

A JOINT MEETING OF THE NEW KENT COUNTY PLANNING COMMISSION AND THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 20th DAY OF AUGUST IN THE YEAR TWO THOUSAND EIGHTEEN IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 6:30 P.M.

IN RE: PLANNING COMMISSION CALL TO ORDER

Planning Commission Chairman John P. Moyer called the meeting to order. He welcomed everyone and announced this would be a joint meeting with the Board of Supervisors. The Planning Commission would conduct business first followed by the Board of Supervisors.

IN RE: MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Mr. Moyer called for a moment of silence and led the pledge of allegiance.

IN RE: PLANNING COMMISSION ROLL CALL

Laura Rose	Present
Patricia E. Townsend	Present
Katherine C. Butler	Absent
John P. Moyer	Present
Amy Pearson	Present
Joyce B. Williams	Present
Richard Kontny, Jr.	Present
Dr. Joanne K. Schmit	Present
Edward W. Pollard	Present
Van "Marc" Bennett	Present
C. Thomas Tiller, Jr.	Present

All Planning Commission members with the exception of Katherine C. Butler were present.

IN RE: APPROVAL OF JULY 16, 2018 PLANNING COMMISSION MEETING MINUTES

Before the Planning Commission for consideration were minutes of the July 16, 2018 meeting. Mr. Moyer called for comments. There being none, Ms. Townsend motioned to approve the minutes of the July 16, 2018 meeting as presented. The members were polled.

Laura Rose	Aye
Patricia E. Townsend	Aye
Joyce B. Williams	Aye
Richard Kontny, Jr.	Abstain – had not been present on July 16, 2018.
Dr. Joanne K. Schmit	Aye
Edward W. Pollard	Aye
C. Thomas Tiller, Jr.	Aye
Van "Marc" Bennett	Aye
Amy Pearson	Aye
John P. Moyer	Abstain – had not been present on July 16, 2018.
Katherine C. Butler	Absent

The motion carried.

IN RE: CITIZEN COMMENT PERIOD

Chairman Moyer opened the citizen comment period. He noted comments would be limited to planning-related issues which were not scheduled for public hearing. He provided brief instructions noting individuals would have three minutes and group representatives would have five minutes in which to speak.

Joseph Davis of 4220 Windy Knoll Road, Barhamsville spoke regarding prohibited land uses. He thanked the Planning Commission for the opportunity to speak. He suggested the "shadow of CUP-02-18 has not yet left us" and many feared the applicant would reapply. The community was still concerned about "increased noise, compromised safety, depressed property values and possible environmental impacts." He reported he had shared an idea to address their concerns and fears at the Board of Supervisors meeting the previous week. He noted the New Kent County Code provided for permitted uses in various zoning districts in order to assure responsible and compatible growth. He suggested New Kent and many other localities recognized some uses were not suitable for the community at large. New Kent had identified ten uses which were considered prohibited. The code language prior to the list of prohibited uses stated, "Certain uses have been determined to be entirely inconsistent with the comprehensive plan and for which no acceptable conditions can be established that would reduce the inconsistency." Mr. Davis suggested County staff had determined the use proposed in CUP-02-18 was inconsistent with the Comprehensive Plan and he further suggested any similar facility in another location would also be inconsistent. He suggested a simple solution would be to prohibit tactical combat or military style shooting and training facilities in the County Code. He suggested that once this was achieved, any application similar to CUP-02-18 would be eliminated. He believed once this change was made, there would be an immediate positive impact for those buying or selling properties in the area. Mr. Davis stated, "We as a community will be relieved this type of proposal will be off the table and we can resume our lives as before." He indicated they were not requesting any County Code changes regarding recreational firearms use or activities (indoor and outdoor recreational shooting ranges, turkey shoots, sporting clays, etc.). He thanked the Commission for their time and consideration.

John Lockwood of 20251 Triangle Road, Barhamsville spoke regarding prohibited land uses. Mr. Lockwood noted it had been proposed that an eleventh prohibition be added to New Kent's prohibited land uses. He shared a passage from a letter Senator Tommy Norment had sent the New Kent Board of Supervisors. Senator Norment had said, "Given the intense scrutiny and trepidation that both businesses and residents have for this project and the specific concerns they've addressed, I firmly believe that it would be in the best interest of New Kent County and the residents of Barhamsville for the Board to reject this land use permit." Mr. Lockwood indicated he couldn't agree more with Senator Norment and stated, "this is something that doesn't belong in my neighborhood or yours." He suggested there was no place in New Kent with enough land to safely allow for such a facility and all residents would be "well served" if the eleventh prohibition was added. He reported it had been explained to him that this was a simple process and he understood things didn't always move quickly. He noted the first step was to have a Supervisor make a motion and the Board to vote to send this to the Planning Commission for consideration. Once the Planning Commission had voted, it could be sent back to the Board for approval. He suggested there was no reason this couldn't be done by November, giving them something more for which to be thankful at Thanksgiving. He reported having asked Board of Supervisors Chairman Thomas Evelyn to add this topic to the agenda for the September 4th meeting and he was hopeful they would be able to move forward with this. He thanked the Commission for the opportunity to speak.

Charles Karow of 4800 Windy Lane, Barhamsville spoke regarding prohibited land uses. He suggested the prohibited uses in the County Code were "to weed out uses that are

inconsistent with the Comprehensive Plan, cannot be made acceptable and stand little chance of being approved." He suggested "weeding out untenable uses" would protect the County's tax base, save County staff and citizens time and effort and save applicants the expense of preparing an application that could never be approved. He suggested combat training would fit into this category. He suggested the surface danger zone for military rifles extended for two and a half miles and further suggested there was no property in the County more than two and a half miles from residential use. He suggested a combat training facility would be a "money-loser" for the County and estimated a minimal annual loss of \$200,000 in revenue. He also suggested there was no location in the County far enough from residential properties to avoid this economic impact. He suggested the noise from such a facility would be heard for a distance of ten miles and there was no property in the County ten miles wide or ten miles away from residential properties. He stated, "It seems to me to be very clear that there is no way a combat training range facility could ever be approved in any location in New Kent County." He suggested this made combat ranges a clear candidate for the list of prohibited uses. He encouraged the Board to take "prompt action to make this happen as soon as possible to reassure the citizens and stabilize property values." He thanked the Commission for the opportunity to speak.

There were no others wishing to speak during the citizen comment period. Chairman Moyer suggested he "would be remiss" if he did not make a comment. He suggested this was a group "with solidarity, and tenacity, passion about what their group is doing." He indicated the Commission appreciated this but stressed the group was "responsible for the individuals in your group/individuals are responsible for the group." He noted a young gentleman had been "incapacitated" on the football field the previous week. EMS had not been able to get to him quickly because an 18-wheeler belonging to a member of the group was blocking access. He suggest this became the responsibility of everyone in the group and fortunately the situation had worked out okay. He thanked all for indulging him the opportunity to comment.

IN RE: PLANNING COMMISSION PRESENTATIONS

There were no Planning Commission presentations.

IN RE: PLANNING COMMISSION UNFINISHED BUSINESS

There were no unfinished business items.

Chairman Moyer announced they would move on with the joint public hearing. County Attorney Bill Hefty announced the joint public hearing could not begin prior to 7:00 p.m. due to the fact the Board of Supervisors bylaws stipulated public hearing were held at 7:00 p.m. even though Planning Commission public hearings started earlier. He recommended the Chairman call for a recess until 7:00 p.m. at which time the Board of Supervisors would convene. The Planning Commission could continue on with other agenda items.

