

THE BOARD OF SUPERVISORS HELD A WORK SESSION ON THE 27th DAY OF OCTOBER IN THE YEAR TWO THOUSAND THREE OF OUR LORD IN THE COURTROOM OF THE OLD COURTHOUSE, NEW KENT, VIRGINIA, AT 6:37 P.M.

IN RE: ROLL CALL

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| Rebecca M. Ringley | Present |
| James H. Burrell | Present |
| Dean E. Raynes | Present |
| W. R. "Ray" Davis, Jr. | Present |
| Julian T. Lipscomb, Sr. | Present |

Chairman Lipscomb opened the meeting.

IN RE: CHANGES IN THE AGENDA

Chairman Lipscomb announced that Item 1, Closed Session, was being moved to the end of the agenda.

IN RE: DR. BILL BENNETT/ACCESS TO THE NEW KENT AIRPORT RUNWAY

Present to address the Board on this issue was Dr. Bill Bennett, former Supervisor Robert Boroughs, and Attorney Bruce Arkema.

County Attorney Phyllis Katz reported that she had previously briefed the Board during a closed session.

Mr. Boroughs represented that he was on the Board of Supervisors when the property, which was intended to be a part of a county industrial park, was sold to Dr. Bennett, with a stipulation that he would have access to the runway. He recounted the difficulty that Dr. Bennett has experienced with County staff over the years in this regard. He blamed County staff for the delay that Dr. Bennett has had in furthering his plans and obtaining access to the runway, and stated that Dr. Bennett is entitled to what was stipulated in the deed.

There was discussion concerning whether Dr. Bennett's operations would jeopardize the Airport's grants (either now or in the future), approval by FAA, whether his intended operation would compete with the FBO, location and nature of the access, and the defects in the paperwork previously prepared.

Attorney Bruce Arkema represented that Dr. Bennett intends to buy antique plane kits, assemble them on premises, have them inspected by FAA and fly them to Oshkosh.

Ms. Katz reported that the FAA has taken no position on this matter. She warned that grants come with conditions and she advises against the County doing anything that may jeopardize its eligibility for future grants.

Airport Manager Bill Kelly indicated that the FAA is primarily concerned that it has spent a lot of money to improve the Airport and the possibility that someone who has access to the airport would create unfair competition or “through the fence” operations.

Dean Raynes stated that the County has an unfair advantage and should grant him access, with the stipulation that anything he does is cleared first with the FAA.

Bill Kelly indicated that the FAA will review and comment, but leaves decisions up to the Airport sponsor (the County), with the understanding that if the sponsor violates current grant assurances, then it will not get anymore money from the FAA. It is the sponsor’s responsibility to protect the grant assurances. He also stated that one of the problems is that the parallel taxiway referred to in the documents and which would have provided access, has never been built.

It was agreed by all that it was the intention that the industrial park inhabitants share one access to the runway, as opposed to each having their own access.

After further discussion, it was the consensus of the Board to grant Dr. Bennett access to the runway for his plane, and the County Administrator and County Attorney will work with Dr. Bennett and Mr. Arkema to develop a memorandum of understanding on the other items. It was further agreed that Dr. Bennett’s access will be grass and will not be the County’s responsibility to construct. Dr. Bennett and his attorney were in agreement.

Ms. Katz reminded that Dr. Bennett must comply with the zoning requirements that are in effect.

IN RE: SIX-YEAR PLAN

R. E. Prezioso, Resident Engineer with VDOT, was on hand to discuss the Six-Year Plan that is scheduled for Public Hearing in December. He reviewed the roads in the current plan, which included the unpaved roads (Old Telegraph, Egypt, Page, Stewart, Polish Town, Evergreen, Macon and Mihalcoe) or portions thereof, which will be surfaced under the Rural Rustic Roads program. Funds for paving under Rural Rustic Roads is covered under Revenue Sharing proceeds, and not from the Six-Year Plan. The projects and projected fiscal year allocations, by priority, currently on the Six-Year Plan are:

1. Terminal Road (2004-2005)
2. Stage Road (2004 - 2006)
3. Mount Pleasant Road (2004 - 2007)
4. Henpeck Road (2005 - 2009)
5. Higgins Road (2007 - 2008)

It was his suggestion to move Higgins Road to the Rural Rustic Roads program, which will speed up its surfacing, and free up \$105,000 for another project.

