

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 23rd DAY OF FEBRUARY IN THE YEAR TWO THOUSAND ELEVEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 3:00 P.M.

IN RE: CALL TO ORDER

Chairman Evelyn called the meeting to order.

IN RE: ROLL CALL

Thomas W. Evelyn	Present
David M. Sparks	Absent
James H. Burrell	Present
Stran L. Trout	Present
W. R. Davis, Jr.	Present

The Chairman reported that Mr. Sparks was sick and would not be attending.

IN RE: AGRICULTURE IN NEW KENT COUNTY

Andrew J. Pompei, a graduate of New Kent High School and a Masters student in Urban & Environmental Planning at the University of Virginia, reviewed an independent studies report, *Farming on the Urban Fringe*, he prepared regarding agriculture in New Kent County. He explained that the report was intended to provide New Kent with suggested programs and initiatives it could use to make farming more profitable and/or provide incentives to landowners, which could result in more farm land remaining in production. He emphasized that most of the recommendations could be adjusted to meet budgetary constraints.

He spoke about how rapid growth occurring in rural areas on metropolitan fringes was making farming more difficult because of land fragmentation (smaller areas to farm), higher land values, higher property taxes, and complaints from neighbors. He commented that suburban sprawl had significant costs for localities and strained their budgets, reporting that for every dollar collected in tax revenue, it cost localities \$1.15 to support residential development, \$0.28 to support commercial/industrial development, and \$0.36 to support farmland and open space. He indicated that in 2007, there were 121 farms in New Kent covering 20,361 acres; \$4.6 million in agricultural goods were produced in New Kent, with New Kent ranking 84th out of 98 Virginia localities in total value of agricultural goods and 52nd in total value of crops produced. For forestry, he advised that in 2007 New Kent had 98,183 acres (72% of County area) in forests, with an average annual timber harvest value of \$1,551,040, ranking 46th of 98 Virginia localities in the value of timber harvested.

He reviewed some of the current land conservation efforts through State agencies and non-profit land conservancies, as well as County programs that included *Conservation and Agricultural* zoning classifications, the Agricultural and Forestal District (AFD) program, and a Purchase of Development Rights (PDR) process, but indicated that more could be done. His recommendations included modifying the *Agricultural* zoning classification to allow for a greater variety of agricultural-related businesses including farm stands, on-site commercial kitchens, and ecotourism; forming a Local Land Trust, wherein County officials would work with local citizens to create a program allowing for acquisition of conservations easements, a farmer/landowner match program, an agricultural assessment program, a buy/protect/sell program, as well as public educational and recreational programs, which would initially require County funding but would eventually become independent; creating a Rural

Economic Development Officer who could market the County's agricultural products, plan Ag-related public events, and help farmers develop sustainable business plans; enacting Land Use taxation to provide tax relief for properties used for agricultural, forestal, horticultural and open space purposes to be administered by the Commissioner of Revenue; instituting a "right to farm" policy that would require homeowners purchasing property within or adjacent to the A-1 zoning district to sign an "agricultural use notice" at the time of closing, acknowledging that they had been warned of the inconveniences associated with living next to agricultural operations. He noted that the State of Virginia had a right to farm policy but to date no localities had adopted their own.

Mr. Davis pointed out that New Kent did have a conservation easement program in place, and preferred the AFD program over a Land Use program, noting that about 20% of the County land was in AFD and that the program worked well for New Kent. There was discussion regarding properties in AFD and whether parcels whose zoning classifications had been changed to *Economic Opportunity* could still participate. County Attorney Michele Gowdy advised that if the zoning change had not been initiated by the landowner, then they were allowed to continue participation.

Board members inquired whether Mr. Pompei had done a comparison of a PDR program against a Transfer of Development Rights (TDR) program. He indicated that he did some research which reflected that the only locality in Virginia with a TDR program was Frederick County, but that although it seemed to be successful, it had not be in place long enough to make a comparison.

Board members thanked Mr. Pompei for his presentation.

