

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 13<sup>th</sup> DAY OF JUNE IN THE YEAR TWO THOUSAND FIVE OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING AT 6:00 P.M.

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IN RE: INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by the Rev. Mark Sprowl of Providence Forge Presbyterian Church, followed by the Pledge of Allegiance.

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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

The meeting was called to order.

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IN RE: CONSENT AGENDA

County Administrator John Budesky presented the Consent Agenda, which consisted of approval of the minutes of regular meeting of May 9, 2005 and work session of May 23, 2005; Resolution R-33-05, Reimbursement for CIP projects; Resolution R-34-05, Accepting Easements; Road Name Additions: Old Dirt Road; Appropriations: additional funds for purchase of jail space for May and June of 2005, \$104,000.00; funds received for reimbursement of professional services for Farms of New Kent, Invoice #2FNK-12, \$14,378.90; funds received for Local Capability Assessment Readiness (LCAR) Grant from the Va. Dept of Emergency Management, \$2,000.00; funds received for AED defibrillators purchased in November 2004, \$2,000.00; funds received for reimbursement of professional services for Patriot's Landing, Invoice #PL-06, \$295.50; Total Supplemental Appropriation: \$(122,674.40) Total; \$18,674.40 Money in/Money out; \$104,000.00 From General Fund - Fund Bal; Inter-Departmental Budget Transfers: \$5,000 from Part-time salaries 4-1-12150-1300 to Overtime 4-1-12150-1200; \$7,290 from Reserved for contingency 91030-5890 to Maintenance contract 91030-3320 (to cover cost of maintenance cost for water tanks); \$1,757 from Advertising 4-1-81080-3600, \$585 from Advertising 4-1-81070-3600, \$350 from Dues & Memberships 4-1-81080-5810, \$300 from Copies 4-1-81080-5845 and \$100 from Travel Convention & Education 4-1-81060-5540, to Advertising 4-1-30000-3600 \$1,921 and to Advertising 4-1-81010-3600 \$1,171; \$1,500 from Reserved for contingency 4-1-91020-1 to Professional Services 4-2-53010-3002 (for Social Services); Treasurer's Report: Cash in Bank as of April 2005 \$20,886,917.53

Chairman Davis pointed out that the \$104,000 being appropriated represents what it costs the County to house prisoners for two months.

Mr. Hill moved to approve the Consent Agenda 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

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The motion carried.

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IN RE: CITIZENS COMMENT PERIOD

Chairman Davis opened the Citizens Comment Period.

Constance Kukla urged the Board to continue to consider all of the route options for the sewer project. She indicated that she feels that there will be less difference in the costs for the three options as the easements costs and other numbers come in. She asked the Board to look at the best "fiscal decision" and to keep their minds open in order to do what is best for the County

Rev. Milton Hathaway encouraged the Board to adopt an Affordable Housing policy for New Kent. He spoke about the three housing tiers, the top being market driven and the bottom tier being addressed by organizations such as Habitat for Humanity. He is concerned about the middle tier, and indicated that an Affordable Housing policy would give the County a tool with which to work with developers. He urged the Board to move forward to establish some type of policy for the County.

There being no one else signed up to speak, the Chairman closed the Citizen Comment Period.

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IN RE: RESIDENT ENGINEER'S REPORT

Gary Jennings, Assistant Resident Engineer with Virginia Department of Transportation, reported on some of the issues that were requested by Board members. Regarding Route 628, he has been advised that inmates have been working on the site distance issues, and potholes were patched this week. He reported that potholes were repaired in Five Lakes, and those on Route 655 were scheduled for repair today or tomorrow.

Mr. Jennings indicated that area crews had been working on mowing and ditching. The first mowing of the interstate and primaries has been done, and they are working on the first mowing of the secondaries, working east to west.

Following up on his report last month that the Route 632 project was about to be awarded, Mr. Jennings reported that the low bidder has now declined and did not want to proceed with the contract. The project will have to be re-advertised next month and the completion date will change from December 2006 to July 2007. He indicated that the bid received from the next lowest bidder was much higher than the lowest bid. The Route 686 project will be bid on this winter and work on both projects will proceed at the same time.

Mr. Jennings reported that work is starting on the Eltham Bridge on the Eltham side. Travel lanes will be reduced from four lanes to two between Route 273 and the bridge beginning on June 20. This will likely exacerbate the problems with Friday afternoon congestion.

Mr. Burrell inquired about advertising alternate routes. Mr. Jennings indicated that the Saluda residency will be working on a public affairs announcement that will do just that; however, the Friday afternoon traffic primarily consists of non-locals on the way to their river homes for the weekend.

Mr. Davis asked about message boards. Mr. Jennings indicated that they intended to use message boards that first week.

Mr. Jennings reported that work will start on Sassafras Circle in Five lakes on June 29.

He stated that the paving schedule starts tomorrow. The first project is in Charles City County, and then will move to Old Forge Lane/Route 1047, and then to Route 611. Next week they will be "standing down" with normal maintenance in order to concentrate on patching and low shoulder work on the primary routes.

Mr. Jennings reported that he will not be able to stay for the two public hearings tonight as he will be leaving to attend at meeting in another locality, but his associate Tracy Lassiter will be present to answer any questions.

Mr. Davis asked Mr. Jennings to explain the proposed truck restrictions on Route 273. Mr. Jennings indicated that this will restrict commercial truck traffic from using Route 273 as a cut-through from Williamsburg to West Point. Any truck without a bill of lading for an address on Route 273 will be restricted and subject to receiving a summons. Mr. Davis asked if it would pertain to a certain size truck and Mr. Jennings stated that he would have to look up that information.

Mr. Jennings reported that the additional rumble strips have been installed on Route 33.

