

THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 23<sup>rd</sup> DAY OF MAY IN THE YEAR TWO THOUSAND FIVE OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING AT 6:01 P.M.

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IN RE: ROLL CALL

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

Chairman Davis called the meeting to order.

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IN RE: ACCEPTANCE OF UTILITY EASEMENTS

County Attorney Phyllis Katz advised that Resolution R-31-05 accepts easements that have been given to the County by residents for the utility project.

Mr. Burrell moved to adopt Resolution R-31-05 as presented, whereby pursuant to the authority granted to it under Section 15.2-1803 of the Code of Virginia, as amended, the Board of Supervisors accepts the following utility easements: from Sylvia McCarthy, TMP #29-1-A-A; from Dennis C. Chartier and Janet P. Chartier, TMP #29-1-A-C; from Milton K. Brown and Myrtle H. Brown, TMP #19-46-A; from Raymond L. and Sheree R. Purcell, TMP #32-1-A; from W. Kendall Lipscomb, Jr., TMP #30-1-B; from Ralph E. and Kathleen C. Gove, TMP #29-2-B, from Jerrold . and Donna M. Acree, TMP #29-1-A-B; from Joseph J. Ritzenthaler, TMP 32-5-2; from New Kent Equities, Inc., TMP 19-66; from Wesley Milnes II, TMP 20-2-A-10; and further, pursuant to the authority granted to it under Section 15-2-1803 of the Code of Virginia as amended, accepts the following option agreement for pump station lot from Marion Patterson Hughes, TMP #19-40, said Resolution to take effect immediately.

The members were polled:

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

The motion carried.

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IN RE: CLOSED SESSION

Mr. Hill moved to go into closed session to discuss a personnel matter pursuant to Section 2.2-3711A.1 of the Code of Virginia involving an employee; 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 for discussions relating to investment of public funds pursuant to Section 2.2-3711A.6 of the Code of Virginia

where competition or bargaining is involved and public disclosure initially would adversely affect the financial interests of the governing body. The members were polled:

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

The motion carried. The Board went into closed session. Mr. Burrell moved to emerge from closed session. The members were polled:

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

Mr. Sparks made the following certification:

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

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

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

Chairman Davis 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:

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

The motion carried.

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IN RE:           FY05/06 BUDGET, TAX LEVIES AND FEES

The first Resolution for consideration by the Board was Resolution R-26-05, amending Appendix A of the Code of New Kent County to increase the annual license fee for motor vehicles from \$20 to \$25.

Mr. Trout moved to adopt Resolution R-26-05, as presented. The members were polled:

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

The motion carried.

Mr. Sparks stated that he is going to look into the possibility of having decals eliminated in the future.

Next under consideration by the Board was Ordinance O-15-05 imposing tax levies on real and personal property for the 2005 tax year as follows: \$0.81 per \$100 valuation on real estate; \$3.75 per \$100 assessed valuation on tangible personal property; \$1.00 per \$100 assessed valuation on aircraft; \$3.00 per \$100 assessed valuation on machinery and tools, and \$0.10 per \$100 assessed valuation for ad valorem tax on real estate in the Bottoms Bridge Service District.

Mr. Sparks moved to adopt Ordinance O-15-05 as presented. Mr. Trout asked if he would accept an amendment to his motion, changing the tax on aircraft to \$0.75 per assessed valuation. Mr. Sparks amended his motion to make that change. The members were polled:

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

The motion carried.

Under consideration by the Board was Ordinance O-14-05, increasing the cable television franchise tax from 3% to 5% effective July 1, 2005.

Mr. Burrell moved to adopt Ordinance O-14-05, amending the effective date to October 1, 2005. The members were polled:

James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	Aye

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The General Fund will increase by \$211,061 for increased and additional Community Development/Building Inspection fees as adopted, the General Fund will decrease by \$2,144 due to the reduction of the Airplane Tax from the proposed rate of \$1.00 to \$0.75 per \$100 assessed value, and the General Fund will decrease by \$21,300 due to the reduction of the Cox Cable Franchise Fee rate from the proposed rate of 5% to 3%, all resulting in a net increase to the General Fund budget of \$187,617. The total General Fund budget will be \$12,124,043 and the total FY 2006 County budget will be \$75,501,670.

Mr. Burrell pointed out that one of the main reasons for the large increase between the amount of the budget last year and this year is the cost of the Bottoms Bridge sewer project.

The members were polled:

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

The motion carried.

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IN RE: UTILITY PROJECT UPDATE

Roger Hart from R. Stuart Royer reported that experts were in the County over the weekend looking for swamp pink and the small whorled pogonia, and he was happy to report that neither of these endangered plants were found in the areas of the proposed sewer line route. They are proceeding to work with VDOT on the access points they will need from I-64 and are getting ready to advertise.

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IN RE: FARMS OF NEW KENT

Chairman Davis reviewed the rules for the Public Hearing. Speakers will be allowed three minutes and should not ask questions. The Board members should keep their questions until the end.