IN RE: PURCHASE OF VOTING EQUIPMENT

Before the Board for consideration was a request from the New Kent Electoral Board for the transfer of funds to purchase some voting equipment scheduled for purchase in FY12 but available at a greatly reduced price in FY11 from one of the State's approved vendors.

Electoral Board Chairman Charles Moss explained that there were two types of voting machines currently in use in New Kent: optical scan units (being used in Districts One and Three) and the DRE ("touch screen") units (being used in the remaining three districts). He indicated that localities in Virginia were no longer authorized to purchase new touch screen units but could continue to use existing units as long as they were operational. He advised that the Electoral Board had committed to update one district per year with optical scan equipment, which also required an Automark Voter Assist Terminal for visually- and hearing-impaired voters. He indicated that one of those terminals normally cost \$5,200 but that one of the State-approved manufacturers, PrintElect, was offering the units at a cost of \$1,995 each, allowing New Kent to purchase the remaining six units that it needed for \$11,970, a savings of \$19,230.

He confirmed that the touch screen units had been used in New Kent, without a problem, for the past twelve years, and that those units could be sold to other localities interested in purchasing them. He reminded that the touch screen units had been purchased through a funding program, but that such a grant was not available for the conversion to optical scan units.

Mr. Sparks asked if the terminals had been competitively bid. Mr. Moss explained that this was the only ADA-accessible device approved by the State.

Mr. Lawton pointed out that it was being proposed to use unneeded funds budgeted for another CIP project (Rt. 618 Electrical Upgrades) rather than transfer funds from reserves.

Mr. Moss indicated that New Kent had only one visually-impaired voter but was required to have one of these terminals at each precinct, and that it was acceptable to use them at those precincts that still had the touch screen units.

Mr. Trout moved to approve the transfer of \$11,970 from line item 91000-9943 (Rt. 612 Electrical Upgrades) to line item 91000-9120 (Voting Equipment) for the purchase of voting equipment from PrintElect. The members were polled:

David M. Sparks	Absent
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye

The motion carried.

IN RE: MAPPING OF RESOURCE PROTECTION AREAS (RPA)

Before the Board for consideration was a result for a transfer of funds for an RPA mapping project, in follow up to a discussion at a previous work session.

Environmental Planner Amy Walker explained that since the last meeting, she had discovered that the funds budgeted for the cancelled survey monumentation project totaled \$25,000 rather than \$50,000. She indicated that the additional \$25,000 needed for the mapping project could be transferred from Capital reserves, or the project could be split in two, with initial mapping of the James River watershed and a later mapping of the York River watershed.

She advised that the project would not only produce an up-to-date Chesapeake Bay map and help with the County's Phase II compliance with the Chesapeake Bay Act, but would also assist citizens who now relied on the County's not-so-accurate RPA maps. She confirmed that those maps would have to be updated eventually and that it would save the County money and also increase its chance to obtain competitive grant funding for subdivision retrofits that might be required to meet the new stormwater regulations.

Mr. Davis noted that some of the watersheds extended into adjacent localities and asked if there was any way to work together with those localities to share the cost. Ms. Walker explained that those other localities had their own engineers and "were several steps ahead" of New Kent and had different standards to meet and a larger revenue base.

Mr. Evelyn asked about the difference between the initial \$900,000 estimate for the project and the current estimate of \$50,000. Ms. Walker explained that the initial estimate was for a lot of ground field work whereas the latter estimate was for a study that would not have much ground field work.

Board members asked how long such a study would be reliable. Ms. Walker advised that unless there was a stream change, she felt that the maps would be useful for quite some time.

There was discussion regarding whether or not wetlands were delineated on surveys.

Chuck Roadley and Jim Orrell from Williamsburg Environmental Group (WEG), the company proposed to do the project, was present and reviewed some sample maps. Mr. Roadley explained that the mapping project grew out of concern about the reliability of the County's maps. He spoke about how in 2007, the Department of Conservation Resources (DCR) changed the definition of an RPA to include connected and contiguous wetlands, and how the changing of those definitions could impact County maps.