Mr. Burrell asked about the truck signs, commenting that a truck had missed the turn and gotten stuck when it tried to turn around and had to be towed out. Mr. Jennings reported that those signs are still on order.

Mr. Hill thanked Mr. Jennings for his staff's help in removing the fallen tree on Talleyville Road. He asked Mr. Jennings to address a bad pothole in front of the driveway at 9421 Talleyville Road. Mr. Hill stated that he had been fielding concerns from residents concerned about runoff resulting from clogged ditches along Route 612 and asked that they be cleaned out.

Regarding Quinton Park, Mr. Jennings reported that the County has returned the letter accepting VDOT's entrance into the park. Mr. Hill inquired when the County could expect to have the temporary road in place as there is a group that wants to start work on the project. Mr. Jennings indicated that it would be the end of June.

Mr. Trout inquired as to when the work will be done on the entrance to The Colonies. Mr. Jennings stated that this is the railroad company's responsibility, but they plan to work on that after the paving work on Route 611.

Mr. Trout called Mr. Jennings' attention to a dead tree that is leaning towards Route 60 east of Route 106. He stated that if it fell, it would close both lanes of travel.

Mr. Burrell commented that the mowers are knocking down signs. He also indicated that the ditch in front of 14141 Stage Road, east of Good Hope, needs to be cleaned out.

Mr. Davis thanked Mr. Jennings for the mowing and clean up that was performed along Route 33 and Interstate 64 in preparation for President Bush's visit. He asked him to look into the signs for West Point.

Mr. Davis asked Mr. Jennings to look at High Bluff Lane and advise what it will take to bring it into the state system. He also stated that there was a pothole that is getting larger on Polish Town Road at Tabernacle.

Mr. Davis asked what could be done about the trucks traveling from James City County into New Kent. Mr. Jennings stated that he is working with another residency and district on that problem but cannot make any promises.

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IN RE: KEEPING OF INOPERABLE VEHICLES

The Chairman of the New Kent Clean County Committee, Diane Walls, along with three members from this committee, Wayland O'Bier, Robert Robertson and Jimmy Dean, were present to answer any questions that the Board had regarding the request to change the New Kent Code to conform to the changes recently made in the Code of Virginia.

Mr. Burrell commented that he feels that the language that the County has is pretty strong. The problem is having adequate staff to enforce it.

Ms. Walls stated that what they are asking is that the New Kent Code match the State Code which has been amended to include additional sections c, d and e which spell out penalties for not removing the inoperable vehicles. She did concede that it was pointless if it was not going to be enforced.

Mr. Davis stated that the Board has instructed staff to attend to this problem and inquired how many citations were issued. Community Development Director George Homewood responded that 132 were issued last year. County Attorney Phyllis Katz stated that most of those cited have come into full compliance. Mr. Davis stated that Kenny Vaughan has worked hard on this project. Ms. Walls stated that they are not asking anyone to do any more work.

Mr. Trout stated that what the State Code did was conform the civil penalties for keeping junk cars to be the same as other civil penalties, which may have actually lowered the amount of the fine for the first offense. He admitted that the County needs to do something about the junk cars that can be seen from the road. However, if the County has the vehicles towed, it will have to pay for it up front and there will be a lag time before it is reimbursed. He acknowledged that this is a growing problem, but he feels staff has made some headway in getting some cleaned up.

Ms. Walls stated that the Clean County Committee hopes that more will be done. She mentioned that there was an ad in the Chronicle from a towing company offering free towing with vehicle title. She indicated that Kenny Vaughan no longer attends their meetings so they are not aware of his progress. Mr. Davis stated that the Board will make sure that the committee gets a copy of Kenny's monthly tally sheet.

Ms. Walls mentioned that John Crump had met with their committee to discuss beautification of the County in connection with Jamestown 2007.

Mr. Davis stated that Mr. Vaughan has other things to do and he wished that the County had the money to pay someone to do this. He thanked Ms. Walls and her committee for their efforts.

George Philbates of Philbates Towing shared information about the towing and salvage process. He indicated that if there is no title, then the vehicle must be held for 90 days.

Oftentimes there are no tires, wheels or keys. He must drain all fluids into separate containers (oil, transmission fluid, grease, anti-freeze and brake fluid) and pay to dispose of some of them. Many vehicles weigh only between 1500 and 1600 pounds and at \$2.00 per 100 pounds, frequently he only gets \$32 for the scrap metal. Mr. Philbates stated that he has agreed to accept for free any vehicle (as well as old appliances and lawnmowers) that someone brings to him, and will move any vehicle in New Kent for \$25.00.

Mr. Hill asked the County Attorney to explain the civil penalties in the Code. Ms. Katz indicated that the first offense is \$100. If after 10 days the junk car remains, the second and subsequent offenses are \$250, for a maximum of \$5,000. Mr. Hill asked if the County has the authority to set different penalty amounts from the State, and Ms. Katz stated that it does. Mr. Hill asked if any County employee other than the Zoning Administrator had the authority to issue summonses for this. It was reported that the Sheriff and his deputies also have this authority.

Mr. Hill commented that these junk cars are eyesores and that most people work hard to maintain their homes. He stated that if the County is not going to enforce the regulations and provide the manpower to enforce them, then the County should stop wasting the time of the ten citizens that sit on the Clean County Committee. He indicated that if Kenny Vaughan doesn't have the time, then the County needs to get the Sheriff's deputies involved as they are already riding through the County and it should be pretty easy for them to issue the summonses. Ms. Katz explained that the Sheriff's deputies could swear out affidavits but the Zoning Administrator has to issue the actual summons.