IN RE: PLANNING COMMISSION NEW BUSINESS

There was no new business.

IN RE: PLANNING COMMISSION CHAIRMAN'S REPORT

There was no Chairman's Report.

IN RE: RRPDC (RICHMOND REGIONAL PLANNING DISTRICT COMMISSION) REPORT

Chairman Moyer reported there had been no RRPDC meeting the previous week and therefore there was no report.

IN RE: COMMISSIONER'S REPORTS

Ms. Townsend reported she had spoken with County Administrator Rodney Hathaway about the AFD (Agricultural, Forestal District Program) and suggested the possibility of the formation of a Planning Commission subcommittee to get more guidance on AFDs. Mr. Moyer asked if this should be an agenda item for the September meeting or just a work session discussion. Ms. Townsend suggested a work session would be sufficient. She suggested other departments such as the Commissioner of Revenue and Planning should be included. Mr. Moyer asked Ms. Townsend if she would like to serve as chairman of this subcommittee. Ms. Townsend agreed and Mr. Moyer noted they would discuss setting up a meeting time for all interested parties.

Mr. Kontny reported he had discussed the possibility of private entities such as Woodhaven Shores and Five Lakes being able to have full police enforcement of traffic laws with Mr. Hathaway. He suggested there was language in the Code of Virginia and Mr. Hathaway was checking to see if similar language was or could be included in the County Code which would allow private subdivisions to be able to bring their roads to "VDOT enforcement standards for the stop signs, road signs" for signage necessary for the Sheriff's Office to enforce street laws within private communities. He suggested the Sheriff's Office's "hands were tied" unless it was a case of reckless driving. Mr. Moyer thanked him for this information and noted he was anxious to hear the outcome. He suggested this could be very important to other developments, many of which contained some roads not maintained by VDOT.

IN RE: STAFF REPORTS

Planning Department Administrative Assistant Sheri Wood reported Laura Rose and Marc Bennett had been registered with the 94th Virginia Certified Planning Commission Program which would be held on September 24th and 25th. She noted this instruction supported certification as Certified Planning Commissioners through the L. Douglas Wilder School of Government and Public Affairs. Ms. Wood also reported the 2018 AFD ordinances that were passed by the Board of Supervisors had been reported to the state as of August 14th. The ordinances and maps had been updated in the County system.

Mr. Moyer reported Ms. Butler was not present due to the recent death of her father. He asked that everyone keep her and her family in their prayers.

IN RE: PLANNING COMMISSION MEETING SCHEDULE

Mr. Moyer announced the Planning Commission's next regular meeting would be held on Monday, September 17, 2018 at 6:30 p.m. in the County Administration Boardroom.

Noting it was still too early to conduct a public hearing, Mr. Moyer called for a recess until 7:00 p.m.

The Planning Commission reconvened at 7:00 p.m.

IN RE: BOARD OF SUPERVISORS CALL TO ORDER

Chairman Evelyn called the August 13, 2018 Board of Supervisors meeting back into session.

IN RE: BOARD OF SUPERVISORS ROLL CALL

Thomas W. Evelyn	Present
C. Thomas Tiller, Jr.	Present
Patricia A. Paige	Present
Ron Stiers	Present
W. R. Davis, Jr.	Present

All Supervisors were present. Mr. Evelyn thanked everyone for attending. He noted it was good to see the Planning Commission and thanked them for their service to the County.

IN RE: JOINT PUBLIC HEARING – APPLICATION CUP-18-18 (R1), QUINTON RETAIL CENTER

Mr. Evelyn noted this would be a joint public hearing. The process would begin with a presentation from staff and comments from the applicant followed by a public hearing.

Before the Board for consideration was Resolution R-28-18 (R1) to approve Conditional Use Permit Application CUP-18-2018, Quinton Retail Center (Chester A. Alvis, David L. Horsley, Sr. and Barry Rogers with Paramount Development Corporation) on Tax Map & Parcel 21-5-1 and Tax Map & Parcel 21-5-2.

County Planner Joey Winter provided a brief overview of the application. Paramount Development Corporation represented by Mr. Barry Rogers, had requested a Conditional Use Permit to construct a retail establishment greater than 30,000 square feet in size, on business zoned property located at the intersection of New Kent Highway and Airport Road. He reported Mr. Rogers as well as Mr. Gregory Davis of Kaufman and Canoles, an attorney for the applicant, were present. Mr. Winter noted the County Table of Land Uses required a Conditional Use Permit for any retail establishment over 30,000 square feet in the business zoning district. The subject property consisted of two business zoned parcels identified as Tax Parcel 21-5-1 owned by Chester A. Alvis and Tax Parcel 21-5-2 owned by David L. Horsley, Sr. Adjacent parcels to the north and east were zoned business and A-1 and adjacent parcels to the south and west were zoned A-1. The subject property was designated as Rural Crossroad on the Future Land Use Map. Rural Crossroads typically served a local population and were characterized by commercial establishments such as general stores, banks, restaurants, gas stations and convenience stores. It was proposed that two sites totaling 8.78 acres would be commercially developed. These sites included the "Quinton Retail Center" on 6.43 acres fronting on Airport Road and Route 249 for a planned 35,235 square foot grocery store and "Future Development Parcel" on 2.35 acres between the roundabout and Quinton Retail Center for future commercial development.

Mr. Winter reported the Quinton Retail Center site plan application had been submitted to the Planning Department on November 27, 2017. The plan had gone through the standard review process and was approved by the Environmental Department, Health Department, Building Department, Fire Department, Public Utilities Department, Sheriff's Office and VDOT. The site plan had received final approval from New Kent County on May 10, 2018. He reported because the Quinton Retail Center site contained multiple parcels, a subdivision must occur prior to site development. This would be accomplished through the Planning Departments standard subdivision review process and as of this meeting date, no subdivision application had been submitted. CUP-18-2018 had been sent to all reviewing

agencies for comment. The Environmental Department, Health Department and Building Department had no comments. VDOT had no recommendations for changes to the CUP and any remaining access issues would be addressed during the land use permitting process. The Sheriff's Office, Fire Department and Public Utilities had all replied with comments which were included in the Staff Memo. Written comments had been received from multiple nearby property owners, copies of which had been provided. The standards for review of Conditional Use Permits had also been included in the Staff Memo. Staff had reviewed this application in the same manner as other zoning change applications and it was staff's opinion that the proposed use met the standards for review. Staff was recommending the Planning Commission forward a favorable recommendation to the Board of Supervisors. If the Planning Commission chose to forward a favorable recommendation, staff had offered draft conditions to be included in the Commission's Resolution PC-19-18 (R1) and in the Board's Resolution R-28-18 (R1). Mr. Winter turned the floor over to Mr. Gregory Davis.