Community Development Director George Homewood explained that the Planning staff had been reviewing this project for the last 2 ½ to 3 years. Unfortunately, they find that the project fails to meet the over arching goal of complying with the Comp Plan because (1) the development at its core is really a large subdivision and (2) it will continue to grow beyond its boundaries and serve as a catalyst for more development around it. Therefore, staff continues to recommend denial of the application. He explained that the Planning Commission voted 10:0 with one abstention to recommend denial. He stressed that he is not suggesting that there are no redeeming qualities. Recognizing that the Board may want to approve the application, for consideration tonight are Ordinance O-09-05(R3), a Proffer Statement and a Development Agreement, representing what the staff and applicant feel are the best set of rules and regulations. The applicant has asked for one change that would potentially speed up the project by exempting the estate lots in Land Bay I from the

build-out timing mechanism, which is set forth in Alternative A. He explained that this is an extremely small difference. Mr. Homewood stated that members of the County's team of consultants are available if the Board has any questions.

Pete Johns addressed the Board on behalf of the applicant. He described the project as providing a positive economic impact and quality controlled growth. It will provide funds to help complete the sewer project and provide economic income that will offset the need for higher taxes. He described how the project will promote tourism as well as provide for affordable housing and preservation of farmlands and forests. He believes that Farms of New will set high standards for future developments in the County. He pointed out that staff admits that the project will probably win many awards and has agreed that it will provide revenue for years to come. Regarding concerns about residential development at the Talleyville interchange, he stated that development at that interchange is inevitable and it will be difficult to maintain a rural character in that area. He believes that this project will do more to maintain rural character than any other proposed project. The staff's expectation that it will promote uncontrolled growth reflects poorly upon the Board's ability to manage that growth. Regarding the documents for the Board's consideration tonight, he stated that they are in full agreement with staff on all aspects with the exception of the restrictions on the number of estate homes that can be built each year in Land Bay I, and are asking that they be permitted to build these estate homes as the market dictates.

Chairman Davis opened the Public Hearing.

Cathryn Stam stated that she felt Farms of New Kent was a good idea and a well thought out plan. It gives the community a tremendous opportunity to move forward and urged the Board to approve the application.

Vicki K. Courrier asked the Board to approve the application because it will provide economic opportunity and will attract young people to return to New Kent to live and will encourage entrepreneurs. She stated that growth is inevitable and she feels that the development will enhance New Kent's natural beauty. She feels that the project is compatible with New Kent's mission and values.

Gary L. Green commented about the aggressive budget and CIP adopted by the Board, and stated that without approval of the project he doesn't see how the County is going to pay for it without a substantial tax increase. He feels this is a world class project and would set a standard for future developments in New Kent. He urged the Board to approve the project.

Lawrence Maier, Jr. spoke in opposition to the project. He emphasized that it was not a personal attack on the applicants. He stated that no reasonable person expects New Kent to remain as rural as it is today; however, this project is not compatible with the Comp Plan. The Planning Commission sent a clear message with their 10:0 vote against the project. This is high density housing. He would not blame any of the Planning Commissioners if they resigned should the Board disregard their recommendation. He commented that many feel that it was a big coincidence that the landfill application was filed at the same time that this project was under consideration. Some suspect this was devised as a scare tactic to encourage support of this project over the landfill, when in fact the County doesn't need either project.

He spoke about credibility and how some Board members were against the project when they were running for office and are now ready to vote for it. He stated that once someone loses his credibility, he will never get it back.

Dwight Johnson stated that the County has negotiated an attractive economic package with the applicant and he is in favor of the project. He feels that it will provide positive and healthy growth for New Kent and will set high standards for future developments and will provide needed revenue. He asked the Board to approve it.

Alan Files identified himself as a direct neighbor of the project and stated that he and his wife support it. He commented that stagnant communities die out and that New Kent needs to broaden its tax base and lessen the tax impact on the residents. The project will provide quality housing which will attract quality businesses. It is the economic catalyst that New Kent needs and would be a wise use of a small percentage of the property in the County. He described a recent trip to a similar development in Danville, Virginia, and stated that he wishes that he could have spent that money in his own County.

Bill O'Keefe stated that he is representing the more than 800 landowners in Brickshire, 98% of who overwhelmingly support the project. He thinks that this will be good for the County. He commented that this will be the most important decision that this Board will make as it will determine the future of the County and will be a legacy. He stated that change is coming to New Kent and the County either needs to embrace or resist it. He urged the Board not to let fear of the unknown or lack of faith in the future override sound decision making, and encouraged them to give true meaning to the County's motto of "pride in the past, faith in the future", and help New Kent become a model of wise development. He asked them to "do the right thing and vote yes".

Brett DeVoto spoke in favor of the project. He feels that most of the residents support it and he asked the Board to vote yes.

Michael Lamb identified himself as a business owner involved in local construction who supports the project. He stated that this development will bring a level of quality to developments in the County, and that the County should be proud that the applicant is interested in locating here in New Kent.

