

A WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 7<sup>th</sup> DAY OF JUNE IN THE YEAR TWO THOUSAND FOUR OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING AT 7:00 P.M.

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IN RE: ROLL CALL

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

Chairman Burrell re-opened the meeting that was continued from June 1, 2004.

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IN RE: DRAGONSRIDGE PUD APPLICATION

Chairman Burrell explained that the Public Hearing had been concluded at the June 1 meeting and that there would be no opportunity for public comment at tonight's meeting.

Community Development Director George Homewood distributed two documents. One was a revised consensus document based on the Planning Commission recommendation with consensus changes by staff and applicant. The second was a matrix outlining the six remaining differences between staff and applicant. Also distributed was a memo from Mr. Davis requesting a performance bond from the applicant for the proffers. Chairman Burrell acknowledged receipt of the concerns and suggestions e-mailed from Mr. Trout.

Mr. Davis suggested that the public be informed of the changes that have occurred since the last meeting.

Mr. Trout stated that he had received about 350 e-mails on this application. Interestingly, the majority of the people who spoke at the Public Hearing were against the project and a majority of those to whom he has spoken outside of the meeting were in favor. He stated that he was very impressed with the professionalism and quality of the arguments made at the Public Hearing and in contacts he had received. He outlined the history of this property and project. The property originally belonged to Chesapeake Corporation and Delmarva. In 1994, an area plan was adopted for the Route 33 corridor that designated about half of the property as light industrial. (He stated that all of the property between DragonsRidge and Route 33 is still designated for light industrial or commercial.) Subsequently, property that was previously zoned conservation was rezoned as agricultural; the difference is that in agricultural, without rezoning you can subdivide into 15 acre parcels and build houses. After this rezoning three years ago, although the area plan remained in place, much of this property was subdivided into 15 acre parcels. This continued until last August when a new Comp Plan was adopted, at which time much of this land, including that belonging to DragonsRidge, was re-designated as rural land. When DragonsRidge bought the land, half of it was still designated as light industrial. Homeowners started buying their property after it had been rezoned agricultural. Homes are

still being built in this area and New Kent is now faced with the most traditional type of planning conflict. Both sides have rights and the County is bound to protect the rights of both. He indicated that there is no easy solution. He reported that there has been a lot of negotiation to try to limit some of the adverse effects of the motorsports park, including many of the things that will limit the hours of operation. He indicated that the parties have agreed that there will be six days per year when motor sports activities at the track may occur until 10 p.m., two hours past the normal close of 8:00 p.m. Parties have agreed to quiet time on Sundays from 11 a.m. until 12:00 noon. There have also been discussions regarding noise levels at the property lines, measurement protocols and buffers, as well as when the applicant would be required to connect to public water and sewer. He reported that they have been working to try to come up with an ordinance that works for all parties, and that the Board tonight is to consider if this project is right for the County, if it is good for the County, and is there appropriate protection for the citizens and for the applicant so that it can be successful.

Mr. Homewood reviewed the changes that have been recently agreed upon. Auto parts swap meets will not be permitted.

Staff is still recommending that the applicant should be required to connect to public water and sewer from the outset. The applicant has requested that it be given up to five years to connect or when usage reaches 10,000 gpd. Mr. Homewood suggested that if the Board grants the applicant's request, it should require a performance guarantee. He indicated that staff has suggested to the applicant that connection to public sewer is more environmentally important than connection to public water, and he suggests that it connect to public sewer while allowing it to construct a community well on the site which would eventually be turned over to the County as a public system.

Mr. Homewood reported that the noise experts have agreed upon language that is acceptable to all parties.

Regarding hours of operation, the Planning Commission recommended no racing on Sunday mornings, to which the staff agrees. The applicant has objected, and has asked that racing be permitted on Sundays from 9 to 11 a.m., with a one hour break between 11 a.m. and 12 noon, with racing resuming at noon and stopping at 6 p.m. Staff still recommends no racing on Sunday mornings.

Mr. Homewood indicated that the parties had reached consensus on what constitutes "loud" as well as illumination of the go cart track.