He also suggested that the unallocated funds shown in 2007-2008 and 2008-2009 be allocated now to an unnamed unpaved road.

IN RE: FARMS OF NEW KENT

Attorney Chuck Rothenberg provided documents showing recent modifications/changes in the Proffers, which included

- payment of \$1,500 upon issuance of the building permit of any residential dwelling in Land Bays I, III or IV that is not age restricted, to be used to equip, repair, renovate, construct or reconstruct public school facilities
- stipulation that the sheriff/police substation shall be an addition to the Fire/Rescue building
- stipulation that all proffered buildings will be free and clear of all liens, and the assignment of all warranties to the County
- 8% reduction in density in Land Bay II (by 50), Land Bay IV (by 50) and in Land Bay V (by 200)

Mr. Raynes stated that he'd like to see a higher "per unit" payment.

Mr. Rothenberg also provided documents with the recent changes in the Phasing Schedule, which included:

- that the fire/rescue building will be constructed once Certificates of Occupancy have been issued for 150 dwelling units within the PUD (reduced from 250 units)
- that the trigger for construction of the library and community buildings will be 375 of the combined total of age-restricted or non-age restricted dwelling units, rather than 375 of either
- the trigger for construction of the golf course and winery will be recordation of subdivision plats that create lots for 275 non age-restricted units (reduced from 375), and 400 lots for construction of the polo field and equestrian facilities
- the trigger for the development of the first 150,000 square feet of commercial office will be 375 dwelling units; at 850 dwelling units, the development of an additional 125,000 square feet of commercial/office space; and at 1225 dwelling units, an additional 125,000 square feet, for a cumulative of 400,000 square feet (previous scheduling called for non-age restricted dwelling units)

Mr. Johns reported that it is their plan to have the sewer completed in the second half of 2006.

Mr. Lipscomb inquired about the possibility of connecting to the Parham Landing Wastewater Treatment Plant. Mr. Johns indicated that their studies have shown that a plant at Talleyville will provide better service, provide temporary capacity at Bottoms Bridge, and support commercial development at the Route 106 interstate exchange. He reported that both the proposed water and sewer systems will provide for capacity over and above what Farms of New Kent will need. Regarding the restrictions placed upon discharge into the Chickahominy v. the Pamunkey, he indicated that they anticipate that restrictions into the Pamunkey will increase. He also encouraged the County to start the formal process to renew permits for both of the wastewater treatment plants now. Community Development Director suggested that the County wait until after December 8 to start that process.

In response to an inquiry from Mr. Davis about the proposed connection fee rebates, Chuck Rothenberg stated that the rebates would apply to all connections to the utilities systems, whether inside or outside of the Farms of New Kent. Mr. Davis stated that a provision be included regarding providing a true accounting of construction costs. Both Mr. Rothenberg and Mr. Johns indicated that would be no problem, and Mr. Rothenberg suggested that it might be part of a Utility Agreement.

Mr. Rothenberg reported that there are further draft design guidelines to be addressed, and Mr. Christie indicated that work is still being done to draft the CUP resolution.

There was also discussion on the proposed use of gray water within the project, and the possibility of designing the sewer lines to the Chickahominy Wastewater Treatment Plant so that the flow could run either to or away from that plant.

There was discussion about the fiscal impact of the project on the County. It was reported that there would be a negative impact the first year, with a break even in the second year. None of the proffers were included in the fiscal impact analysis.

There was also discussion about the increase in traffic. Pete Johns reported that all road improvements would be built in the first year. There will be four lanes down Route 106 from I-64 to Route 249, with the highest density of the project being within $\frac{3}{4}$ miles of the interstate. There will also be some improvements of Route 106 south of I-64.

Discussion then shifted to the CDA petition. Ms. Katz reported that the parties have had productive negotiations and thanked Bonnie France for her cooperation in developing the first draft of a memorandum of understanding. She voiced her concerns that no specific information has been provided regarding the infrastructure improvements in each land bay, and FONK representatives indicated that information is available and will be provided. Ms. Katz also advised that if there were significant changes to the petition and ordinance, it would need to be re-advertised; otherwise, smaller changes could be handled through a MOU. Ms. France reported that there was nothing different, just more detailed, and asked if the Board would accept an addendum to the petition so that it would comply with the Guidelines adopted by the Board subsequent to the filing of their petition. It was reported that the petition only identifies what improvements are eligible for CDA financing and there has been no decision as to what would be included, as that would be done in Phase 2 of the approval process.