Lee Lamb asked the Board to vote yes. He stated that the County should be proud that a developer of such good quality wants to put this in New Kent and he is amazed that it has dragged on for so long. This development will raise the standard and other localities will envy New Kent. He feels that this will be comparable to Brickshire and will change the history of New Kent. He stated that this will make New Kent a place people know and will attract businesses and keep kids here.

Jayne Thomas lives on property directly across from the project and wholeheartedly and enthusiastically supports it. She commented on the beauty and tranquility of the vineyards, which are just the beginning of the project, and asked the Board to vote in favor of the application.

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Chap Harrison stated that he has lived for 55 years on property right across from the project and is in favor of it. He feels that it will be an asset to the County and can't see how the Board could not approve it. He asked the Board to approve the project and move forward.

George A. Philbates, Jr. supports the senior housing part of the project but feels that the market homes are too dense, will overtax the schools and should be cut back. He asked about safeguards that will ensure that the vineyards, polo field and other green spaces will be protected and not developed in the future. He expressed his concern about increased traffic congestion on I-64 and the roads in the County.

Becky Philbates stated that she agrees with the Planning Commission, and told the Board that if it was not going to take its recommendation, then it should do away with the Commission as it is just a waste of time. She scoffed at the need for a farmers market, stating that the development will take the farmland for houses and that Richmond cannot attract local farmers to its farmers market. She questioned that the project will attract businesses, and also asked how many other people in the County the applicant had attempted to "bribe".

Ray M. O'Leary expressed his support of the project from the beginning. He admitted that the recent budget numbers "scared him to death" and that was one of the reasons that he supports it. He indicated that there were a lot of local folks that are in favor of it and asked the Board to vote yes.

Donna Sickels urged the Board to look at the project as a business opportunity. Virginia is one of the top five states that produce wine and she commented on the success of the Williamsburg winery. She asked the Board to approve the project.

Margie P. Harrison voiced her support of the project, stating that it will determine the future of the County. She urged the Board to vote yes.

Mike Lamberth lives at Iden Crossing which abuts the project. He has voiced his support of the project for the last three years and admitted that he has nothing new to add. He talked about legacies, the benefit to children and the schools, positive economic impact, and the new conservation easement provisions. He cautioned that tonight this is "beyond the Board" as it is being watched by businesses in other states. He asked the Board to approve the project.

Steve Miles stated that he had suggested that the Board hold this meeting in a place where everyone could have a seat. He asked the Board to vote yes. The County needs revenue for parks & recreation and schools, and this is a planned growth commitment.

Jack Brannan commented on the slow growth in the County since he moved here in 1979. He is pleased with this project and asked the Board to support it.

Jack Schlosser stated that this application will double the rate of residential growth which is already increasing. There will be an immediate increased demand on County services, the cost of which would have to be borne by the County until the proffers and tax revenues could catch up. He spoke about the impact on traffic and stated

that County residents would be subsidizing the project with their extended waits in traffic. He does not think that the retail businesses (which result in average yearly wages of \$22,000) that the project expects to attract is the best for the County and would much prefer light industrial or business workers (\$37,000 per year). He talked about the President's recent visit to the Virginia BioDiesel plant which he described as a true industrial development, stating that he doubted a U. S. President would ever visit a retail establishment. He talked about the collective wisdom of the Planning Commission action and asked the Board to reject the application.

Lisa Guthrie spoke against the project, stating that it was not the right fit for New Kent. She said that the heart of the County is not the right place to put 2,400 new homes. The project does not comply with the Comp Plan and the present infrastructure in the County is insufficient to support it. She commented that the proffers will do little to prepare the County for the demand on government. The applicant guarantees commercial space of 150,000 square feet but promises 1 million square feet. There is no guarantee that the residential component won't sprawl into the green spaces. She also warned the Board that if it fails to adhere to the Comp Plan on this, it will leave itself open to future litigation. The Board must decide if this is absolutely the best for the County and truly reflects the community's vision.

Herbert C. Jones, Treasurer of New Kent, spoke in favor of the application. He talked about the infrastructure deficit in the County, the substantial budget, the dedication of the developer, and the 20 years of positive cash flow that will result from the project. He prefers planned growth to unplanned and feels that this project is a proactive attempt to manage growth. The Board's decision will affect what New Kent will look like over the next 100 years. The project will greatly mitigate the County's water and sewer costs without affecting the real estate tax rate which does affect those on limited and fixed incomes. It will help with the cost of schools. He stated that he would rather have Farms of New Kent than a landfill and asked the Board to vote in favor of the application.

Judy Harris expressed her concerns that if the application is approved, that the requirements and regulations are enforced. She commented that County staff is already at its limits. She is concerned about the increased demand on law enforcement, board members, and even the post office. It will impact the County and she wants the Board to make sure everything is done properly. If the Board thinks it can do it, then vote yes. If not, then vote no.

Wayne Hayden spoke in favor of quality development and urged the Board to approve the application.

Bernard Randolph stated that this project is good for New Kent and encouraged the Board to support it.

Eugene Williams, a lifelong County resident, spoke in favor of the project. He feels that this is an excellent, quality development and asked the Board to vote in favor of it.