Regarding the six special events per year, staff recommends that these events only be held on Fridays and Saturdays. Mr. Hill has requested Fridays, Saturdays and two Sundays per year, as well as Labor Day and Memorial Day. The applicant has proposed to include Thursdays as well as the day before the Independence Day holiday. They will still be limited to six events per year.

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Staff has recommended that all outdoor activities that would be “loud” be excluded on Sunday mornings prior to noon. The Planning Commission recommended excluding only motorized vehicle events on Sunday mornings. This is still an area of discussion.

Staff is recommending that sales of alcoholic beverages on the property exclude on premises consumption, and that the applicant establish rules to prevent alcohol abuse and underage drinking, but has received no feedback from the applicant.

Mr. Homewood also reviewed Mr. Davis’ request for language that would require the applicant to post a performance guarantee for the full value of the proffers, and suggested that could be accomplished by insertion of a new paragraph into the Ordinance.

Mr. Davis stated that the applicant and the project’s opponents have “acted like gentlemen” whereas the Board of Supervisors has not. Past Boards have allowed people to build their homes in this area, and approved a \$6 million expansion at Makemie Woods for a Christian retreat. When the land was rezoned, the Board had a responsibility to the people which it failed to keep when it let them build homes.

Mr. Sparks stated that the citizens, whether for or against the project, have been very professional and courteous and commended the citizens for their hard work. He stated that last year the Board changed the designation of this land, knowing that the applicant was coming back. The Comp Plan is a serious document and he doesn’t want to violate it unless it is extraordinarily beneficial to the County. He stated that he has not talked to that many people who are in favor of the project and has not seen any overwhelming support. He feels that motor sports is a great thing in its proper place, but he does not think that New Kent is a proper place for a race track.

Mr. Hill stated that the Board has worked hard on the project. Based on the emails and letters he’s received, he feels that as one moves away from the eastern end of the County, more people are looking forward to the track being in New Kent. He stated that this is a hard decision to make but that is why the Board was elected.

Mr. Davis moved to deny Ordinance O-07-04R as presented. Mr. Trout made a substitute motion, moving to adopt Ordinance O-07-04R with the following amendments:

17a Delete the last two sentences: “Any delay in construction or connection shall require the execution of a postponed improvement agreement guaranteed with surety. Any such agreement and surety shall be approved as to form by the County Attorney.” and add: “Connection fees, tap fees or other fees or taxes existent at the time of permit application or construction shall apply.”

17b Add at end of paragraph: "This requirement shall not apply to connection to County Water and Sewer except as provided in paragraph 17d."

17d In line 5 after "10,000 gallons per day", add: "or on the submission of any site plan which would enable the total viewing stands to accommodate 1000 or more spectators, restroom

facilities to allow the total 7-day equalized flow to exceed 10,000 gallons per day, or any meeting or lodging facilities other than camping".

17d In line 6 after "whichever occurs sooner" add: "The plans, specifications, construction documents and surety for such public utility infrastructure, whether on site or off site, shall be reviewed and approved by the County prior to final approval of the site plan or subdivision plat pertaining to such improvements."

26a Delete entire paragraph and replace with "The hours of Motorized Vehicle Racing shall be limited to between 8:00AM and 6:00PM Monday through Thursday, between 8:00AM and 8:00PM Friday and Saturday, and between 9:00AM and 6:00PM on Sunday. No Motorized Vehicle Racing will occur between the hours of 11:00AM and 12:00 Noon on Sundays."

26b Delete last sentence and insert: "For the purposes of this section, "loud" shall mean any noise that is equal to or greater than 55dBA when measured at the property line."

26h Delete paragraph (ii) in its entirety.

27a Delete "For the purposes of this section, "loud" shall mean any noise that is equal to or greater than 60dBA when measured at one hundred feet (100') from the source." and add: "For the purposes of this section, "loud" shall mean any noise that is equal to or greater than 60dBA when measured at the property line."

27b Delete "For the purposes of this section, "loud" shall mean any noise that is equal to or greater than 60dBA when measured at one hundred feet (100') from the source." and add: "For the purposes of this section, "loud" shall mean any noise that is equal to or greater than 55dBA when measured at the property line."