Ms. Katz advised that private roads (in gated communities) are not eligible. She also expressed her concern about the County's acceptance of some of the improvements.

Bonnie France indicated that another change to the proposed ordinance and articles of incorporation was to tighten up the provisions regarding the boundaries of the CDA, only permitting changes to correct errors or make adjustments with up to 10% deletion of the original amount.

It was reminded that not all of the property in the PUD is in the CDA. The proposed wastewater treatment plan is in both.

Ted Cole of Davenport & Associates, financial advisor for the County, recommended that as this process unfolds, his company and legal counsel be fully engaged from start to finish in order to safeguard the County's interests, so that they may give unbiased advice in order that the Board can make informed decisions. He also recommended that the County Administrator be an appointee to the CDA Board, and stressed the importance of having a working draft of the MOU which will help eliminate many of the uncertainties.

Bonnie France indicated that she believed CDA boards could have *ex officio* members but would check to see if there would be any conflict of interest in appointing a county officer to the CDA board. She also reported that the MOU is a first draft only, and that they are looking for input from the Board.

There was also discussion regarding the CDA Board, its members and length of terms. Ms. France reminded that it was the CDA Board's primary duty to deliver infrastructure in compliance with the agreement and the law, and to oversee repayment. They have a very specific, limited mandate with little discretion. She indicated that the CDA Board was more akin to a corporate board than an industrial development authority, and she urged the Board to consider this when making appointments. CDA board members need knowledge of construction and real estate. After further discussion, Mr. Davis moved to amend the CDA Guidelines under I. a. iv. to read "*except for the first term, each subsequent term shall be for four years*". The members were polled:

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| Rebecca M. Ringley | Aye |
| James H. Burrell | Aye |
| Dean E. Raynes | Aye |
| W. R. "Ray" Davis, Jr. | Aye |
| Julian T. Lipscomb, Sr. | Aye |

The motion passed.

After discussion, it was agreed that the Board would take action on these applications at the November 24 work session which will be held in the Boardroom of the County Administration Building, to be followed by a work session with the Patriot's Landing group.

Chuck Rothenberg thanked the New Kent staff for the enormous effort put into this process.

IN RE: CLOSED SESSION

Mr. Davis moved to go into closed session to discuss a personnel matter pursuant to Section 2.2-3711A.1 involving an employee evaluation. The members were polled:

The members were polled:

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| James H. Burrell | Aye |
| Dean E. Raynes | Aye |

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| W. R. "Ray" Davis, Jr. | Aye |
| Rebecca M. Ringley | Aye |
| Julian T. Lipscomb, Sr. | Aye |

The motion passed. The Board went into closed session.

The Board emerged from closed session. Mr. Davis moved to come out of closed session. The members were polled:

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| Dean E. Raynes | Aye |
| W. R. "Ray" Davis, Jr. | Aye |
| Rebecca M. Ringley | Aye |
| James H. Burrell | Aye |
| Julian T. Lipscomb, Sr. | Aye |

The motion passed. Mr. Davis made the following certification:

Whereas, the New Kent County 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 Lipscomb inquired whether there was any member who believed that there was a departure from the motion. The members were polled:

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| W. R. "Ray" Davis, Jr. | Aye |
| Rebecca M. Ringley | Aye |
| James H. Burrell | Aye |
| Dean E. Raynes | Aye |
| Julian T. Lipscomb, Sr. | Aye |

The motion carried.

IN RE: MEETING SCHEDULE

Chairman Lipscomb announced that the next meeting of the Board of Supervisors would be held at 6:00 p.m. on Monday, November 3, 2003, in the Boardroom of the County Administration Building.

IN RE: ADJOURNMENT

There being no further business, Mr. Davis moved for adjournment. The members were polled:

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| Rebecca M. Ringley | Aye |
| James H. Burrell | Aye |
| Dean E. Raynes | Aye |
| W. R. "Ray" Davis, Jr. | Aye |
| Julian T. Lipscomb, Sr. | Aye |

The motion passed. The meeting was adjourned at 10:32 p.m.