Rev. Milton A. Hathaway stated that he had followed this project for the past three years. He has supported it since the beginning and continues to support it. He does

have a concern in the area of affordable housing and wants those outside of the development to enjoy a tangible benefit. He is pleased that the developer has "stepped up to the plate" in the area of affordable housing. He asked the Board not to look at the Planning Commission's vote from a numbers standpoint, but to look at the issues. There has been a lot of give and take since the Planning Commission considered the application and it is now a better plan. He stated that no one gets everything they want but he feels that this project will make New Kent a better and stronger community. He urged the Board to vote in favor of the application. He also asked the Board not to place restrictions on the estate homes in Land Bay I.

Mark Hennaman, a lifelong resident of the County, commented on the "ringing endorsement of the project" given by Rev. Hathaway, stating that there are few people who have a more comprehensive understanding of land use. He told the Board that he has been where they are and is aware of all the time that is spent reviewing staff reports, and thanked the Board members for all that they do. He stated that seven years ago, many of the same comments were made about the Kentland project and Colonial Downs – "too much, too soon, too big". Those predictions have not come to be. The impact on schools is not from these kinds of communities but from those that will come in their place. These types of homes give the "biggest bang for the buck". He asked the Board to vote yes.

Addison D. Askew stated that he and his wife have followed this project for 2½ years and have always been in favor of it. He feels that it will have a positive effect on the citizens and taxpayers, government and its employees, commercial and retail development and affordable housing. It will enhance the image of the County and he feels the Board would be foolhardy to vote against it. The positives far outweigh the negatives and he recommended that the Board vote for the project.

John King spoke in favor of the project. He is a certified planning commissioner from an adjacent County and has never seen a project like this before. He urged the Board to vote in favor.

Ralph Ashton talked about the demand for services that results from the scattered housing currently in the County being greater than the tax base. A farmers market is just one of the things that Farms of New Kent will bring, which will be similar to the one in Williamsburg and not Richmond's. This is just one more thing that New Kent will have to be proud of. On behalf of himself and his wife, he asked the Board to approve the project.

Kathy Mowrey stated that earlier in the day, her husband had submitted a petition against the project. She talked about the development of Brandermill in Chesterfield County, and the resulting traffic congestion. She moved to New Kent because of its country setting. This project is too large and will bring in too much traffic. She stated that she is not against growth, but doesn't believe that this is the type of growth for New Kent. It is too big, too much and too quick. Retirees look for homes that are near medical facilities, and there are none in New Kent. There is no draw for tourists. This will not attract working class residents who work out of the County. Only 150 homes have been built in Brickshire to date. She feels there are too many reasons why this project does not belong in New Kent.

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Kimberly Brightwell spoke in favor of Farms of New Kent. When she moved to New Kent seven years ago, she was told to expect more development. This development seems to be a positive one, especially with the money generated for schools. The kids deserve every opportunity and the County needs money. She stated that she is tired of supporting other counties. She reminded that the Planning Commission is an appointed body – the Board is elected.

Bill Leary indicated that he and his wife hope that the Board votes for the application. This is controlled growth that will not put a burden on the taxpayers. He thanked the Board members for their time and effort.

Susan Houston talked about blackmail, and someone's attempt to pit Farms of New Kent against the landfill. It is not an "either or" situation and one doesn't have anything to do with the other. She said the smallest successful winery in the state is on 55 acres and she wonders about the prospects for this winery with being on less property, and how much business it would create. She suggested that the Board look beyond the winery and golf course, and consider the housing density. This project will change the County forever and the Board must be absolutely certain this is the right step, as there is no going back.

Doug Houston talked about the "double speak" in the applicant's ad in the newspaper, and spoke about the definitions of "legacy", "farm" and "rural", contending that none of these words describe the project. He asked the Board to vote no.

Dennis Walters talked about the impact on teacher/student ratios, roads, public utilities. He stated that the quality of life in New Kent needs to be preserved. He agrees with the Planning Commission's assessment. All residents will be asked to support this new community by an increase in taxes. He doesn't want to see this happen in New Kent.

Sheila Morris spoke against the project. She talked about the name and asked "where are the farms?" She called this the first step to suburbanization of Route 249. Although the project has been downsized from 3,000 homes to 2,400, the applicant retains the right to expand. She contests the applicant's threat that there will be piecemeal development if the application is denied. The County is not ready to "go belly up" without the Farms of New Kent. The project does not comply with the Comp Plan. Once the door is opened, it can't be closed.

Mark Daniel, a real estate broker, represents land owners in Land Bay IV. He reminded the Board that this land was zoned R-1 for several years before the Farms of New Kent application and the land will be sold if the project is not approved. It is unrealistic to think that with water and sewer coming right past it, the land won't be developed. Another developer won't make proffers which will provide affordable housing and money for roads and schools. On a personal note, he asked the Board to vote in favor of the project.

Julian T. Lipscomb stated that he was in favor of the project in its original form and this new and improved version is ever better. Mark Hennaman and Reverend Hathaway said everything that he had intended to say. He talked about the Board

being required by law to present a balanced budget every year and about how the revenue from this project will take care of a good part of the debt service.

