

A REGULAR WORK SESSION WAS HELD BY THE NEW KENT COUNTY BOARD OF SUPERVISORS ON THE 31ST DAY OF JULY IN THE YEAR TWO THOUSAND NINETEEN IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 9:00 A.M.

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IN RE: CALL TO ORDER

Chairman C. Thomas Tiller, Jr. called the meeting to order.

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IN RE: ROLL CALL

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

All members were present. Mr. Tiller noted a good number of citizens were in attendance and thanked everyone for attending.

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IN RE: APPROVAL OF EASEMENT & LAND ACQUISITION AGREEMENTS FOR THE ROUTE 618 WATERLINE

New Kent Assistant Public Utilities Director Mike Lang reported the Route 618 waterline was the next step in consolidating New Kent's water systems. This waterline project would yield immediate benefits in operation efficiency, disaster preparedness and water quality improvements. Because the VDOT rights of way along Route 618 were too narrow to accommodate the waterline, temporary or permanent easements would be needed in some areas. Mr. Land also reported 0.5 acre was being acquired to locate a pressure reducing valve (PRV) within a small building and a Contract to Purchase this property had been included for approval. He reported that along with the assistance of County Attorney Brendan Hefty, temporary and permanent easement agreements as well as compensation agreements had been drafted for each of the impacted properties. He pointed out the easement agreement for Tax Map Parcels 22-66 and 22-66A, belonging to Criss Cross Properties, LLC, included in the meeting packets had been in draft form. He distributed a revised agreement which had been sent to the owner for signatures. He drew attention to item "e" on page 2 and noted the wording, "Such approval shall not be unreasonably withheld" had been added. Easement agreements for the remaining Tax Map Parcels (22-8, 22-9, 22-9A, 22-9B, 22-9C, 22-9D, 22-10, 22-11, 22-68, 22-69 and 22-70) had been signed by the owners. Compensation agreements had also been signed for all parcels with the exception of 22-9D and 22-10. Mr. Lang also distributed elevation drawings for the proposed PRV building. He closed by noting the Public Utilities Department was always working to minimize costs and reported this project would save on labor and operating costs and the loan to fund it would be paid in twenty years.

Mr. Evelyn asked the duration of the project. Mr. Lang suggested construction would take approximately one year. Mr. Davis asked the size of the waterline to be installed. Mr. Lang reported a 16" waterline would be used. Mr. Davis asked if a second line could be placed adjacent to what was currently planned. Mr. Lang indicated an additional easement would be needed for anything more. Mr. Davis asked what the expected flow would be. Mr. Lang reported the flow would be 1,000 gallons per minute. He also reported that several fire

hydrants would be installed along Route 618. Mr. Davis asked how long this waterline extension would run. Mr. Lang reported the extension would be 10,500 feet in length.

Mr. Davis moved to authorize the County Administrator to sign the easement and land acquisition agreements for the Route 618 waterline as presented. The members were polled:

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

The motion carried.

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IN RE: APPROVAL OF RESOLUTION R-18-19 NAMING THE FIRST RACE OF THE 2019 COLONIAL DOWNS SEASON IN HONOR OF MAGALEN O. BRYANT – RESOLUTION R-18-19

Economic Development Director Matthew J. Smolnik reported New Kent had received a request from Colonial Downs for a resolution naming the first race of the 2019 season in honor of Magalen O. Bryant, the grandmother of Delegate Michael Webert. Delegate Webert had been the chief patron of HB 1609, the legislation making the reopening of Colonial Downs possible. Ms. Bryant was a well-known and respected steeplechase owner and breeder from Virginia. Mr. Smolnik reported he had worked closely with Tucker Martin with McGuire Woods Consulting and Deputy Clerk Wanda Watkins to get this resolution to the Board and requested they consider its adoption. Live racing was scheduled to resume at Colonial Downs on August 8<sup>th</sup>. Resolution R-18-19 was sponsored by Mr. Stiers.

Mr. Stiers moved to adopt Resolution R-18-19 naming the first race of the 2019 Colonial Downs season in honor of Magalen O. Bryant. The members were polled:

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

The motion carried.