Mr. Davis stated that the Sheriff has enough to do and suggested that staff work on something in-house. Ms. Katz advised that if the Board wanted to amend the County Code, then a motion to move forward with a public hearing would be necessary. Mr. Burrell so moved.

Mr. Trout made a subsidiary motion to refer the request for changes to Section 15.2-904 to the County Administrator to work with staff to determine a feasible method for solving the problem. He stated that the County Administrator should work on this with the Planning Department and Sheriff's Office and then report back on what would be feasible and enforceable. Mr. Hill stated that before any vote is taken, he would like to know from the County Attorney if the County could advertise Mr. Philbates' offer to tow any vehicle for \$25 on the County's government channel, or would it have to go to bid. Ms. Katz stated that there could be some public service announcements in conjunction with the efforts of the Clean County Committee, telling the public what has been offered, and include anyone who called and asked to be included, and this would not fall into the procurement laws. She admitted that she is not familiar with the FCC rules but thinks it certainly could be advertised on the web site. Mr. Sparks suggested that an ad on the government channel could just direct that anyone with a junk car can call a particular number and get information about how to dispose of it. He agreed with Mr. Trout that the County Administrator should work with the Sheriff and Community Development staff to see if they can find additional ways to encourage residents to have these junk cars removed, and acknowledged that County resources are already stressed.

Ms. Katz suggested that callers should be able to inquire anonymously.

Mr. Burrell stated that any public hearing to change the ordinance would be announced which would get more publicity.

Mr. Trout suggested that whatever the County does, that it be workable.

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The Board discussed a timetable. Mr. Hill suggested that 30 days is sufficient time for staff to work out a policy and he stated that he didn't want to wait 60 days until August.

Mr. Sparks pointed out that there are two different issues. If the Board wants to adopt the changes, then a public hearing should be scheduled. As for a process to make the County more efficient in removing these junk cars, that's a separate issue and the Board can ask Mr. Budesky to work with staff to find a way to do a better job.

Mr. Trout stated that the motion currently on the floor was his motion to refer this to the County Administrator. This would allow the County Administrator to take a look at not only the Code sections that Mr. Burrell has referred to, but also the rest of the process for dealing with these junk cars.

Mr. Burrell suggested that staff could still work on the matter and that would not preclude a public hearing. Having a public hearing will allow the public to have input and there may likely be those who may have some valuable information. He does not think that his motion would preclude having staff involved – in fact, staff could easily be involved. If staff could not complete its work in 30 days, then the public hearing could be scheduled for August.

Mr. Sparks wanted some clarification from Mr. Trout. Was Mr. Trout saying that if the Board referred this to staff, then the County would not need to adopt the State Code? Mr. Trout stated that the staff could come back with a recommendation that may be conformance with State Code, but at the same time, it would allow the staff to take a look at the feasibility of actually enforcing the regulations. Currently there is a considerable staff shortage. It is both a staff problem and a financial problem because the County would have to pay for towing the vehicles and other costs of enforcement. He wants to make sure that the County finds the best and most feasible solution.

Mr. Davis stated that going to public hearing won't change the enforcement but will only change the County's ordinance to conform to the State Code. Mr. Trout stated that what the County needs to determine is what it wants to do. The County does not know if this will work or not, and that is something that staff can look at and make a determination. He stated that the Board needs to know that before it goes to public hearing.

The members were polled on Mr. Trout's motion to refer this to staff:

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

The motion failed to carry.

Mr. Burrell re-stated his motion to take the item under discussion to public hearing in order to bring it into conformity with State Code. Mr. Hill asked Mr. Burrell if he would amend his motion to ask staff to put together a task force to come to some solution as to how the County might better manage enforcement. Mr. Burrell accepted that amendment to his motion.

The members were polled:

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

The motion carried.

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IN RE:           ENGINEERING SERVICES

Public Works Director Alan Harrison explained his request that the County Administrator be authorized to enter into contracts with three engineering firms. He reported that thirteen firms had responded, the list had been narrowed down, and five firms were interviewed. Three of those have been selected to assist the County when needed on engineering work so individual RFPs won't have to be issued in each instance. This will avoid the need for advertising. These three firms will be pre-qualified to respond to the County's requests and there will be individual but identical agreements with R. Stuart Royer & Associates, Whitman Requardt & Associates and URS Corporation.

Mr. Trout commented that this was done through an extensive process of reviewing applications and interviewing in order to come up with these recommendations. He asked if a major project comes up, would it be bid out. Mr. Harrison explained that the County had that option. Mr. Trout asked if the County or any of its departments could use other engineering firms during the contract period. Mr. Harrison indicated that any department could issue an RFP for other firms if they wanted to or could "piggy back" on these contracts. Each contract was for three years, extendable for two additional one-year periods if desired.

Mr. Davis stated that he was familiar with Royer, and asked how Mr. Harrison had chosen Whitman Requardt & Associates and URS Corporation. Mr. Harrison explained how the process worked, and that they had looked at each written proposal with a "blind eye" and did not take into account any past experience with the firm. The firms were scored in six categories and a ranking was established. It was decided to have a critical mass of three based on the work load. The interview process was when prior experience was considered, and he has worked with both firms before. The interview team was composed of himself and Robert Wilson, the Director of the Dinwiddie Sewer & Water Authority. Mr. Budesky interjected that he had reviewed the process and he supports Mr. Harrison's recommendation.

Mr. Hill asked if the County would be utilizing two of the firms to look at information received from the third in order to provide some kind of check and balance. Mr. Harrison admitted that he had never done that in the past but it was possible. Mr. Budesky advised against doing that as normal practice as it would result in a doubling of the fee but if there is ever a concern at any point, then the County could call upon the expertise of one of the others to review a project where there might be some concern.