27d Add after "31 December": "or 1 January"

Mr. Trout then explained what each amendment would mean. Mr. Davis questioned whether testing could be done during the proposed "quiet time". Mr. Trout indicated that "motorized racing" included testing.

Mr. Trout indicated that he had some concerns about Mr. Davis' request for surety on the proffers. There was discussion about the proffers and what would happen if the applicant or its successor were unable to pay. County Attorney Phyllis Katz advised that the proffers are part of the zoning application, and an owner cannot come back to a future board to change the proffers. The difference is that proffers run with the land. If the applicant goes bankrupt, it is her belief that a successor property owner would be bound by both the cash and non cash proffers. If they fail to pay the proffers, then the County could cite them and put a lien on the property. She advised that the proffers cannot be changed now but it would be wise to require a surety on proffers in the future.

Mr. Rothenberg affirmed that the modifications to the ordinance proposed by Mr. Trout were agreeable to the applicant.

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The members were polled on Mr. Trout's substitute motion:

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

The motion carried.

Mr. Trout moved to deny the main motion, explaining that a "yes" vote would approve the application and a "no" vote would disprove. The members were polled:

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

The motion passed.

Mr. Burrell requested that the following statement be placed in the record verbatim.

*A PUD application is a rezoning and like all other rezonings it must be consistent with the Comprehensive Plan.*

*The Planning Commission has made the following finding: "the proposed rezoning conforms to adopted Comprehensive Plan in that it furthers economic development while not increasing the density of residential uses."*

*As a member of the Board of Supervisors at the time the Comprehensive Plan was adopted, I agree with this finding.*

*Among my reasons for believing that this conforms to the Comprehensive Plan are the following goals and objectives in that Plan that are being met in this PUD:*

- 1. To have resort type development (which this PUD clearly is) develop along side residential development.*
  - 2. To promote lodging and conference related enterprises*
  - 3. Support the development of timeshare, golf and resort communities.*
  - 4. To tie flexible zoning tools (e.g. PUDs) into specific performance standards for landscaping, signage, and physical arrangement. This PUD has very stringent performance standards.*
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*Because this PUD will be a tourist attraction, bringing people into our county, it is very likely to spur the type of commercial growth that the county envisions for the Route 33 interchange economic opportunity area – hotels, restaurants, retail establishments.*

*The rezoning of the over 600 acres of land will be very compatible with the rural land designation in the current Comprehensive Plan. The Comprehensive Plan states that rural lands are intended to include very low density housing in cluster or open space developments. This PUD allows up to six dwelling units (other than the time shares).*

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IN RE: CHIEF DEPUTY CLERK - POSITION GRADE CHANGE

Mr. Christie explained that the Chief Deputy Clerk had left unexpectedly and that the Circuit Court Clerk needed to fill this position which is currently a grade 18. The Chief Deputy Clerk positions in both the offices of the Treasurer and Commissioner of the Revenue are grade 21 positions and the Circuit Court Clerk is asking that this position be made a grade 21 which will permit her to attract more experienced applicants. It will only cost the County about \$50 more to implement this change because the former Chief Deputy had significant seniority. Circuit Court Clerk Karen Butler reported that the proposed salary meets the budget of the Comp Board, and that this was a typical grade for this position.

Mr. Davis moved to reclassify the Circuit Court Chief Deputy Clerk at grade 21. The members were polled:

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

The motion carried.

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IN RE: RETREAT

Mr. Christie reported that the proposed retreat date of July 17 conflicted with the NACO Annual Conference. Following discussion, there was consensus to change the date of the Retreat to July 24.

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IN RE: MEETING SCHEDULE

Chairman Burrell announced that the Board will be meeting with Hanover County staff on Tuesday, June 8 in Hanover County. The next regular meeting will be on June 14, 2004 at 6:00 p.m. and the next work session on June 28, 2004 at 6:00 p.m., both in the Board Room of the County Administration Building.

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IN RE:           ADJOURNMENT

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

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

The motion passed. The meeting was adjourned at 8:11 p.m.

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