Mr. Davis indicated it was a pleasure to be before the Board. He introduced Mr. Clarence Ballard with Food Lion Construction Management and Mr. Barry Rogers with Paramount Development (land acquisition group working with Food Lion). Mr. Davis noted it was unusual to come before the Board for a Conditional Use Permit when a site plan had already been approved. He suggested in this case it was an advantage because he could show what Food Lion was planning for the property. He suggested there were a number of things about the proposed use that were not noted on the site plan including:

- Food Lion's existing commitment to New Kent County. Food Lion had a number of stores in the County, knew the County and was a big employer.
- Food Lion had identified an increasing demand for a grocery store on the Route 249 corridor. The Comprehensive Plan labeled Route 249 as a major collector road. Neighborhoods such as Kenwood Farms, The Farms of New Kent and Idens Crossing and Watkins Elementary School were nearby and Food Lion's research had suggested this was a key spot where there was demand for a grocery store.
- Food Lion had no plans to close any other Food Lion store in New Kent County. The other stores were strong and doing well.
- Food Lion was a good corporate citizen of the County and a big generator of retail sales. The Comprehensive Plan identified retailers as the key economic engines for the County through sales tax revenue. The two Food Lion stores closest to the proposed new store were generating approximately \$45,000 annually in real estate tax and the proposed new store would generate an estimated \$25,000 annually. The proposed new store would also create approximately 50 jobs.
- The proposed Food Lion store would be a quiet and clean land use and would be a good neighbor. Food Lion had a long track record of knowing how to keep neighbors content and satisfied. The store would have limited hours with daily operation from 7:00 a.m. to 10:00 p.m. This would be a smaller store compared to the 43,000 square foot median. The average Walmart was noted as 105,000 square feet, the average Lowes - 116,000 square feet and the average specialty grocery store (Whole Foods) - 40,000 square feet.
- This store would not create big impacts on the County or its neighbors. This would be a new style of Food Lion and was a prototype which the company had previously built once in Wake Forest, NC. This store would feature an expanded deli with grab-and-go sandwiches as well as fresh, organic and locally sourced foods.
- Food Lion would own the second smaller outparcel but had no plans for development or use of this parcel.
- Mr. Davis noted there had been questions regarding how the application had been filed and whether the applicant was seeking a Conditional Use Permit for an entire shopping center. This was not the case and the Conditional Use Permit was related only to the Food Lion retail store shown on the site plan.

- Commercial uses including Windmill Realty, Verizon and Dollar General were already present and James and Anita Bost lived to the south of the proposed development. Top Food Lion executives had communicated repeatedly with Mr. and Ms. Bost in an effort to gain their support for the project. Engineers had relocated the septic field and the landscaping plan included 19 trees along the common boundary to supplement a substantial number of evergreens already on the Bost property. Food Lion had agreed to a screening fence along the back of the property as a condition of the permit. Food Lion had also discussed building a berm between the properties with Mr. and Mrs. Bost but they had been unsuccessful in gaining their support. Mr. Davis suggested Food Lion was not finished being a good neighbor to the Bosts and would be happy to continue discussions with them throughout the planning and construction phases.

Mr. Davis closed by noting staff had found this application to be consistent with the Comprehensive Plan and was recommending approval. He requested that the Planning Commission recommend approval to the Board of Supervisors and that the Board grant approval. He indicated he would be happy to address any questions. Questions were held until after the public hearing.

Mr. Evelyn opened the public hearing and provided brief instructions on procedures.

Nancy Goodman of 8623 Historical Path Road, New Kent - Ms. Goodman indicated she appreciated the opportunity to address the Planning Commission, the Board of Supervisors and other attendees. She noted it had been her understanding that commercial development would be concentrated along the I-64 corridor and suggested this proposal was clearly out of sync. She suggested development had become random and there was limited comprehensive long-term planning. She also suggested a commercial development of this size in this location was not compatible with the surrounding area. She further suggested long-range outcomes should be carefully thought out and "unintended consequences of this approval need to be considered." She urged both bodies to vote "NO" to this commercial proposal.

Keith Fuhrmeister of 6031 Wensleydale Drive, New Kent - Mr. Fuhrmeister noted appreciation for the opportunity to speak. He indicated he had understood the plan for development in New Kent County had been to concentrate on Route 60 and the I-64 interchanges. He noted he was not sure of the specifics of a "rural crossroads" but suggested a 36,000 square foot Food Lion did not mesh with his idea of a rural crossroads. He noted his concern was for the rural integrity of the County and indicated the possible approval of this made him question the direction in which the County was going. He was also concerned about traffic on Route 249 and specifically referenced additional traffic when there were issues on I-64. He suggested the roundabout at this interchange would not be able to handle any additional traffic and specifically referenced the difficulty tractor trailers would have navigating the roundabout. He expressed thanks for the opportunity to speak and encouraged a vote against this development.

Lisa Guthrie of 6019 Wensleydale Drive, New Kent - Ms. Guthrie expressed appreciation for the opportunity to speak. She reported having reviewed the County's Comprehensive Plan and noted the introduction page stated, "the central factor in the plan is the widely held desire of the citizens of New Kent County to maintain the County's attractive rural character while providing opportunities for the creation of income and wealth in the community." She reported U.S. Census data indicated New Kent's population growth had more than doubled that of the remainder of Virginia. New Kent had been in the top five counties for growth in 2016 with the other four localities being in Northern Virginia. She noted this growth needed to be supported but suggested the County needed to stick to its plan to grow responsibly

and target growth in areas designated for growth. She suggested a look at neighboring jurisdictions would reveal how "reckless growth" had "erased the rural quality of life in those localities." She suggested the 35,000 square foot grocery store did not fit the description of a rural crossroads. She noted it had taken years to get the roundabout completed at this intersection to address traffic and crash issues. She noted there was still a significant issue with traffic especially on weekends as drivers used Route 249 to avoid delays on I-64. She suggested this may not have been considered in the traffic analysis provided by the consultants and suggested turn lanes would not alleviate the issue. She noted the standards of review for a Conditional Use Permit stated, "The proposed use shall not adversely affect the general plans for the physical development of the County as embodied in the Comprehensive Plan." She suggested "this application is a challenge to that statement" and indicated she hoped the Boards would act accordingly and deny this permit.

Anita Bost of 8480 Airport Road, Quinton (also speaking on behalf of James Bost) – Mr. Evelyn directed Planning Commission Recording Secretary Sheri Wood to set the timer for six minutes. Ms. Bost reported they were the only family sharing a border with the proposed development. She suggested that "over the past ten months we have been lied about, lied to and experienced many difficult and disappointing situations regarding this proposal." Ms. Bost indicated she understood and wanted New Kent citizens to understand that the Board of Supervisors had no control over "by right" development and current zoning did not require that the Board of Supervisors be brought into any by right decision making process if the project was less than 30,000 square feet. This was the first opportunity the Board of Supervisors had been given to have input into this development. She suggested zoning laws placed "almost all power with our unelected Administrators." She stated, "The bottom line is the Planning Department, not all of whom live in New Kent, say they recommend rapid approval ... with no conditions..." She suggested the Planning Department wanted everyone to think this meeting was just a formality, "a minor detail." She suggested the Planning Department knew this was much more and they and the developer had "made a critical mistake by not knowing the ordinances as they should." She suggested a Conditional Use Permit should have been approved in October 2017 prior to the approval of site plans. She noted that for the first time in the process the Planning Commission and the Board of Supervisors were able to implement conditions on the development. Ms. Bost indicated "as counter intuitive as it may seem" she and Mr. Bost were recommending that, "under no circumstances can you disapprove this CUP application." She suggested if the CUP was not approved, Food Lion could move forward with building a store that was 5,000 square feet smaller. Ms. Bost stated, "you must approve the Conditional Use Permit with a motion to attach conditions." Ms. Bost suggested those conditions should include:

- A 75 foot vegetation buffer the full length of the common border – Ms. Bost indicated the specific standards for review gave the legal authority to adjust buffer widths. A 75 foot buffer would give her family some protection from the shopping center. She suggested they should be granted more than the 50 foot standard because the property was zoned for a maximum 30,000 square foot shopping center and if the additional building space was approved, a wider buffer should also be approved. The current site plan included a 27 foot buffer and she urged the Commission and the Board to grant them the minimum 50 foot buffer required for Agricultural zoned property.
- Approving their "shopping center" - Ms. Bost suggested any motion "must include the official designation of the project as a shopping center exactly as their CUP application clearly states ..." Ms. Bost suggested the shopping center designation would require Food Lion and any other structures to be built on the property to adhere to all County ordinances governing shopping centers. She noted one of the requirements for a shopping center was to have 25% of net developable land in green space.