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IN RE: UPDATE ON PLANNING COMMISSION ACTION TAKEN REGARDING COMBAT/TACTICAL TRAINING FACILITIES AND ADDING THEM AS A PROHIBITED USE

Planning Director Kelli Le Duc reported County Administrator Rodney Hathaway had requested the Board be provided an update on the Planning Commission activities concerning defining a combat/tactical training facility as well as the possible addition of combat/tactical training facility to the list of prohibited uses. By motion made by Mr. Tiller, the Board of Supervisors had voted on May 13, 2019 to refer to the Planning Commission for its review, to hold a public hearing, and make a recommendation in accordance with section 15.2-2285 of the Code of Virginia, an Ordinance to add "Combat Range/Combat Training Facility" to the list of prohibited uses in Section 98-64 of the New Kent County Code and to ask the Planning Commission to consider whether to add or remove other uses

in the prohibited uses category. The Planning Commission had conducted a public hearing regarding these ordinance amendments on June 17<sup>th</sup> and had deferred action until their July 15<sup>th</sup> meeting. Ms. Le Duc reported the Planning Commission had taken action on July 15<sup>th</sup> to approve the following definition and to add Combat/Tactical Training Facility as the eleventh item on the list of prohibited uses in Section 98-64 of the New Kent County Code:

*"Combat/Tactical Training Facility means a commercial, open air facility that is designed to train in any combination of anti-terrorism, counter terrorism/force protection operation, and any mission simulation using military weapons which includes one or more of the following items:*

- *Outdoor firearms ranges utilizing automatic and or semiautomatic weapons.*
- *Combat training with real or simulated use of firearms or other military weapons system.*
- *Military tactical training area.*
- *Use of real or simulated high impact explosive devices.*
- *Use of mock/high impact firearms blast or simulated rocket propelled grenades.*
- *Unenclosed shoot house.*
- *Evasive driving courses with or without the use of real or simulated firearms.*

*This definition shall not apply to approved recreational firearms uses, and facilities operated by local, regional, state, or federal government agencies, in accordance with applicable Department of Defense guidelines for bona fide law enforcement safety and proficiency training activities as identified by the New Kent County Code."*

Several Board members reported having received an email from Charles Karow (a New Kent County resident) in which he had noted some confusion over the terms guidelines and standards. He suggested the phrase "*Department of Defense guidelines*" should be changed to read "*Department of Defense standards*." Board members noted general support for this suggested change.

Ms. Le Duc noted her appreciation to Sheriff Joe McLaughlin for his input in drafting the definition of combat/tactical training facility. She pointed out it had been the Planning Commission's intent to not impede any state or local agency from operating this type of facility. The Board of Supervisors would be conducting a public hearing on these proposed ordinance changes at their August 12<sup>th</sup> meeting.

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IN RE:                   DISCUSSION ON SHORT TERM RENTAL REGULATIONS

County Administrator Rodney Hathaway reported he had been asked during the June Board of Supervisors work session to research the County's authority to regulate Airbnb rentals. He pointed out the County's authority was actually in regard to Short-Term Rentals (STR) and noted Airbnb was one of a number of STR platforms. His findings included:

- The Virginia General Assembly had established the following definition for short-term rentals in 2017 – *the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for occupancy.*

- Short-term rentals were regulated in the Code of Virginia under Section 15.2-983 – Creation of Registry for Short-term Rental of Property and Section 58.1-3510.4 – Short-term Rental Property; Short-term Rental Businesses.
- New Kent County was currently requiring a business license for operators of STRs and the operators were also required to pay transient occupancy taxes and sales tax. Section 15.2-983 of the Code of Virginia allowed localities to adopt ordinances requiring STRs to register annually and to charge a registration fee. This Code also allowed a locality to impose a penalty of up to \$500 per violation for failing to register. A locality could restrict such an operator from registering until any imposed penalty was paid. A registration requirement would give localities the opportunity to provide homeowners with any information they may need to be in compliance with local taxing and zoning regulations.
- Some localities in Virginia were imposing various land use regulations and restrictions on STRs. Some regulations included occupancy limits, accessory residential unit restrictions, requirements for the STR to be the operator's primary place of residency and restrictions on commercial uses such as parties, banquets and fund raising. Some localities were requiring Conditional Use Permits and Special Use Permits and a few localities were banning them outright.

Mr. Hathaway suggested if the Board wished to require STRs to register, staff could work with the Commissioner of the Revenue to develop an ordinance for consideration. If the Board wished to consider land use and zoning regulations for STRs, staff could work with the Planning Commission to develop an ordinance amendment for consideration. He reported there were currently about seven property owners operating STRs in the County.