Mr. Hill asked, for example, if the County could utilize these firms to make sure that the water tank that Mr. Crump is going to build for the Courthouse utilities is going to be built to County specifications. Mr. Harrison said that the County could if it wanted to, but a good example would be Farms of New Kent who is going to be building an elevated tank and he intends to use them for inspection of the water tank construction.

Mr. Sparks asked how Mr. Harrison intended to allocate work to each of these firms. Mr. Harrison stated that he was going to match up the various work tasks to the strengths of each firm and try to even up the work load.

Mr. Sparks asked if Ms. Katz had written the proposed agreement. Ms. Katz stated that she had reviewed the agreement and had written a large part of it. Mr. Sparks asked about the section dealing with the frequency of site inspections, voicing his concern that inspections would be made every two weeks rather than weekly. Mr. Harrison stated that the engineering firms can be on site when asked, but this is just for routine inspections. He indicated that these contracts are standard but can be changed to once a week if that's what the Board wants. Ms. Katz referred the Board to Article III and explained how selection is made and how terms are negotiated.

Mr. Hill stated that he had researched both companies on the internet and discovered that URS claims to be global leader in its field, and both companies have done projects in the Richmond metropolitan area in water and wastewater.

Mr. Burrell moved to authorize the County Administrator to enter into annual engineering service contracts with R. Stuart Royer & Associates, Whitman Requardt & Associates and URS Corporation. 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

The motion carried.

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IN RE: RESTRICTING COMMERCIAL TRUCK TRAFFIC ON ROUTE 273/FARMERS DRIVE

Tracy Lassiter from VDOT explained to the Board that commercial truck traffic uses Route 273 to cut between Whitmore Chevrolet and Route 30, and this restriction will restrict that use. Mr. Davis commented that this was the same process that was used on Route 613 and will have to be approved by the Commonwealth Transportation Board, and he asked when that body would next meet. Ms. Lassiter stated that the CTB will be meeting within the next couple of weeks and she doubted that this request would be considered at that time, but most likely at the following meeting.

Mr. Davis commented that this measure will result in safer conditions on Farmers Drive. He related that in the last month, two 53-foot trucks ran off the road because they were too large.

Chairman Davis opened the Public Hearing.

Pat Hester stated that he was not present to speak against the restriction but to make the Board aware of what might take place when more trucks are using Route 30. He described the dangerous condition at the intersection of Route 30 and Polish Town Road where there is a steep rise in the road and vision is often blocked by signs or overgrown brush. With more trucks using Route 30, traveling 55 mph, this increases the danger at that intersection, and other intersections where school buses may be making turns.

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Isabel Davis White stated that restricting truck traffic on this road came up quite a few years back and the speed limit was lowered. She described the deep ditches and lack of shoulders along Farmers Drive, and agreed that truck traffic needs to be restricted. She talked about the elderly residents who have a hard time getting out of their driveways.

Beverly Heath stated that he was not against the restriction but did have some concerns about how it would affect his business, King's Rentals. Mr. Davis stated that it would not affect local businesses that are located there - just the trucking companies using it as a cut-through. It also won't affect the farmers or loggers.

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

Mr. Davis agreed that some work needs to be done to improve the line-of-sight on Route 30 coming from the transfer station, perhaps cutting back the brush and the bank. Mr. Heath interjected that similar work needs to be done at the Mt. Ebo intersection as well.

Mr. Hill asked if there were any other short cuts that these trucks might take. Mr. Davis stated that there wasn't. Mr. Heath suggested that it might help if the speed limit was reduced through Barhamsville. Mr. Davis stated that he would revisit that issue with VDOT.

Mr. Burrell moved to adopt Resolution R-32-05 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.

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IN RE: DEED OF EASEMENT – VDOT PROJECT ON MT. PLEASANT ROAD/ROUTE 628

Tracy Lassiter from VDOT reported that the Route 628 project is on the Six Year Plan. The County has been requested to deed to the State a right-of-way in the area. Some question has been raised about the County's ownership of the property and they are going to go back and revisit this and see if the current landowner can't deed the property directly to the State rather than go through the County.

Mr. Davis asked if the landowner has already deeded the land to the County. County Attorney Phyllis Katz stated that she is unaware that they have. Community Development Director George Homewood indicated that he knew nothing about it either. Mr. Homewood explained that traditionally, the fee under secondary roads is actually owned by the County and what is dedicated to VDOT is not the fee on the road but the right to maintain. Over the years that has become confused and VDOT has ended up owning many of the rights-of-way, but historically, the rights-of-way in the secondary systems should remain and have remained in the ownership of the County. That is probably why Wingspread, the owner which is based out of Florida, is suggesting that it be handled in this way. Typically what happens in a subdivision is that when the subdivision streets become public roads, they are platted and they belong to the Board of Supervisors. At some point when they need to become public roads, the Board then conveys the right to maintain them to the Dept. of Transportation, but actually still maintains the ownership. This owner is out of state and is probably getting legal advice as to what the State Code actually says and the way that the County has been doing things for the past two decades.

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Mr. Davis asked if Mr. Homewood saw any reason for the County to take ownership. Mr. Homewood stated that he didn't, and that in his time here, the process has never been altered from actually conveying rights-of-way to VDOT. However, if the property is being conveyed to the County, then the County will need to convey it to VDOT.

Mr. Trout stated that he doesn't think the County wants to own it. This only authorizes the Administrator to execute a deed, and he didn't think the Administrator would want to execute a deed unless the County owned the property. This has been advertised for public hearing, and the Board would not be saying that it has to be done, but would be authorizing the County Administrator to do so.

Chairman Davis opened the Public Hearing.

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

Ms. Phyllis Katz stated that the Board could defer action until further information is determined. No further public hearing will be required.