- Not permitting an entrance/exit on Airport Road – Ms. Bost indicated access to and from the development was a standard included in the standards for review. The proposed development's primary entrance would be from Route 249 and she suggested the other three stores in New Kent had only one entrance. She further suggested they should not be allowed to cause traffic issues on Airport Road.

Ms. Bost stated, "as strange as it may seem, the only way to please the citizens who disagree with this proposed Food Lion site plan is to approve this business with very specific conditions." She suggested if Food Lion really wanted to be here and was concerned about being a "good corporate neighbor" they would adjust their plans accordingly. She thanked the Boards for the opportunity to speak.

Donna Jennings of 8460 Airport Road, Quinton – Ms. Jennings expressed appreciation for the opportunity to speak and indicated she was opposed to the building of the Food Lion. She noted her biggest concern was traffic on Route 249 and suggested this road could not handle any more traffic. She pointed out a daycare, churches and private homes were located along Route 249 and there were no shoulders. Farm equipment was often on the road and she noted the extra weekend traffic from I-64. She asked, "How many people have to die on 249 before we pay attention to that?" She noted this Food Lion could be approved but suggested the Commissioners and Board members would be responsible for what may happen on Route 249. She suggested Route 249 needed to be a four-lane highway with shoulders prior to anything the size of the proposed Food Lion being built at this intersection. She suggested traffic was her biggest concern but noise pollution and clutter were also concerns. She noted the Dollar General store had just opened and while they had done a nice job of landscaping she had observed boxes and other clutter on the property. She reported flooding was also an issue and suggested this type of flooding had never occurred prior to the Dollar General. She also suggested the proposed development was not in line with the Comprehensive Plan. She indicated that when she had purchased her property the subject property had been considered a "Hamlet" with small restaurants and small shops. She thanked the Boards for the opportunity to speak.

Julian Lipscomb of 11030 Old Church Road, New Kent – Mr. Lipscomb (member of Board of Supervisors from 1996-2003) indicated he was glad to be present and glad to see the Commissioners and Board members. He indicated that when he had sat where the Board members were sitting, the County Attorney and the Virginia Association of Counties had always stressed that if a Board passed "something that was illegal, it would always be illegal, you are subject to go to court." Mr. Lipscomb suggested the plan had been passed illegally and should be "nullified." He suggested Food Lion should start from scratch and they should not start over with "a walk in retail building" but should call it what they had indicated on their original application, "a shopping mall." He suggested the site plan was for a walk in retail building which was much different from a shopping center. He suggested Food Lion had known the difference and the plan had been approved illegally. He suggested if the site plan was not nullified, conditions should be put upon the development. He suggested one of those conditions should be no entrance on Airport Road. He suggested this was "hodgepodge development" and would increase traffic.

Don DeMarzio of 7081 Harrison Bluff Lane, Quinton – Mr. DeMarzio suggested the first thing to be remembered was that New Kent already had three Food Lion stores and didn't need a fourth. He indicated he drove Route 249 every day and suggested the roundabout would not be able to handle the traffic. He suggested that thanks to GPS vehicles were routinely redirected to Route 249 from I-64 and this was especially a problem on weekends. He stated, "It's going to be a disaster waiting to happen." He suggested residents on Airport Road had horses and farm equipment and it was not unusual to drive up on a slow moving vehicle. He noted Food Lion representatives had stated hours would be 7:00 a.m. to 10:00

p.m. He reported he had worked in the grocery business and suggested what Food Lion was not telling everyone was that vendors would be making deliveries at 5:00 a.m. to 6:00 a.m. and night crews with lights on disturbing the community. He suggested there were a number of parcels in the County which were designated for this type of development and specifically noted property near Dairy Queen at Chesapeake Circle. Mr. DeMarzio suggested New Kent did not need a grocery store or a large shopping center at the proposed location. He suggested, "It's not going to fit in. It's not going to look good." He also suggested it would cause a variety of environmental issues. He suggested the Commissioners and Board "have to do the right thing and get rid of this idea and vote it down tonight." He closed by suggesting New Kent needed something other than another Food Lion.

Mr. Evelyn thanked all who had spoken. There being no additional individuals wishing to speak, the Public Hearing was closed. He turned the meeting back over to Mr. Moyer.

Mr. Moyer asked if Planning Commission members had questions.

Mr. Bennett indicated he had questions for Mr. Winter. Mr. Winter was joined at the podium by Zoning Administrator Kenneth Vaughan. Mr. Bennett asked for confirmation that the Conditional Use Permit would be applied to the entire 20 acres contained in Tax Parcels 21-5-1 and 21-5-2. Mr. Winter confirmed this was accurate. Referencing recommendations from staff for approval, Mr. Bennett noted condition number 2 stated, "Any further commercial development on this site shall not exceed 30,000 square feet in total." With the understanding the Conditional Use Permit would apply to all 20 acres, he suggested no more than 30,000 square feet of building foot print would occur on the remaining 14 acres. Mr. Winter indicated that any development over 30,000 square feet on any parcel on the site would require a Conditional Use Permit. Mr. Bennett directed his next question to Mr. Davis. He asked how would the Conditional Use Permit allowing more than 30,000 square feet of retail space on one parcel support the Comprehensive Plan's "Rural Crossroads" designation. Mr. Davis indicated this had been looked at carefully and suggested "the rural crossroads designation in the Plan is a little devoid of detail." He noted the description did speak about smaller uses but was not specific as to types of uses or size. He noted the proposed grocery store was a little smaller than most grocery stores and was designed to serve the local community. He stated, "I'm not able to quote you a size from the Comp Plan because it's not set out."

Ms. Townsend noted she had a problem with the 27 foot buffer and would like this to be discussed with the Board of Supervisors for their opinion. She was concerned about the entrance/exit on Route 249 and that travelers heading west would be crossing over a lane of traffic. This was a safety concern and she suggested it would be better if they turned to the right to travel east and pass through the roundabout to turn back in a western direction. These were her two major concerns and she asked for input from the Board of Supervisors and other Commissioners. Mr. Moyer asked for confirmation that Ms. Townsend was suggesting a "right turn only" exit. Ms. Townsend confirmed and noted she was concerned the roundabout would cause issues with visibility. Mr. Moyer asked Planning Director Kelli Le Duc for the speed limit at the roundabout. Numerous commenters were heard. Mr. Moyer indicated the speed limit was 45 in the roundabout but was 55 by the time a traveler heading west would be turning left into the Food Lion.

Mr. Pollard indicated he wished to comment about the roundabout itself. He noted roundabouts had "popped up" in the County and he questioned why they were necessary. He noted it was sometimes necessary for drivers to come to a complete stop at the roundabouts. He indicated he wasn't sure how many other localities had roundabouts but suggested they were creating a problem. He suggested doing away with the roundabout

could solve some of the mentioned problems. He also suggested the State (VDOT) needed to justify to the County that the roundabout was the best way to handle this intersection and he further suggested "sometimes the State doesn't always do the right thing."