Mr. Evelyn suggested the Board would not want to impose too much regulation on STRs. Mr. Davis reported construction workers often rented homes for a month or more while working in the area and questioned if these situations would be considered STRs. He also suggested more public input was needed. Mr. Stiers suggested it sounded like the County wanted to discourage STRs and noted they were already being taxed by the County. Mr. Hathaway noted the information presented was what the Code of Virginia would allow and had not been put forth as recommendations. He again noted STRs were already charging occupancy tax and purchasing business licenses. He suggested the Commissioner's Office already had a heavy load and was not sure what more they could do. He suggested requiring STRs to register would make it easier for staff to keep track of who was operating in the County. Mr. Stiers noted he had no problem with requiring STRs to register, his issue was with charging a registration fee.

New Kent County Building Official Clarence Jackson approached the table with information for Mr. Hathaway. The information provided indicated Building Code set the occupancy limit for STRs at ten occupants. Mr. Davis asked if they were required to be ADA (Americans with Disabilities Act) compliant. Mr. Jackson indicated they were not required to meet ADA requirements if the occupancy limits were held. Mr. Davis again suggested the Board needed to hear more from the public. Mr. Hathaway noted the STRs were filling a need since the County didn't have hotels. He indicated he had been more concerned that STRs may have been receiving an unfair advantage over motels but had learned they were being treated the same. The Board decided to give this further consideration.

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IN RE: OTHER BUSINESS – KINK FEST/KINK WEDDING

Ms. Paige suggested there had been a recent activity in the County which had utilized a good number of staff hours. She reported the activity had initially been described as a

"Kink Fest" and it had later been reported to the County that the activity would be a wedding, a "Kink Wedding." She reported the Zoning Administrator and she as well as New Kent County Deputies had the pleasure of going to this event and suggested what she had seen had not been a wedding. She indicated she understood this event had been held on private property but did not believe this type of activity was suitable for the County. She suggested the Zoning Department should look into the language in the cultural events permit process to see what type of regulations could be placed on events such as this.

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IN RE: OTHER BUSINESS – RESOLUTION R-19-19 TO VDOT IN REGARD TO THE  
NEW KENT RETAIL CENTER SITE PLAN AND DEVELOPMENT – FOOD LION

Before the Board for consideration was Resolution R-19-19 requesting the Virginia Department of Transportation (VDOT) to require a left turn lane on New Kent Highway as part of the New Kent Retail Center site plan and development.

Mr. Evelyn reported plans for a Food Lion under 30,000 square feet at the corner of New Kent Highway and Airport Road had been approved by VDOT. He was concerned that VDOT had not required a left turn lane off of Route 249 and suggested the lack of a turn lane and the heavy traffic on Route 249 would cause traffic to back up around the roundabout especially on weekends. Rob Carey with VDOT had indicated this project did not meet the qualifications necessary to require a turn lane. Mr. Evelyn requested the Board consider adopting Resolution R-19-19 expressing the County's concerns to VDOT.

Ms. Paige also noted she had previously expressed concerns to VDOT regarding the eastbound approach to this roundabout having a 55 MPH speed limit and a curve. She suggested this area would become more dangerous with shoppers trying to get into the Food Lion parking lot along with extra traffic caused by drivers attempting to escape I-64 traffic. She suggested the speed limit had to be lowered. County Administrator Rodney Hathaway agreed and drew attention to language in the proposed resolution stating, "Given the current traffic, speed limit, and surrounding land uses, adding another high traffic development such as a grocery store without the construction of a left turn lane appears to be a recipe for disaster." He went on to read the next paragraph stating, "VDOT currently has an opportunity to require a private developer to fund this needed improvement to avoid negative impacts on traffic congestion and safety, and VDOT also has an opportunity to avoid the need for future State funds to fix a problem that can be addressed now." Mr. Davis suggested this had been very well said. Other Board members concurred. Ms. Paige also pointed out the Airport Road northbound roundabout approach was also in a curve and suggested the Airport Road entrance into the Food Lion in addition to the existing Dollar General entrance was a concern. Mr. Evelyn indicated he wasn't sure if this resolution would do anything but suggested it was important for the Board to try to do what they could.

Mr. Davis moved to adopt Resolution R-19-19 requesting that the Virginia Department of Transportation require a left turn lane on New Kent Highway as a part of the New Kent Retail Center site plan and development. The members were polled:

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

The motion carried.