Mr. Trout moved to defer action on conveying the approximately 1.831 acres designated as Tax Map #43-6-10 to the Commonwealth of Virginia. 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.

Mr. Burrell left the meeting at 8:00 p.m. for a family emergency.

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IN RE: WOOTEN REZONING

Planning Manager Rodney Hathaway reported that Timothy Wooten has applied to reclassify 30 acres from C-1, Conservation, to A-1, Agricultural, in order to match the zoning classification to the current use of the property. The subject parcel is located at 1840 Polish Town Road, designated as tax map parcel 37-22B and classified as Rural Lands in the Comp Plan. Surrounding land is zoned as A-1 and is designated as Rural Lands and some Economic Opportunity. This parcel is a part of the York River AFD, having been added about 6 – 7 years ago.

By way of background, Mr. Hathaway explained that this was a portion of the property purchased by the applicant's parents in 1979 from Chesapeake Corporation. It was transferred to the applicant about 10 years later. The County issued a building permit and certificate of occupancy for a single family home in 1991, and for a garage in 1996. Since single family homes and garages are not allowed on land zoned C-1, the property is not in conformance with the zoning in which it is located. At the time the permits were issued staff obviously overlooked the zoning as it was marked as A-1 zoned land. This situation was brought to Mr. Wooten's attention by a title company during a recent refinancing, and he is now asking for a rezoning.

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Mr. Hathaway described the development potential of the property if it is rezoned. This 30-acre parcel could be subdivided into four new parent tract parcels and nine family subdivisions, resulting in 13 new dwellings.

Mr. Hathaway stated that staff finds the request in compliance with the Comp Plan and consistent with the land uses and zoning classifications of surrounding properties, and recommends approval of the application. However, staff would feel a lot stronger if the original proffers were resubmitted wherein it was offered that the property would not be further subdivided. These proffers were withdrawn at the Planning Commission meeting. He acknowledges that a number of mistakes were made by prior County staff but those mistakes gave the applicant rights and privileges that he otherwise would not have had.

He reported that the Planning Commission voted 10:1 with one abstention to forward the application to the Board with a favorable recommendation.

Mr. Trout asked how the rezoning would affect the property's AFD status. Mr. Hathaway reported that it would have no effect and that the property could remain in the AFD.

There was discussion about the proffers. Mr. Hathaway confirmed that the County cannot impose proffers, as they are strictly voluntary.

Mr. Hill stated that at the Planning Commission hearing, Mr. Wooten made a statement that at some point, he might want to give his son a piece of the property. The applicant was present and confirmed that. Mr. Hill asked the applicant how he feels about the opportunity to subdivide the land. Mr. Wooten responded that he doesn't know what will happen in the future and he should not be under any restrictions.

Chairman Davis opened the Public Hearing.

Beverly Health stated that Mr. Wooten was a good neighbor and it would be a grave mistake on the County's part not to approve this application. He did not understand how Mr. Hathaway arrived at the number of potential lots and thought it is closer to 4 to 6. He stated that the proffer is not proper in this situation.

Isabel Davis White stated that this mistake was made in the Planning Department and was not made by Mr. Wooten. It should have never been zoned C-1 and Mr. Wooten should not be penalized. She indicated that she was on the AFD Board when this was added and it was represented to be zoned A-1 and not C-1.

George Philbates stated that this was a mistake made by the County and the property should be rezoned A-1 with no restrictions.

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

Mr. Davis stated that the County has treated this land as though it was zoned A-1. He asked Mr. Wooten how the parcel behind him was zoned. Mr. Wooten stated that it is zoned C-1 as well but they always thought that it was A-1. The whole tract was purchased in 1979 at which time they were told it was zoned A-1. Mr. Hathaway confirmed that the piece behind this one is also zoned C-1. Mr. Wooten stated that there was no residence on that parcel which is owned by his mother. Mr. Davis asked about rezoning both parcels at the same time. Ms. Katz stated that unless they go back in the records and find an error in the maps, then it would need to be re-advertised.

Mr. Hill moved to adopt Ordinance O-19-05 as presented. The members were polled:

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

The motion carried.

Mr. Homewood commented that the Board could choose by resolution to sponsor an application to rezone that piece of C-1 property. He further stated that he suspects that this was not a result of an error in zoning but an error in perception over the years. Chesapeake had much of their land placed into C-1 category in the late 1960s so that they could carry their property at a much lower value and pay lower taxes. As they sold off the timber parcels, not all were rezoned and he suspects that was just the case here and probably people did not pay a lot of attention and did not realize that the C-1 zoning had not been changed. From what he can tell in reviewing the records in his department, people made assumptions that if it wasn't R-1 or R-0 or one of the B categories, it must be A-1 and no one every realized that C-1 was a zoning classification. A good way to fix it, if the Board chooses to do so, would be to sponsor an application to rezone that piece of property. He indicated that a week from today the Planning Commission will be considering a draft zoning ordinance and map which will also afford the Board the opportunity to make that change.

Mr. Trout stated that the Board has taken care of the parcel with the home on it and may want to leave the other parcel in C-1 as there was some concern that the tax level would increase. Commissioner of the Revenue John Crump stated Chesapeake had their land in C-1 which was not recognized by his office. That's why Chesapeake came back to the Board of Equalization and wanted to change it and that's when they started selling off their property. Mr. Crump stated that there was no difference in the value between land zoned C-1 and A-1. The tax rate for C-1 zoned land is the same as A-1.