Mr. Kontny suggested the County had put itself into a monopoly by just having Food Lions. He noted Food Lion had upgraded the old Winn Dixie store into an upscale Bloom store and then changed it back to a regular Food Lion. He suggested the County was concentrating numerous grocery stores in one small area without thinking about the entire County. He suggested something similar to this was needed in the eastern end of the County and noted the closest store for Lanexa residents was in Providence Forge. He suggested the proposed store and location was not the right fit. He asked, "If I feel that this doesn't fit and I make my decision known that I'm going to vote against it, can they come back and say well we're going to put a 30,000 foot one in there and you don't have to say anything about it?" He suggested if this was to be approved, there needed to be many restrictions in place and issues with traffic and the roadway should be addressed. He noted the County had previously addressed traffic issues with Route 60 and Route 106 and suggested if this area was going to be a business area, the same type of traffic management should be in place. He suggested there were many considerations to be made and noted he appreciated a comment made by Ms. Bost when she had suggested it was sometimes better to approve something and "put restrictions in knowing that in the long term it makes it work." He added this would be better than just approving this "in such a way that it doesn't benefit the entire area as well as the County." Mr. Kontny indicated he didn't "have a good feeling about the way this site plan was put together." He didn't like the placement of the septic system and suggested it should "be placed in a location that makes it more feasible..."

Ms. Rose indicated she also had a lot of concerns regarding the traffic and suggested Ms. Townsend's point was well taken when she had suggested the Route 249 exit be "right turn only". She noted disagreement with Mr. Pollard's comments regarding the roundabouts and indicated she thought the roundabouts "worked beautifully." The roundabouts slowed traffic down without having to come to a complete stop and made the flow of traffic much better than it had been. She also noted concerns with a second entrance/exit from Airport Road and questioned if it was needed. She directed a question to Mr. Davis. Seeking clarification, she noted Mr. Davis had said this Food Lion was a "prototype." Mr. Davis indicated Food Lion used models and each store was not a new design. This was a new model and this would be the second time this model would be used. She asked for the square footage of the store located on Route 249. Mr. Davis apologized noting he did not have that data with him. Ms. Rose indicated she was trying to get a feel for the size of the proposed new store and whether it was significantly bigger/smaller or about the same size as other stores in the County. Mr. Davis asked all to pardon him while he looked through a folder of documents. He indicated there had been calculations on tax revenue which involved looking at the square footage and he believed this information was in his file.

Mr. Evelyn noted that while Mr. Davis was looking for the information, he would like to make a comment about VDOT. He reported he had spoken with VDOT several times and they had indicated they would attend this meeting. He noted no VDOT representative was present. He indicated that he too had concerns about the access from westbound Route 249 and suggested there was no question traffic would back up at the roundabout on weekends. He noted it was VDOT's road and they had approved the Route 249 access. He had called them earlier in the day to try to understand why it had been approved. He reported he had looked at VDOT's traffic study which had indicated a speed limit of 55 MPH at this access point would not require a turn lane. The study had also indicated a speed limit of 60 MPH would warrant a turn lane. Mr. Evelyn reported he had suggested they may want to go to the location for a closer look. VDOT had reported "our book" didn't indicate a

turn lane was needed. Mr. Evelyn reported he had suggested, "You need to add a chapter to your book." He suggested that although VDOT had signed off on the entrance, the need for a turn lane was common sense. He agreed with Mr. Kontny that there were many things to be considered and noted he would have additional comments as discussions moved along. Mr. Moyer suggested a turn lane could be included as a condition.

Mr. W.R. Davis, Jr. asked if anyone had seen a "53 footer" navigate the roundabout. Mr. Evelyn indicated he had. Mr. Davis asked, "How does it do?" Mr. Evelyn reported the trailers were running on top of the pavement. Mr. Davis suggested it would be difficult for a tractor trailer delivering to the Food Lion to make a 360 degree turn at the roundabout. Mr. Davis asked the speed limit on Airport Road. Several answered the speed was 35 MPH.

Ms. Paige noted she had previously questioned the speed limit going into the Route 612 roundabout being set at 55 MPH while the speed limit at the Talleyville roundabout was 45 MPH. Mr. Evelyn noted if the speed limit was reduced to 45 MPH it would be more difficult to warrant a turn lane. Mr. Moyer noted a roundabout had been installed at the Route 612 interchange in lieu of a traffic light and asked if this had been done because the traffic volume did not warrant a traffic light. Mr. W.R. Davis, Jr. confirmed that at the time the decision had been made to move forward with a roundabout, traffic volume had not warranted a traffic light. Mr. Moyer suggested if a viable business was located at the interchange, a traffic light could be installed in the future. Mr. Moyer reported roundabouts were seen frequently in states north of Virginia, all had speed limits of 55 MPH and trucks had no problems maneuvering through them. He noted there was a chance a driver would have to stop when yielding to other drivers. He also noted he agreed with Ms. Townsend regarding the left hand turn onto Route 249. Mr. Evelyn reported VDOT had stated all of the trees in the curve on Route 249 would be removed to improve sight distance. Ms. Townsend expressed concerns that if the Route 249 access was not right turn only, it would be a safety concern for drivers crossing a lane of traffic. She suggested the increase of traffic on weekends would make this worse. Mr. Moyer noted this proposal was a long-term plan and asked what the projected opening date would be for the store. Mr. Gregory Davis indicated the anticipated opening date would be about a year out. Mr. Moyer noted if information from VDOT was correct, the I-64 project to the Bottoms Bridge exit would be three lanes in each direction by the time the store opened and hopefully would take care of some of the traffic on Route 249. Ms. Paige noted disagreement and pointed out the project was ending at Bottoms Bridge which she believed would create a "bottle neck."

Mr. Kontny drew attention to the site plan and noted truck traffic would not be coming to the store from Route 249. He noted the loading dock design/placement was such that trucks would enter from the Airport Road access.

Ms. Rose asked Mr. Gregory Davis if he had been able to find the square footage for the store located on Route 249. Mr. Davis indicated the store at Marketplace Drive was 45,000 square feet and the store at New Kent Highway was just under 35,000 square feet. He noted the New Kent Highway store was slightly smaller than the proposed new store.

Mr. Bennett pointed out the information provided showed traffic volumes that were static projections from 2016. He suggested this data was three to four "traffic years" ago and with the delays due to the ongoing construction on I-64, the area was now seeing an "elevated traffic volume." He suggested it may be worthwhile to have more current numbers to better understand exactly what was needed for the entrances.

Ms. Townsend again noted she had two problems with the application. The first was the setback distance and the second was the right turn only concern on Route 249. She

suggested if a favorable recommendation was made to the Board of Supervisors, these concerns should be addressed in the conditions.