Delvin Greenleaf spoke in support of the project, commenting on taxes and the increasing budget. The County needs growth and it might as well have planned growth. He asked that the Board do what the people want and approve the application.

Carl Southworth talked about schools and the horse industry and urged the Board to vote for the project.

Scott Wagar, president of the New Kent Chamber of Commerce and a local business owner, spoke in favor of the project. He thinks the Farms of New Kent will be good for him, his family, and business and thinks the Board should vote for it.

Lorraine Dismond lives in close proximity to the project and feels that it would be a tremendous asset to New Kent. She urged the Board to vote yes.

Mark McGuire feels that the Farms of New Kent represents responsible growth and will bring in tax revenue to the County.

Charles Whitehurst spoke in favor of the project. The County is fooling itself if it doesn't realize that I-64 will one day be an eight-lane highway. The Board needs to look out for the County and to make intelligent decisions in order to help the County.

Fred Bahr stated that he will depend on those who spoke before him, and he hoped the Board will adopt this plan.

Bill Graves disagreed that the project is good for New Kent. It is a mistake to call it "farms". Residents want the County to remain rural, and increased growth will result in "concrete parking lots". He asked the Board to vote no and keep the County rural.

Mark Moker stated that he and his wife moved to New Kent 8 years ago because of its rural character and its proximity to Hampton Roads and Richmond. He has witnessed tremendous growth in the last 8 years, and explosive growth to the east and west. The reality is that growth is coming to New Kent one way or another - it's just a matter of geography. The Board recently approved the building of a new high school and sewer system, both necessitated by growth. The County continues to grow and more improvements will be necessary. Those improvements will need to be funded with an increase in taxes. This project offers a unique opportunity for controlled growth, as well as providing for parks and businesses, and a way to help pay for the needed improvements without bringing in a landfill.

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

Mr. Sparks had some questions about Alternative A. Mr. Homewood explained that Alternative A contains a phasing schedule requested by the applicant that is different from what is in the ordinance which has the schedule recommended by staff. Alternative A is not a stand alone document. The applicant is asking to remove the 300 homes in Land Bay I from the phasing plan and be allowed to develop those

estate homes at any rate that the market will bear. If the Board does not approve Alternative A tonight, the applicant can, at any time, come back and ask for an amendment to the ordinance.

Mr. Burrell asked about a change on page 6 of the Development Agreement regarding extension of Public Utilities to existing uses. Mr. Homewood reported that an initial draft submitted by the applicant did include an extension of sewer beyond Watkins School to Second Liberty Baptist Church. Staff asked that provision be removed from the Development Agreement because it is very difficult to establish the need for that extension from a development standpoint, and it might appear to be a private favor done for the benefit of one group over others. Further, Second Liberty Baptist Church is outside of the sewer service areas adopted by the Board at its last meeting and staff did not feel it to be appropriate to have a sewer extension into an area that is not to receive sewer services as a part of the over all plan. However, at any time, this can come back to the Board as a specific request to extend the sewer. The Church could make that request on its own but the developer would not be compelled to do it.

Mr. Burrell asked about provisions for affordable housing. Mr. Homewood stated that if the money proffered were used to construct houses, it would fund about 44 homes. However if a portion of those funds were to be used as has been suggested by Quin Rivers and paid out through programs to help people with home ownership such as helping to buy down mortgage points or for down payment assistance, then it would benefit more people.

Mr. Hill asked Mr. Homewood if he was aware that Second Liberty Baptist Church is used by the School division for in-school suspension for students who have parents who work out of the County. Mr. Homewood acknowledged that there was some use of that by the schools; however, the land remains under private ownership and is not owned by the County, and staff feels that the tie between the needs of the development and that particular facility is tenuous at best. There is nothing to say that the developer and Second Liberty can't make some sort of arrangement so that in the event that Second Liberty would at some time come and ask the Board to allow sewer to be extended to them, that the developer would not be able to make a contribution. That is an option but it is staff's feeling that it is best not to tie it into the zoning application when the relationship between the two is just too tenuous, and it may seem like something potentially improper is occurring.

Mr. Hill stated that he looks at this as an obvious benefit to New Kent County to have Second Liberty Baptist Church offer to be a school resource location and he would like to see this as part of the Development Agreement so that there are some assurances that it will be done. Because it is a benefit to the County, he feels that it belongs in the Development Agreement and asked Ms. Katz for her legal opinion as to whether or not that is a basis or foundation for it to be included.

Mr. Trout interjected that he had participated in some of the discussions on this and he concurs with Mr. Homewood. It would be good to have water and sewer run to every building and every house in the County if it could be done, but questioned whether the County should look at running it to a private facility, a single church, that is being currently used for some after-school or school programs. He understands that there are other areas and other facilities that have been similarly used in the

past, and there is no guarantee that this use will continue in the future. It is not a County facility but merely an area that is currently offering these services. While it is still a good idea and something that he was going to trust that the developer and Second Liberty would get together and work out, it is not proper for inclusion in a development agreement or proffer or PUD ordinance and that's why it was excluded.