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IN RE: AMENDMENTS TO NEW KENT COUNTY CODE, SECTIONS 94-33, -39, -40 AND -42, ENVIRONMENTAL-CHESAPEAKE BAY PRESERVATION AREAS, AND SECTION 38-176 (HEALTH & SANITATION – SEPTIC TANKS)

Community Development Director George Homewood stated that on May 9, 2005, the Board conducted a public hearing on the proposed changes to the Chesapeake Bay provisions in the County Code. He apologized that he had not been available at that meeting to address the questions and concerns that were raised. Since then, he and the County Attorney have submitted a memorandum that attempts to answer those questions, and he is ready to further respond tonight.

Mr. Trout stated that there appears to be five different items that are not related to each other, and he would suggest that the Board consider the items one at a time. That should be less confusing than trying to take care of five changes at one time.

Mr. Davis concurred, and asked which changes were required. Mr. Homewood stated that the one that must be done is the first one which deals with change in definition of "substantial alteration".

Mr. Trout stated that as he reads the original section, it says that 2500 feet in any Chesapeake Bay Preservation Area, and what the changes does is to restrict that to Resource Management Areas. Mr. Homewood explained that there is a Resource Protection Area (RPA) and a Resource Management Area (RMA), and together those two are the Chesapeake Bay Protection Areas. The only real restriction on property in an RMA is that it requires a septic tank pump-out or inspection once every five years. The other RMA provisions (adopted by previous boards as countywide measures) are that there be a 100% reserved drain field area and that a land disturbance permit be required for 2500 square feet of land disturbance. The inspection option was adopted as part of the Chesapeake Bay provisions in Chapter 94 but has not been adopted as part of Chapter 38, and this is attempting to conform the two.

Mr. Trout stated that what this essentially does is limit the 2500 square foot substantial alterations to RMA rather than the whole Ches Bay Protection Area. Mr. Homewood indicated that they had argued with the State that the provision was already there and already part of the regulations, and that one shouldn't regulate by definitions, but that "those arguments fell on deaf ears" and the State said that the County must do this.

Mr. Hill asked if there were counties in this area that don't subscribe to Ches Bay regulations. Mr. Homewood responded that they must, or the State would come in and takes over the program.

Mr. Trout moved to adopt Ordinance O-13-05 as it pertains to Section 94-33 only. Ms. Katz stated that the motion sounded like the Board will not have the option to adopt any of the other sections, so she suggested that the motion be amended to reflect that the Board adopt Section 94-33 of the ordinance. Mr. Trout indicated that was what he had intended to say.

The members were polled on Mr. Trout's motion to adopt Section 94-33 of Ordinance O-13-05:

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

The motion carried.

Regarding Section 94-39, Mr. Homewood reported that this change was recommended to the County by the Ches Bay Local Assistance Board and is one that he agrees with. Since much of the calculation is comparing the pre-development loading with post-development loading, the County ought to use the same method in calculating both. He admitted that this has never been a problem in New Kent as no one has ever tried to submit a work quality impact assessment that used different methodology for calculation pre-development and post-development, but apparently has happened in other localities and that is why it has been recommended for adoption in New Kent.

Mr. Hill asked why there was no mention of any of these other sections in the letter from the State dated March 24, 2004. Mr. Homewood stated that the others were strictly recommendations. The one change that was referenced is an absolute requirement, and New Kent's program is conditional based upon making the change which was just adopted. The others came as recommendations which will not impact New Kent's status as complying

in any way, shape or form. The Board can reject all of the rest and the County will be a compliant locality.

Mr. Sparks asked if these were recommendations from staff. Mr. Homewood responded that they were recommendations that came from CBLAD that made a lot of sense to staff and that is why they are included.

Mr. Sparks moved to adopt Section 94-39 of Ordinance O-13-05. The members were polled:

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

The motion carried.

Regarding Section 94-40, Mr. Homewood explained that the RPA is not supposed to be touched. The RPA and its 100 foot buffer is an area to filter and clean storm water as it travels across it. What staff has been doing on plats is requiring the building to be set back from the edge of the RPA. He described the reason for that with an example that one would be in violation of the RPA if a house is built up to the edge of the RPA and then someone put a ladder or other equipment in the RPA to paint it. He stated that requiring the additional set back would allow a homeowner to have the expectation of using their backyard. Homeowners do not have the expectation that they can't enjoy their yard if the RPA is right outside the door. He pointed out that this does not apply to any of the pre-1989 lots and especially does not apply to those lots where there is administratively-granted (and generally automatically administratively granted) waiver that allows encroachment into the first 50 feet of the RPA buffer. This only applies to those lots that are post-1989 and provides 20 feet of yard in which homeowners can have a deck, grass or whatever they want without reaching the edge of the RPA. He explained that this has been done through persuasion and using a "bully pulpit". Staff is now requesting that this be placed into the Code as a requirement. This would only apply to the main building set back and not any accessory structures.

Mr. Hill stated that he is not sure if the County needs to strengthen something that the State mandates and he asked Mr. Homewood how many times, in all of his years of experience, has he seen a builder back right up to the RPA. Mr. Homewood stated that there are a dozen instances of this in Brickshire alone. Mr. Hill asked how that could have happened, since the land was subdivided after 1989, and he questioned how the Planning Department could have allowed this. Mr. Homewood reported that most of these are in Section I, which existed before any of the current staff was involved in the regulation. The building line was shown on the plat as coming right up to the edge of the RPA and that obviously satisfied staff when they issued building permits. That is one of the reasons why staff is asking that it be added to the ordinance. He indicated that staff has been very successful lately in using its "bully pulpit" to move the building setback away from the edge of the RPA.

Mr. Hill asked if, taking into account a 30-foot front set back and the proposed 20-foot rear setback, there will be building lots in the County that will no longer be "buildable". Mr. Homewood stated that is theoretically possible but he does not know of any in that situation. However, those would be the ones for which there is the opportunity to obtain a

waiver, which is administratively granted and adjustments are able to be made using topography and other factors. Those are the situations where pre-1989 lots were subdivided without knowledge of the RPA, and would be entitled to an automatic waiver.