County Attorney Bill Hefty suggested there were two issues with the road. The first issue had been whether the applicant would agree to do something about the left turn into the Food Lion from the east and eliminate some of the backup from cars turning left. The applicant had agreed to give \$100,000 to the County to be held in escrow for five years to build a left turn lane in Route 249 heading west. The second issue had been the right turn only suggested for the exit onto Route 249. Mr. Hefty indicated this had been discussed with Mr. Gregory Davis and he asked Food Lion's position on this request. Mr. Davis reported he had run this by Food Lion and this would be unacceptable. He referenced Food Lion's experience in developing stores and retail centers and suggested they had learned a right out and right in limitation was too much of a limitation on customers. He suggested "if the application were approved with that limitation, Food Lion likely would not build the store." Mr. Moyer asked Mr. Davis to repeat his answer and then went on to "paraphrase" what Mr. Davis had said. Mr. Moyer stated, "If the application is approved with the condition of a right turn only, they would not build a store." Mr. Davis indicated this was "quite likely." Mr. Evelyn indicated he wanted to make everyone aware that if this was the case, Food Lion could go back to a 30,000 square foot store with the entrance as it appeared on the site plan already approved by VDOT. Mr. Davis indicated Mr. Hefty's comments regarding a left turn lane on Route 249 were correct. He reported Food Lion had just learned of this interest earlier that day and had been able to get their traffic engineer involved. Initially Food Lion had readily agreed to the construction of the left turn lane. He reported there had been questions about whether this was warranted and if sufficient right of way existed to accommodate the lane. Food Lion's traffic engineer had determined this was feasible and they had been very close to saying Food Lion could build the left turn lane. It had been discovered that a number of utility vaults would be impacted which would involve interacting with VDOT, Verizon and Dominion Energy. Food Lion was committed to trying to address the traffic concerns and indicated the \$100,000 had been Food Lion's traffic engineer's estimate for the cost of the turn lane. Believing the County was in a better position to coordinate with the various utilities, Food Lion had offered the \$100,000 escrow to cover the cost and was willing to have this listed as a condition in the CUP.

Ms. Townsend asked Mr. Davis if he had said the left turn was completely off the table. Mr. Davis indicated this was not correct; the left turn was on the table and was what the \$100,000 would be escrowed to cover. The right in/right out only was what would be off the table. Mr. Hefty reported Food Lion was not willing to agree to no left turn onto Route 249 and were in agreement with a west bound left turn lane into the parking lot. Ms. Townsend asked Mr. Hefty if the setback requirement had been discussed. Mr. Hefty indicated it had been discussed and suggested Mr. Davis could share Food Lion's position on the 50 vs. 27 foot setback. Mr. Davis indicated they had looked at this and noted a waiver allowing the current setback had been granted by the County at the site plan review stage. The idea of extending the setback was examined later after the waiver had been granted. He noted problems with extending the setback, specifically that extending the setback would shift the building closer to Route 249 and eliminate the loading docks and some of the storm water management structures to the rear of the building. Shifting the building forward would also require that the Airport Road entrance be relocated closer to the roundabout which may not meet VDOT geometric requirements. Parking spaces would be lost and he suggested meeting parking requirements had been tight with the current site plan. While it may seem simple to shift the building a little bit, at the end of the day Food Lion and its engineers had determined this was not feasible. Mr. Davis reported the proposed store location was 180 feet from the Bost residence to the back of the Food Lion. This 180 feet also included a 50 foot strip of property sold to Mr. Bost by Mr. David Horsley

a number of years ago. Mr. Kontny asked for clarification regarding the 27 foot setback and the 180 feet mentioned by Mr. Davis. Mr. Davis indicated the proposed store location was 27 feet from the Bost property line and 180 feet from the Bost residence.

Ms. Paige asked why the County would take on a \$100,000 escrow for a left turn lane when they didn't know how much it would cost. She also asked what Food Lion would do if no access point from Airport Road was a condition. Mr. Davis reported the \$100,000 figure had come from Food Lion's traffic engineer. He reminded everyone that Food Lion had just learned of the interest in this left turn lane earlier in the day but their engineer had been able to put together an estimate in terms of construction, paving and striping costs. Food Lion was comfortable with using this figure as what it would cost them if they moved forward with constructing the turn lane. He noted the discovery of the issue of moving utility vaults would raise the cost dramatically. Food Lion was in no way suggesting the County should pay to have these utilities moved but was suggesting the County may have more success communicating with the utility carriers. In response to Ms. Paige's second question, Mr. Davis noted if the Airport Road access was eliminated all truck traffic to the property would come into the front of the store where pedestrians would be present. Food Lion saw this as undesirable from a safety perspective as well as it would limit access to the rear of the store for refuse disposal trucks and fire/rescue vehicles. A two entrance design was a better design for the area surrounding this store. Ms. Paige asked who would be responsible for damage from tractor trailers driving on the lip of the roundabout. Several individuals answered VDOT would be responsible.

Mr. Kontny asked if Food Lion had considered a second entrance to the property from Route 249. Mr. Davis noted VDOT had certain geometric standards for the proximity of entrances and noted two entrances from Route 249 would have been too close together and would be prohibited by VDOT regulations. Mr. Kontny indicated he thought the property was twenty acres. Mr. Davis noted Food Lion was only interested in the two parcels totaling 8.78 acres. Mr. Kontny noted the application indicated Mr. Alvis and Mr. Horsley had applied for the Conditional Use Permit for 20.52 acres. Mr. Davis indicated Mr. Alvis and Mr. Horsley owned 20.52 acres but Food Lion was only interested in 8.78 acres of the property.

Mr. Moyer noted it appeared the same concerns kept coming up. He asked if any Commissioner would like to make a motion. Mr. Kontny asked if the Planning Commission needed to include stipulations and conditions in their recommendation. Mr. Hefty indicated the Planning Commission did not need to add conditions and noted the Board of Supervisors could do so when they considered the application. Mr. Kontny indicated he did not like the thought of another Food Lion in New Kent County.

In order to address, protect and promote public convenience, necessity, general welfare and good zoning practices in the County, Mr. Kontny moved to adopt Resolution No. PC-19-18 to forward Application CUP-18-2018 to the New Kent County Board of Supervisors with a favorable recommendation. The members were polled:

Laura Rose	Aye
Patricia E. Townsend	Nay
Joyce B. Williams	Aye
Richard Kontny, Jr.	Aye
Dr. Joanne K. Schmit	Aye
Edward W. Pollard	Nay
C. Thomas Tiller, Jr.	Abstain
Van "Marc" Bennett	Nay
Amy Pearson	Nay

John P. Moyer	Aye
Katherine C. Butler	Absent

The motion carried.

Mr. Moyer adjourned the Planning Commission meeting at 8:13 p.m. The Board of Supervisors continued on with their meeting.

Mr. Evelyn noted the Board had just heard the recommendation from the Planning Commission and he asked if Board members had any questions or comments.

Mr. Stiers directed questions to Mr. Gregory Davis. Mr. Stiers noted Mr. Davis had spoken "very eloquently about the Food Lions in New Kent when you first started out." He suggested it had sounded great but was "not that accurate." He pointed out Food Lion had spent approximately \$23,000,000 renovating the three stores in New Kent. If this application was approved, Food Lion would be putting in a fourth store in New Kent County. He suggested Food Lion was a multimillion dollar company and they were doing this for their "bottom line," not because they "love the people of New Kent County." He reported he had asked a Food Lion competitor to do a survey in the County and had been told there was not enough room in New Kent with all of the competition. He indicated he knew Food Lion offered a great product but suggested not everyone liked Food Lion. He stated, "I doubt if you shop at Food Lion." to which Mr. Davis quickly replied, "Oh, yes sir!" Mr. Stiers suggested there were many people in New Kent who went out of the County to buy groceries. He added that one of his "biggest sticklers" was he felt Food Lion was pushing for no competition in New Kent County. Mr. Davis replied by suggesting Food Lion would not spend this much money on a store as "a blocking move" because it would be too risky of an investment. He had previously mentioned Food Lion had data which suggested there was a demand moving east on Route 249. He suggested any other grocery store interested in New Kent County could get that same data but had not done so. He suggested this could be because Food Lion has a brand that is attractive and perhaps other stores were not as willing to take a risk in New Kent. He noted he had one last piece of information which he would share with the utmost respect. He reported he had been involved in a zoning case in James City County several years ago. Fresh Market had outgrown a location where they had been for 15 years and had decided to build a new store. Many citizens had come out to say they liked the Fresh Market where it was currently located. They wanted the Board of Supervisors to vote against the rezoning for a bigger store with more parking because they liked the smaller store where it was located. At the end of the day the County Attorney and the County Planner had said citizens don't get to vote on what business goes where and had noted it was a free market economy in the United States of America. He again noted he had shared this with the utmost respect and stated, "Food Lion is not here trying to block other grocers from coming to town." He indicated this was no more than an "honest effort to have a successful business in your county."