Mr. Hill repeated his request for Ms. Katz' legal opinion on the matter, as it is his understanding that anything can go into the Development Agreement if it is agreed upon by the developer and Board.

Ms. Katz stated that the applicant and their attorney, along with her, staff and Mr. Trout, had considerable discussions on what can and cannot go into a development agreement, particularly since this is quite new and the first time the County is entering such an agreement under State law. She emphasized that the Development Agreement, unlike the Proffers, can be modified at any time. She related that there were two issues that Mr. Homewood spoke of in trying to craft what he did - one was to make sewer policy *ad hoc* by any agreement even though that agreement would be with the consent of the Board. Staff did not want to say that this sewer line would be paid for by the developer and it would go to Watkins School because there hadn't been any decision by the Board to extend the line that far. Part of the wording in the document reflects that intention, allowing the Board if it should decide to extend sewer in that direction to then have somebody (Farms of New Kent) obligated to pay for it, which would be a win/win for everybody. The second problem is to extend it to a private non-profit entity that is specifically designated. The general rule in government is that a development agreement cannot contain provisions that do things to benefit a particular person or particular organization and the way it was previously worded did that. Alternative language had been proposed and then dropped. She stated that the Board could put that provision in if it chooses to do so, but the way it should be worded is to extend it a particular distance down Watkins Road rather than to a particular address.

Mr. Hill asked the developer if it would be acceptable to add that they would pay for extending the sewer line 1500 feet down Watkins Road. On behalf of the applicant, Mr. Foote stated that yes, it is acceptable. Mr. Foote added that the County Attorney had fairly reported the discussions held on this issue and if the Board wished to amend the development agreement or condition its vote upon the Development Agreement stating that should the Board extend the sewer service out 1,500 feet, then the applicant has previously indicated and reiterates tonight that it would agree to pay for that extension. The condition was removed at staff's recommendation and the applicant didn't contest it but is willing to abide by the Board's decision with respect to the matter.

It was confirmed that this provision is in the Development Agreement only, and not in the Proffers (which cannot be changed).

There was a discussion about what motions should be made. Ms. Katz explained that what the Board has before them is a Development Agreement, Proffer Statement, PUD Ordinance and an Alternative A. She suggested that any amendments to the Development Agreement be made prior to the vote on the rezoning application. After

the vote on the application, then the Board can vote on authorizing the County Administrator to sign the Development Agreement.

Mr. Hill stated that he wanted to make it clear that he thinks any time a developer comes to New Kent and wishes do something, if the County can step up and do something positive for the school system and for the youth of New Kent County, then it needs to take that opportunity. He thinks the language should be included in the Development Agreement tonight to ensure that the youth of the County are looked after. He advocates and will make a motion if there is no further discussion.

Mr. Trout reminded that there would need to be a motion on any amendments to the Development Agreement prior to voting on the zoning application.

Mr. Davis asked Ms. Katz if everything that the Board had talked about is in the Development Agreement. Ms. Katz confirmed that it is. She pointed out that the biggest change was to move from the Proffer Statement to the Development agreement some of the commitments that the applicant wanted to make that are not traditional proffer commitments but benefits to the County, such as staff. Everything that has been under major consideration during the past year is in either the Proffer Statement or the Development Agreement.

Mr. Hill asked the applicant about the proffer for Affordable Housing, who confirmed that it is \$200 for every home constructed - all 2,500 homes including the 100 cottages.

Mr. Hill stated that the Board had heard from a citizen tonight who wanted to be assured that the PUD ordinance, Development Agreement and Proffer Statement had language in place to force the developer to abide by these documents and, for the record, asked the County Attorney to reiterate that these are binding agreements and are transferable so that if Farms of New Kent LLC should sell out to another developer somewhere down the road, they are enforceable. Ms. Katz stated that, to the best of her ability, they have been crafted to be ironclad and enforceable, but she wanted the Board to understand the difference between the Development Agreement and the Proffer Statement. Both documents run with the land, but by statute, a development agreement can have a duration of only 15 years, and cannot be extended beyond that. Where possible to negotiate (and the applicant was very cooperative), staff included defaults in the Development Agreement where it was stated that when the developer had to do certain things and if those things were not done within a certain period of time, then the applicant will pay out cash so that prior to the conclusion of that 15 year period, whatever hasn't been done should in some way kick over to the County in some form or alternative. She admitted that there may be a few things in the Development Agreement that just don't get completed. For example, if the Board does not agree to extend sewer and sewer to Watkins School within that 15 year period, then the County may lose the ability to require the applicant to pay for it. But for those 15 years, the requirement is enforceable and does run with the land. The Development Agreement is subject to renewal.

Mr. Trout suggested using the following wording for amending the Development Agreement: "should the Board determine to extend the sewer service area 1500 feet

further south on Watkins Road from Watkins School, the developer shall pay all costs of the extension of water and sewer service thereto.”