Mr. Hill asked if the RPA, RMA and setbacks areas are excluded when calculating the number of units into which a parcel can be subdivided. Mr. Homewood explained that if it is a density-based decision, such as using a cluster, then the RMA and RPA areas are counted. If it is a traditional subdivision, then the RPA areas are excluded from the areas used in meeting the minimum lot area. If, for example, in an R-1 classification and 20,000 square feet is the required lot size, there must be 20,000 square feet on that lot, outside of the RPA.

Mr. Davis stated that it seemed convoluted to change something that seems to have been working fine so far.

Mr. Trout commented that what this does is make the land more usable and like Mr. Homewood said, it is almost impossible not to violate the law when building a house right up to the line or within a few feet of the line. It would also appear to prevent some problems down the road that may be encountered as people buy homes and find out that they have restrictions as to what they can add on or how they can use their yard. This is being used by other jurisdictions. He asked Mr. Homewood if this was one of the recommendations that came down or was this because of what some of the other jurisdictions are doing. Mr. Homewood stated that this came from the Environmental Technical Advisory Committee of the Richmond Regional Planning District Commission about the same time that staff was working on these other changes, and it was added into the mix. He added that the application of this in the future is almost entirely going to occur at the subdivision stage where there are lots that have RPAs, and the building footprint line will be moved back from that. What that does is insure that every lot has adequate building area and lets purchasers be aware of what the rules and regulations are, rather than inadvertently stumble into a violation. He stated that most violations are not willful but occur because people didn't know. Staff would like to try to eliminate those as much as possible. There is not much that anyone can do about those who intentionally violate it, except for try to catch them. They are trying to prevent normal law-abiding persons from becoming law-breakers.

Mr. Sparks asked how the typical homeowner would be aware of an RPA and that they need to be 20 feet away from it. How will it be shown to a buyer? Mr. Homewood stated that the RPA must be surveyed onto all subdivision plats. Secondly, the County requires that RPA signs be placed (by the sub-divider) along the RPA boundary where it intersects property lines and at 200-foot intervals in between. Finally, on the plat itself there is a building footprint outlined into which the house must be built, or a waiver requested.

Mr. Hill asked who has the responsibility of making the buyer aware. Mr. Homewood stated that staff's responsibility was to insure that all of that information is on the plat and easily accessible. The closing attorney should disclose certain things, including environmental restrictions, to the buyer during the closing process.

Mr. Trout asked if this would apply to property that is not yet subdivided. Mr. Homewood stated that principally, yes. Mr. Trout stated that at this point, this would apply Farms of New Kent, Patriots Landing, and Kentland PUD and prevent homes from being built right up to the line like those described in Brickshire. Mr. Homewood stated that Dispatch Station is another one that would fall into that category as well.

Mr. Trout moved to adopt proposed Section 94-40 presented in Ordinance O-13-05. Mr. Hill made a substitute motion that the Board not adopt Section 94-40. The members were polled on Mr. Hill's motion:

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

The motion failed to pass.

Mr. Trout recommended that the Board postpone the vote on his motion to the next meeting when all five members were present. The Deputy Clerk asked for a clarification as to whether the vote will be taken at the next meeting or at the next meeting when all members are present. Mr. Trout changed his recommendation, suggesting that the vote be taken at the work session in two weeks. Mr. Hill suggested that all remaining proposals be postponed as well, to which the other Board members agreed.

Mr. Davis made a substitute motion that the vote on adoption of Sections 94-40, 94-42 and 38-176 of Ordinance O-13-05 be deferred to be made by all five members at the next work session. The members were polled:

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

The motion carried.

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IN RE: EASEMENTS

Chairman Davis stated that the Agenda needed to be changed in order to allow for consideration of 59 resolutions authorizing the condemnation of parcels for which easements have not been obtained, and to recognize the acceptance of the 13 easements that were adopted as part of the Consent Agenda.

County Attorney Phyllis Katz stated that there are two actions needed. The first one is to identify those property owners by tax map parcel numbers whose easements were accepted as part of the Consent Agenda. The second item is the Board's consideration of 59 resolutions, each one condemning easements on particular parcels of land for the Bottoms Bridge sewer project, and she recommended that those tax parcels be identified as well.

Chairman Davis identified the following tax map parcels for which easements were accepted earlier in the meeting by the acceptance of Resolution R-34-05: 19-4-3 and 19-4-2; 30-6-6; 19-62; 19-4-5; 32-5-3; 32-4-8; 32-4-7; 30-6-1, 2, 3, 4 & 5; 21-82; 32-5-4; 30-1-A; 19-B2-7-3-18; 20-61A; 20-10-C; 32-3-1; 29-2; 19-37A; 20-10-D; 30-6-3; 28A3; and 28A3.

Chairman Davis stated that Resolutions R-35-05 through R-93-05 provides for condemnation of 59 parcels. Mr. Hill read the list of the parcels affected as follows: 19-44B, 19-67, 19-37C, 29-1, 20-6-1, 21-20, 19-4-4, 19-46C, 19-B3-4A, 19-42A, 19-42, 19-43, 19-43A, 19-43B, 19-46F, 19-64, 19-64B, 19-64A, 19-37B, 29-2C, 33-B1-1, 33-B2-1-1,

33-B6-2, 19B1-3, 19-4-1, 19-44A, 19-44D, 19-1-1, 19-1-6, 19-9-3, 19-9-2, 19-45, 19-B3-4, 19-44C, 19-2-1, 19-2-2, 19-2-3, 19-2-5A, 19-11-2, 19-11-5, 30-1G, 19-66B, 19-66A, 30-1-D, 19-43F, 19B1-1, 20-10-B, 20-70A, 21-91A, 21-88, 32-3, 22-5A, 22-6A, 32-39, 33-1A, 19-38, 19-37, 19-44, and 32-1.