Mr. Hefty indicated he had several areas to address. First he noted the resolution before the Board contained six conditions staff was recommending be attached to this Conditional Use Permit if they moved forward with approval. Food Lion had agreed to three additional conditions if the Board wished to add them. The first condition was the five-year escrow of \$100,000 for the left turn lane. The second condition stated the "identifying signage for the retail establishment grocery store shall have a maximum size of 50 square feet and maximum height of eight feet" which he noted was the same size standards used in Bottoms Bridge. The third condition was the construction of a fence the length of the building between the Food Lion and Bost properties. Mr. Hefty again noted Food Lion was agreeable to adding these three conditions to the six already included in the proposed

resolution. Mr. W.R. Davis, Jr. questioned if the fence would be the length of the building or the length of the property. Mr. Hefty indicated the fence would be the length of the building. Ms. Paige asked if Mr. Hefty had said this would be a wire fence. Mr. Hefty indicated he had not said it would be a wire fence and noted it would be a "screening fence." Mr. Davis suggested the fence would be 220 feet in length. Mr. Hefty indicated if this was the width of the building, it was correct. Mr. Gregory Davis indicated he wished to state something for the record. He noted "as the staff brought forward those additional conditions to my client today, they were analyzed and they quickly agreed to those."

Mr. Evelyn asked Mr. Hefty if the documents stated the application was for a retail center or was it still noted as a shopping center. Mr. Hefty reported Food Lion had sent a letter to staff withdrawing the portion of their application dealing with a shopping center. Although their application and the ad spoke about a shopping center which also would require a Conditional Use Permit, they had withdrawn the portion of their application requesting a shopping center. He noted a shopping center was not before the Board as a part of this Conditional Use Permit and if Food Lion wanted to develop this property as a shopping center, they would have to come back with another Conditional Use Permit application. Mr. Evelyn asked if development of a building on the remaining land would change the status to a shopping center. Mr. Hefty indicated, "it may or may not be a shopping center depending on when they come in and what they specifically ask for." Mr. Hefty pointed out the proposed resolution contained language which stated, "The granting of this conditional use permit shall not give any additional development rights to the 5.41 acre and 6.43 acre parcels shown as Residual Parcels on the site plan beyond what is allowed by the New Kent zoning ordinance in the absence of the granting of this conditional use permit." He suggested if the parcels were developed as individual parcels they may have a by right use and would not be considered as a shopping center. Mr. Evelyn noted the CUP would run with the land and the Residual Parcels were a part of the CUP. He asked for confirmation that the Residual Parcels could be developed with businesses up to 30,000 square feet in size. Mr. Hefty confirmed and indicated they could not come back asking to develop either of the parcels with a 35,000 square foot building by suggesting the Board had previously authorized it by approving this Conditional Use Permit.

Ms. Paige stated, "So we are only voting tonight because of 5,000 square feet?" Mr. Hefty indicated this was correct and noted Food Lion could by right build a 30,000 square foot building but they were asking for an additional 5,000 to 6,000 square feet which required a Conditional Use Permit.

Mr. W.R. Davis, Jr. indicated if he was voting this up or down, he would have to vote it down. He suggested he had never seen another grocery store on a two-lane secondary road. He noted as some had already said, the road did not have shoulders and suggested this wasn't going to be fixed any time soon. He noted if the Board had to vote on the Conditional Use Permit at least they could include conditions to make it more palatable. He suggested this was the wrong place and the wrong time although it could be the right place and the right time in the future. He also noted traffic concerns.

Mr. Evelyn noted the Board needed to be transparent and reported they were holding this meeting because staff had missed the 30,000 square foot building limit. He reported citizens had frequently approached him asking why we were going to have another Food Lion. He indicated he had shared this was a by right use of the B-2 zoned property and the Board could not pick and choose which businesses came. He stated, "Ultimately, I guess, we are the ones who hire staff so it comes back to us." He suggested they all took responsibility but noted it was very frustrating this had been missed. It was not only frustrating for the Board but also for Food Lion, the owners of the property and the public.

"We have to come back to you and say we made a huge mistake." He suggested the Board members were the ones everyone was looking at and it was the Board's responsibility. He noted they had been elected to be responsible stewards of the County and apologized for how the process had gone for everyone involved. He indicated he was very disappointed in staff and wanted to be transparent to the public regarding exactly what had happened. He suggested the Board had "just gotten in the loop" when he had received a call while on vacation from County Administrator Rodney Hathaway saying, "We've got a big problem." Mr. Evelyn noted the Board was meeting for 5,000 square feet. He noted according to County ordinance, this was a by right at 30,000 square feet in B-2 and the need for a CUP arose when it came to 35,000. He stated, "In my opinion that should have been caught."

Mr. Stiers noted agreement with Mr. Evelyn. He stated, "We made a mistake. The staff made a mistake." He reported this was very unusual and staff was "right on target most of the time." He suggested what the public needed to know was that if the Board voted this application down, Food Lion would come back and build the store 5,000 square feet smaller. Mr. Gregory Davis addressed Mr. Stiers' comment and indicated it was hard for him to say if Food Lion would build a smaller store but suggested it was "quite likely" and noted they were "attracted to the location."

Mr. Tiller indicated he had been very surprised when Ms. Bost had spoken earlier suggesting the best way to handle this was to approve it with conditions. He agreed with Ms. Townsend noting he would still like to see a 50 foot buffer on the back of the property and suggesting 210 feet of fence was not enough. He noted he would also like to see a berm from Airport Road to where the store started and suggested the fence should be at least an additional 150 feet long. He noted the parties had agreed to signage that was in line with the Bottoms Bridge overlay district and suggested the landscaping should also meet the Bottoms Bridge overlay standards. He stated, "The by right thing does scare me." He went on to note if the Board didn't approve this, none of the things he had just mentioned or the previously agreed upon conditions would be required and suggested the Board needed to do all they could to protect the area. He also noted agreement with Ms. Townsend's "right turn only" suggestion for exiting onto Route 249. He noted the speed limit was 55 MPH even though Ms. Paige and he had both asked VDOT to lower the speed to 45 MPH. He noted he was under the assumption the Bottoms Bridge Overlay standards being applied to this application were only for the Food Lion but could also be added as conditions to future developments in the area. Mr. Winter confirmed. Mr. W.R. Davis, Jr. asked if Mr. Tiller was going to make the length of the fence and berm a condition. Mr. Tiller indicated he would like the berm and the fence to be included as a condition. Mr. Hefty asked Mr. Gregory Davis if he had any comments regarding this. Mr. Gregory thanked Mr. Tiller for his consideration and Mr. Hefty for his questions. He suggested this was "a difficult spot" and noted his client had already reacted to a number of late condition requests, one of which had involved \$100,000 cash. He indicated he did not have the authority to agree to a berm condition or the additional fence and suggested if these were the only avenues for Board support that they be included and Food Lion could react accordingly. He indicated it would be outside of his authority to say the additional footage was unacceptable and then the Board vote the request down. He reported Food Lion had rejected fencing the entire length of the common boundary between the properties and suggested the additional 150 feet of fence was reasonable. A berm would involve some site planning issues and he wasn't sure if there would be sufficient room. Mr. Tiller asked if the berm could be included in the 27 foot setback. Mr. Davis indicated it could but noted another issue was a row of evergreens planted on the Bost property which would require that the berm be shifted more into the Food Lion property. He noted he could not answer engineering questions but reported a berm had been discussed with Mr. and Ms. Bost and this suggestion had not earned their

support. He again suggested if these conditions were "absolutely necessary to Board approval," of the Conditional Use Permit, Food Lion "would rather have the CUP than not."