Mr. Hill reiterated that the Church is being utilized by the school system and it is a benefit to have that facility utilized for the kids. It benefits the parents of students who act up from time to time, because they won't have to take a day off from work to stay home with their child. He thinks the benefits far outweigh the costs.

Mr. Hill described some of the problems that staff is having with the radio system and asked if the applicant would be willing to help out with some radio equipment. Fire Chief Gallaher explained that the problem with the radio system is not equipment but problems with the landowner of the tower.

Mr. Burrell stated that with every 1,500 increase in population, the County will need another deputy, so he estimates that the development will be close to 7,500 people, requiring at least four more deputies.

No other changes to the development agreement were requested.

Mr. Hill moved that the Board of Supervisors approve the Development Agreement between the Board of Supervisors and Farms of New Kent LLC with an amendment on page 6, paragraph 10 to include that should the Board determine to extend the sewer service area 1500 feet further south down Watkins Road from Watkins School, the developer shall pay all costs of the extension of services thereto including connection fees.

Mr. Davis confirmed that this was a change to the Development Agreement only. Mr. Hill confirmed that this will become null and void if the PUD ordinance is not approved.

The members were polled:

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

The motion carried.

By way of background, Mr. Trout explained that this rezoning applicant came from the Planning Commission with a 10:0 vote against approval. When the proposed ordinance came to the Board in March, it came with a lot of recommended changes and a lot of work had been done by County staff in the few days leading up to the meeting. He recounted that at that time he made a motion to postpone consideration of the application and the public hearing from that night in March to a later date. Frankly, at that time, the PUD ordinance and other agreements were not ready. A lot of things that had been reviewed and discussed with the developer had not been put into language sufficiently to satisfy the County that whoever works on this project would be bound by the same agreements. He referred to the vote of the Planning Commission as a “wake up call”. Subsequently a number of meetings were held

between County staff, the developers and the attorneys, and a lot of hours were spent trying to perfect these three documents. What they did was take things like the number of homes, size of homes, various things that would be done in favor of the County, and the design of the winery, and put them in writing, into something that would be a solid, enforceable set of documents that would make this project a good project. He considers that a very high quality project came out of all those meetings. It is a first class development with everything in writing, including the size and cost of the winery, the age restricted housing and how that would affect the County. He understands from the analysis that was done initially that the estimated investment in the County (all of which won't be taxable) is \$1.2 billion. He understands that all of the estimates of the financial impact on the County have been positive. He thanked everyone who came tonight and those who sent e-mails and letter and made telephone calls, for letting the Board know how they feel. He said that the positives far outweigh the negatives. He stated that a lot of work has gone into putting these documents into their current forms, and he feels that it is a good project.

Mr. Burrell thanked folks for coming out and he commented that government works best when people get involved. He stated that he has listened to his constituents and has heard both positives and negatives. Most everyone is in favor of the fact that this a planned unit development, especially the estate homes, the winery, the age restricted homes (no impact on schools and little impact on law enforcement), the polo field, and development rights. On the other side of the fence, and he agrees with this, are concerns that the residential development is coming too close to I-64. Congestion on I-64 is already a problem and this will make it worse. The landfill has been mentioned tonight and he made it plain that it's not an "either or" situation. The applicant has talked about tax mitigation but he does not believe that development serves to reduce the tax rate. The rural aspect is what a lot of the citizens worry about. New Kent County has about 5500 homes on about 212 square miles. This project will put 2500 homes on just 4 square miles. Another thing that has been brought to his attention is that many of the folks that have shown up to speak in support of the project are those that will be selling satellite TVs, lawn care, trash pick up, in the construction business, or otherwise will benefit monetarily from the project. Based on his conversations, a vast majority of the people who live in the area of the project that will be impacted by it, are opposed to it.

Mr. Sparks thanked everyone who came out tonight, and stated that there was a lot knowledge in the room. He did not review the pluses and minuses of the application because he feels that the majority know what they are. But he did comment on how he feels and about the rural character of the County. He stated that he does not think that the Farms of New Kent or any other development is going to determine if this County is rural or not. He really believes that people will determine that. There is a lot of open land here, and the County is going to have development. It may be the Farms or it may be another development, but it is going to happen. He thanked the applicant, the staff and the attorneys for their help in taking a document that back in March "had holes in it" and shaping it into something that the Board can vote on tonight. He emphasized that 2,450 homes are not going to drop into this piece of property overnight, but over a period of fifteen years. He commended the applicant for what he thinks is a first class project and also thanked them for their commitment to return. This is an important decision and he hopes the Board makes the right one for the sake of the County.