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IN RE: OTHER BUSINESS – FEMA REIMBURSEMENT FOR HURRICANE MICHAEL

County Administrator Rodney Hathaway reported he had recently signed an agreement with the Virginia Department of Emergency Management (VDEM) for New Kent County, as a sub-recipient, to receive Federal Emergency Management Agency (FEMA) funds to reimburse expenses incurred during Hurricane Michael. The County would be receiving \$71,841.51.

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IN RE: OTHER BUSINESS – FIRE-RESCUE – REMOVAL OF TREES FROM ROAD

Ms. Paige noted Fire-Rescue staff were frequently clearing trees from roadways. She noted that in many cases, it would be months before VDOT would have someone clear the debris from the roadsides. She noted this debris so close to the roadside was a hazard and asked that Fire-Rescue cut the trees back farther. She suggested if they were going to cut the trees, they should “do it one good time.”

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IN RE: OTHER BUSINESS – SPONSORSHIP OF VIRGINIA DERBY

Economic Development Director Matthew J. Smolnik reported he had been contacted by Colonial Downs regarding the County sponsoring the 2019 Virginia Derby. He reported the cost of sponsorship would be \$50,000 and distributed an email from Colonial Downs which provided sponsorship details. He noted if the Board was interested in this sponsorship, it would be his recommendation that it be handled through the Economic Development Authority. He suggested this would be an opportunity to partner with Colonial Downs and would give New Kent County extensive marketing exposure. He also reported Colonial Downs had made commitments to be a sponsor of the Annual Roar and Soar at the New Kent Airport and the Annual New Kent County Grand Illumination. He suggested New Kent County had a strong relationship with Colonial Downs and reminded the Board that the County was receiving revenue from every Rosie’s location Colonial Downs opened. Mr. Smolnik indicated New Kent was already receiving exposure that it would not have received otherwise from the opening of Colonial Downs. He also reminded the Board that it was typical for a new business coming to the County to request and receive some incentives which were generally paid back over a two to three year period. He noted Colonial Downs had neither requested nor received any incentives.

Mr. Evelyn noted it had been reported that New Kent was receiving approximately \$16,000 per day in revenue from Colonial Downs/Rosie’s operations. He pointed out that at this rate, it would take only three and a half days to generate revenue enough to cover the \$50,000 sponsorship. He suggested the County should partner with Colonial Downs and noted they would be a big voice before the General Assembly in the event there was ever any future legislation that would negatively impact the County’s revenue. Mr. Davis agreed with Mr. Smolnik that Colonial Downs had not asked for anything up front and suggested the Board should go forward with the sponsorship.

Mr. Stiers reported it appeared there would be two roundabouts to be constructed at Colonial Downs (one at Route 155 and Kentland Trail and the other at Kentland Trail and Colonial Downs Parkway). He reported VDOT had suggested they would not “foot the bill” for the entire cost and he suggested Colonial Downs was not going to pay for it. He suggested they would be looking to the County to cover the cost. He further suggested Colonial Downs would be looking at it from the perspective that they had already done a lot for the County and he didn’t think they would be interested in paying for road improvements. Ms. Paige noted the Route 155/Kentland Trail intersection had been an

issue for many years. She suggested if VDOT was not going to accept the responsibility for the improvements, the cost would be a small price to pay for safety. Mr. Davis asked if Colonial Downs had noticed any decline in attendance since opening the Richmond location. Mr. Smolnik suggested there had been some decline at the New Kent location but Colonial Downs believed they were reaching a new group of people at the Richmond location. Ms. Paige suggested there should be a rack of brochures featuring local businesses at the New Kent location. Mr. Smolnik noted Colonial Downs had developed partnerships with several local businesses through the Rosie's Rewards Program which included advertising those businesses. Mr. Stiers asked where the \$50,000 would come from for the sponsorship. Mr. Evelyn suggested it would come from the Capital Fund.

Mr. Evelyn moved to appropriate \$50,000 from the Capital Fund Fund Balance to the EDA for the sponsorship of the 2019 Virginia Derby. The members were polled:

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

The motion carried.

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IN RE: ANNOUNCEMENT OF UPCOMING MEETINGS/ADJOURNMENT

Mr. Tiller announced the next regularly scheduled meeting of the Board of Supervisors would be held at 6:00 p.m. on Monday, August 12, 2019, and the next work session at 9:00 a.m. on Wednesday, September 25, 2019, both in the Boardroom of the County Administration Building. There would be no August work session.

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

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

The motion carried.

The meeting was adjourned at 9:49 a.m.