Mr. Stiers asked if these conditions would be added to the resolution. Mr. Evelyn indicated the Board could add any conditions they chose. Mr. Hefty agreed. Mr. Stiers asked if the conditions were included and Food Lion did not approve, would the CUP be denied. Mr. Hefty reported the CUP would still be approved and the conditions would stand. Food Lion could then decide if they wanted to build under the conditions, decide to not build at all or decide to build a smaller 30,000 square foot building without any of the conditions.

Mr. Evelyn called for additional comments and questions from Board members. There being none, he asked "What are we going to do?" Mr. Davis indicated he would give the Board something upon which to vote.

Mr. Davis moved to approve Conditional Use Permit Application CUP-18-2018, Quinton Retail Center with the following conditional uses:

1. The proposed use granted by this Conditional Use Permit shall be defined as *Retail Establishment* which means a facility for the display, sale and rental of merchandise at retail and in small quantities. This includes commonly used goods and merchandise for personal or household use and the incidental rendering of personal services, but excludes those classified more specifically by definition. The term includes retail shop, retail store, retail sales and services and in the case of this Conditional Use Permit, a *grocery store*.
2. The proposed 35,235 square foot retail establishment (grocery store) on this site shall be developed in accordance with the site plan for the Quinton Retail Center [SP-011-17] as approved by New Kent County on May 10, 2018.
3. Any future use of the 2.35 acre parcel shown on the site plan shall require the granting of a Conditional Use Permit. The granting of this Conditional Use Permit shall not give any additional development rights to the 5.41 acre and the 6.43 acre parcels shown as Residual Parcels on the site plan beyond what is allowed by the New Kent zoning ordinance in the absence of the granting of this Conditional Use Permit.
4. Any further commercial development on this site shall not exceed 30,000 square feet in total.
5. An approved site plan shall be required for any further commercial development.
6. This Conditional Use Permit shall expire on the 3rd anniversary of its approval if a certificate of occupancy has not been issued for the 35,235 square foot retail establishment (grocery store).

Mr. Davis paused, noting discussions of the evening had produced three conditions to be included in addition to the six conditions already included in Resolution R-28-18 (R1). Mr. Hefty stated conditions 7, 8 and 9 below to be included in Mr. Davis' motion.

7. The identifying signage for the retail establishment (grocery store) shall have a maximum size of 50 square feet and maximum height of eight feet.
8. Food Lion agrees to donate \$100,000 to the County for the construction of a left turn lane from Route 249 into the development subject to VDOT approval with the funds being escrowed for five years.
9. Food Lion agrees to construct a screening fence along the length of the building plus 150 feet to the west and a berm from Airport Road to the end of the building.

Mr. Evelyn asked if there was any additional discussion. Mr. Tiller indicated he "would like to reiterate ... the 50 foot buffer on the rear side of the property as well." Mr. Hefty noted a

50 foot buffer was not a part of the motion. Mr. Tiller asked if he could amend the motion. Mr. Evelyn asked Mr. Davis if he would like to amend the motion. Mr. Davis amended his motion to include a 50 foot buffer to the rear of the property. Mr. Evelyn asked Mr. Gregory Davis if he would like to comment on the addition of this buffer. Mr. Davis suggested his client would be able to "bend" to the nine conditions already stated but suggested the 50 foot buffer "would be the straw that broke the camel's back." Mr. Hefty reported it also should be noted that the site plan was approved by staff on May 10 and at that time the Bost property had not been rezoned and there was no requirement for a 50 foot buffer. The site plan had been approved with the 27 foot buffer. The General Assembly had "adopted legislation which says that developers and property owners can have vested rights in zoning decisions if there is a significant governmental act which includes the approval of a preliminary site plan." The Developers and property owners would have relied on this preliminary approval and expended funds following the approval. Mr. Hefty reported Food Lion had indicated that they had spent funds after the approval so there would be an issue with their vested right to not have a 50 foot buffer. He stated, "From a legal stand point, there is an issue with now requiring a 50 foot buffer and from a legal stand point, my recommendation is not to do that." Mr. Tiller suggested "that doesn't always necessarily make it the right stand point." Mr. Hefty agreed. After hearing Mr. Hefty's advice, Mr. W.R. Davis, Jr. removed the 50 foot buffer condition from his motion.

The members were polled.

C. Thomas Tiller, Jr.	Aye
Patricia A. Paige	Nay
Ron Stiers	Nay
W. R. Davis, Jr.	Nay
Thomas W. Evelyn	Aye

The motion failed.

IN RE: CLOSED SESSION

Mr. Stiers moved to go into closed session pursuant to section 2.2-3711A.5 of the Code of Virginia for discussion involving economic development incentives for a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating its facilities in the County. The members were polled:

Patricia A. Paige	Aye
Ron Stiers	Aye
W. R. Davis, Jr.	Aye
C. Thomas Tiller, Jr.	Aye
Thomas W. Evelyn	Aye

The motion carried.

Mr. Evelyn thanked all of the citizens who had come out to the meeting. He indicated the Board would take no further actions when they returned from closed session. Board members went into closed session.

Mr. Evelyn moved to come out of closed session. The members were polled:

Ron Stiers	Aye
W. R. Davis, Jr.	Aye

C. Thomas Tiller, Jr.	Aye
Patricia A. Paige	Aye
Thomas W. Evelyn	Aye

The motion carried.

Mr. Evelyn moved to certify by roll call vote that to the best of each Board member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Freedom of Information Act and identified in the motion to go into closed session were heard, discussed or considered in the closed session. The members were polled:

W. R. Davis, Jr.	Aye
C. Thomas Tiller, Jr.	Aye
Patricia A. Paige	Aye
Ron Stiers	Aye
Thomas W. Evelyn	Aye

The motion carried.

IN RE: ANNOUNCEMENT OF UPCOMING MEETINGS

Mr. Evelyn announced the next regularly scheduled meeting of the Board of Supervisors would be held at 6:00 p.m. on Tuesday, September 4, 2018, and the next work session at 9:00 a.m. on Wednesday, September 26, 2018, both in the Boardroom of the County Administration Building. There would be no August work session.

IN RE: ADJOURNMENT

Mr. Tiller moved to adjourn the meeting. The members were polled:

C. Thomas Tiller, Jr.	Aye
Patricia A. Paige	Aye
Ron Stiers	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye

The motion carried. The meeting adjourned at 9:10 p.m.