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Mr. Hill stated that Mr. Sparks talked about how much open space there is in the County. He reported that the staff presented a document at a recent Planning Commission meeting that reflected that there are 135,680 total acres in New Kent County, 25,857.85 of which are in agricultural and forestal districts (19% of total land in New Kent). The Farms of New Kent covers less than 2% of the total land mass of New Kent. He expressed his appreciation to everyone who spoke tonight and in other ways shared their thoughts and concerns with him, and stated that he values the opportunity he has tonight and every night to sit up on the dais and make decisions. He tries to make the best decisions based on the information that's been provided and he takes into account each and every citizen comment that he receives. He acknowledged that he is one of the individuals who was referred to earlier and that credibility was a term that was thrown around. He admitted that as a candidate, he was opposed to the Farms of New Kent. It was 3800 homes then and today it is 2500. There was also 2780 acres then and today it is 2044. Then they were offering \$1500 in proffers for every non age restricted home - today they are offering \$5000. They weren't offering anything on the age restricted units - today they are offering \$2500. They are offering \$100,000 for development of the County park system, and in addition they are building a fifteen-acre park. They will build a firehouse and equip it with a fire engine. If approved, they will pay for two additional planners in the early phase and new building inspectors as the units come on line. He contended that it is a totally different plan and even his predecessor pointed out that it was a much better plan than the one two years ago. The Board heard from three other former supervisors who all endorsed the plan. The Board heard from two planners from the County treasurer who all endorsed the plan. To those individuals who supported him who feel that he has betrayed them, he apologized. But he stated that he will vote tonight in favor of the Farms of New Kent application and he will go to bed tonight and sleep peacefully knowing that he made the best decision for New Kent County.

Mr. Davis thanked all of the people who live in his district and throughout the County who sent him e-mails, letters and phone calls. He thinks this is a wonderful plan and the Board hasn't had a plan this good come to them. But the Board has seen a lot of other things. Tonight the Board approved the budget, and he expressed his disappointment that there was so little input at the public hearing, with the real estate tax rate going up 5 cents. That increase was necessary because of 268 homes that were built last year - to cover teachers and wastewater treatment plant operators, and county staff. This year the County is on track to have 400 new homes. Last year New Kent was the 72<sup>nd</sup> fastest growing locality in the nation, 3<sup>rd</sup> fastest growing in the State. With 400 homes, New Kent may be in the top 10. He commented that although nobody else has offered what Farms of New Kent has offered, \$5,000 will pay what it costs for one child for just over one year in school. He stated that when the last PUD was approved, the Board thought it made a good deal at \$1500. That amount doesn't pay for much today. He stated that the 1700 age restricted housing bothers him because the County has about 1700 homes in New Kent now that are inhabited by 55+ year olds that are having problems paying their taxes. The County is in a spiral. It started with the Kentland PUD which has 2900 more homes that have been approved, and another 100+ homes in the Oaks subdivision on Egypt Road that are already approved. There are 66 homes at the Courthouse already approved and 464 at Patriot's Landing. That's 3650 homes that the County will have to absorb with taxes because there is nothing else to pay for it. Farms of New Kent is giving the

County a whole lot better deal but still doesn't pay its own way. Even at a 15 year build out, the Farms will be building 150 homes a year. Add that on to the 400 already anticipated, New Kent will soon be the fastest growing in the country. It bothers him that the Board is approving something this big in one fell swoop because the County will have to pay for it up front. He asked everyone to remember what New Kent used to look like. He referred to a comment by one of the speakers earlier that there are businesses watching New Kent to see what will happen – he thinks the businesses watching are those that want to build more houses. He stated that he has all the respect in the world for the development team and Mr. Johns – they have done a good job, have stayed the course, come back and made corrections, making it more palatable, but it is still a lot of houses.

Ms. Katz addressed the applicant, stating that they have proposed an amendment to the ordinance. She asked them that in the event the amendment is not approved, are the proffers still acceptable and the ordinance still acceptable to them? Mr. Foote responded that the answer is yes.

Mr. Trout moved to adopt Ordinance O-09-05(R3) as presented.

Mr. Sparks stated that he'd like to amend Mr. Trout's motion, to adopt Ordinance O-09-05(R3) eliminating Alternative A and Alternative B amendment to Ordinance O-09-05(R3) as proposed by applicant. As a point of order, Mr. Trout pointed out that his motion did not include Alternative A, so Mr. Sparks' motion would be removing something that is not there. Ms. Katz agreed with Mr. Trout's interpretation. Mr. Sparks then withdrew his motion. It was clarified that the motion on the floor does not include Alternative A.

Mr. Burrell commented that he has listened and prayed on this, but he has to listen to the vast majority of the citizens who have called him. His vote will not be a reflection on the developers or upon those who have spoken tonight.

Chairman Davis repeated the motion, and the members were polled:

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

The motion carried.

Mr. Trout moved to authorize the County Administrator to enter into the Development Agreement with the Farms of New Kent. The members were polled:

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

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The motion carried.

Mr. Trout congratulated Ms. Katz who was this year's commencement speaker at the University of Virginia Law School.

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IN RE: MEETING SCHEDULE

Chairman Davis announced that the next regular meeting of the Board of Supervisors will be held on June 13, 2005, at 6:00 p.m. in the Boardroom of the County Admin Building.

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IN RE: ADJOURNMENT

There being no further business, Mr. Hill moved to adjourn. The members were polled:

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

The motion carried. The meeting was adjourned at 10:30 p.m.

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