Ms. Katz explained that these resolutions will result in three actions. The first is that the Board is approving the condemnation of partial pieces of land for easements across the property; the second is authorizing the obtaining of the easements immediately under the quick take process; and the third is giving notice to the property owners that the County will be entering upon and taking the property. After adoption, notices will be sent to each property owner of the action taken and that the County will file petitions of condemnation. After the petitions are filed, another letter will be sent to each property owner confirming the filing.

Mr. Hill moved to approve condemnation because the following actions are immediately necessary in order to construct the Bottoms Bridge sewer project, by adopting Resolutions R-35-05 through R-93-05 which approve 1) the condemnation of a portion of and/or an easement(s) across the property identified in the plats attached to each resolution; 2) obtaining such property and/or easement(s) immediately pursuant to Chapter 3 of Title 25.1 of the Code of Virginia, 1950, as amended; and 3) giving notice to the property owner as provided in each resolution that the County and the Board intend to enter upon, and take, the property. The members were polled:

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

The motion carried.

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IN RE: ELECTED OFFICIALS REPORT

Commissioner of the Revenue John Crump commented that he will need to get more information about how these easements will affect the properties, especially those in the Five Lakes area, and needs to understand the restrictions. He reported that personal property tax notices were sent out this week. He is hearing from boat owners who are concerned that they are being treated differently than in other localities and treated differently than airplane owners. He reported that New Kent is one of only two counties that send out personal property tax notices and urged anyone with any questions or who needed information about their assets, to contact his office. Regarding the previous discussion about junk cars, he stated that the New Kent Code provides that any cost incurred by the County in removing a violation can become a lien against the property and the County would eventually recover its costs. That should be an incentive to offenders to remove these junk cars. He would like to work with the County Administrator on this project. Regarding the staffing problems in Community Development, he stated that it is very difficult for them to do what they do and he doesn't know how they keep up.

Mr. Trout congratulated the recent high school graduates and reminded anyone that is looking to hire that there are plenty of graduates out there looking for jobs. He announced that anyone that needed information on the Farm Tour to be held on June 26 should contact the Extension Office. Mr. Trout stated that New Kent is beginning discussions on renewal of the cable franchise agreement which requires the County to study what kind of job Cox is

doing and what New Kent wants in the way of improvements. The Board needs to determine and put together a committee that will study and report back to the Board. This involves a formal and informal process and over the next few months appointments should be made. He mentioned the visit by President Bush and by Sir Sandy from Kent, England. He also indicated that he saw in Richmond Parents' Magazine that his next door neighbor, Rene Anderson, participated in Special Olympic events held at the University of Richmond.

Mr. Sparks stated that he had enjoyed the recent high school graduation and he is glad to see New Kent's young people reach this milestone in their lives.

Mr. Hill announced that the thoroughbred racing season opens this Friday at Colonial Downs. There will be a bluegrass festival at Rockahock Campgrounds on Saturday. He thanked the citizens who participated in the Relay for Life event on June 4, where some walked all night and \$30,000 was raised for cancer research. He also expressed his thanks to the citizens, the Parks & Rec board, the School Board and the Sheriff's Department for their assistance with the event.

Mr. Davis thanked Doug Faulkner, owner of Virginia Bio-Diesel for his company's part in the visit by President Bush, as well as Curtis Contracting for providing a place for parking, and the Sheriff's staff for doing such a good job on security.

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IN RE: DISTRICT APPOINTMENTS

Mr. Hill appointed Karen Cameron as District One's representative to the Board of Social Services to serve a four-year term beginning July 1, 2005 and ending June 30, 2009. He pointed out that Janet Salmon had served the maximum allowed 8 years and will be sorely missed; however, he has confidence in Ms. Cameron whose resume he circulated to the other board members.

Mr. Trout moved to appoint Susan Brucker as District Four's representative to the Heritage Library – Board of Trustees to complete a four-year term ending June 30, 2006.

The members were polled:

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

The motions carried.

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IN RE: APPOINTMENTS TO BOARDS AND COMMISSIONS NOT DELEGATED BY DISTRICT

Mr. Hill moved to appoint Dean Simmons as a member of the Building Code Board of Appeals to complete a four-year term ending December 31, 2006.

Mr. Trout moved to appoint Gene Adkins as an at-large representative to the New Kent Jamestown 2007 Committee.

The members were polled:

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

The motions carried.

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IN RE: MEETING SCHEDULE

Mr. Hill moved to start the work session on June 27, 2005, at 5:00 p.m. because of a work session that the Planning Commission is having the same evening. The members were polled:

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

The motion carried.

The Chairman announced that the next regular meeting of the Board of Supervisors will be held at 6:00 p.m. on Monday, July 11, 2005, in the Boardroom of the County Admin Building. A work session will be held at 6:00 p.m. on Monday, June 27, 2005 at 5:00 p.m. in the Boardroom of the County Admin Building.

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IN RE: CLOSED SESSION

Mr. Sparks moved to go into closed session to discuss a personnel matter pursuant to Section 2.2-3711A.1 of the Code of Virginia involving performance of an employee and for consultation with legal counsel pursuant to Section 2.2-3711A.7 of the Code of Virginia regarding specific legal matters that require advice. The members were polled:

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

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

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

The motion carried.

Mr. Trout made the following certification:

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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:

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

The motion carried.

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IN RE:           ADJOURNMENT

Mr. Hill moved that the meeting be adjourned. The members were polled:

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

The motion carried. The meeting was adjourned at 10:34 p.m.

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