board of Supervisors has convened in a closed session on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

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Now there be it resolved that the Board hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from open session requirements by Virginia law were discussed in closed session to which this certification resolution applies and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Board.

The Chairman inquired whether there was any member who believed that there was a departure from the motion. Hearing none, the members were polled on the certification:

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

The motion carried.

IN RE: ADJOURNMENT

Mr. Hill moved to adjourn the meeting. 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.

The meeting was adjourned at 9:23 p.m.