Mr. Lawton explained that WEG was under contract as a consultant with the Community Development Department and that all that was needed was to negotiate the work and the cost. Staff from WEG advised that it would take about three months to complete the project.

Mr. Davis asked if having the maps would "change the formula" for the County's TMDL limits. Ms. Walker explained that the limits would be based on models and information received from the State. She again stated that having the maps would help the County qualify for more grants for retrofitting areas in the James River watersheds. She also confirmed that the grants that were available were for implementation, and not to pay for the updating of maps.

Board members expressed their concern that this work was being done to benefit future developers and wondered if the costs could be passed on by charging them to use the maps. Mr. Lawton advised that the maps would fall under public information and Ms. Gowdy agreed.

Ms. Walker gave a brief report on a recent TMDL conference she attended and how developers were preparing to meet the new regulations, which could include fixing existing problem areas in localities.

There was continued discussion regarding the proposed project and whether the mapping would be helpful in attracting new businesses to the County. Mr. Lawton indicated that having the maps would help delineate where buildable areas were on prospective sites.

Mr. Trout agreed that the project should be done but wondered if this was the "right time".

Mr. Burrell moved to approve a transfer of previously allocated \$25,000 as a carry forward from FY10 from line item 4-7-9100-9954 Survey Monumentation to 4-7-91000-9110 RPA Mapping and a transfer of \$25,000 from the RE Reserve Capital Projects 4-7-98000-8200 to 4-7-91000-9110 RPA Mapping. The members were polled:

James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
David M. Sparks	Absent
Thomas W. Evelyn	Aye

The motion carried.

IN RE: GRANT APPLICATION TO FUND WHITEHOUSE FARMS WATER STORAGE IMPROVEMENTS

Before the Board for consideration was Resolution R-07-11 approving a proposed application for Virginia Department of Health (VDH) Funding for water storage improvements in the Whitehouse Farms subdivision.

Assistant Director of Public Utilities Mike Lang explained that the proposed resolution would authorize the Department of Public Utilities to apply for funding, which could be in the form of a grant or low-interest loan, and at such time as the application was approved, the Board could decide whether or not to accept it.

Mr. Davis moved to adopt Resolution R-07-11 to proceed with the VDH Drinking Water State Revolving Funds Construction Funding application. The members were polled:

Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
David M. Sparks	Absent
James H. Burrell	Aye
Thomas W. Evelyn	Aye

The motion carried.

IN RE: REDISTRICTING

Assistant County Administrator Bill Whitley reviewed the Redistricting Schedule as well as proposed Redistricting Goals for the Board's consideration and adoption.

He indicated that it was staff's recommendation that three to four options be offered for the Board's consideration, noting that more could be prepared but would serve little purpose. He confirmed that community meetings would be scheduled as well as meetings with some of the minority leaders, and that the Board would need to hold its public hearing in early May so that the information could be timely sent to the Department of Justice for preclearance. He recommended that since the public hearing on the budget was scheduled for the Board's May meeting, it would be better to have a special meeting for the redistricting public hearing.

He reviewed the election timeline and deadlines, and indicated that the County would have to proceed based on the assumption that its plan would be approved, but that there was a provision where the election date could be moved back if it was not approved. He advised that the Department of Justice had up to 60 days to respond and usually did not respond any earlier.

He requested that the Board consider adoption of the proposed goals, which he explained were based upon federal law, state law, and court rulings, and would be a part of the package sent to the Justice Department showing that New Kent was in compliance.

He confirmed that the plans being developed by staff would be based on maintaining five election districts. He suggested that information should be available for the Board's review by its March 14 business meeting, and that he would talk individually with the Board members in the interim.

Mr. Burrell moved to adopt the Redistricting Goals for 2011 as presented. The members were polled:

W. R. Davis, Jr.	Aye
David M. Sparks	Absent
James H. Burrell	Aye
Stran L. Trout	Aye

Thomas W. Evelyn

Aye

The motion carried.

Mr. Whitley indicated that staff would continue to seek feedback from the Board members and would need their help in getting out information to the community.

IN RE: COURTHOUSE AREA PEDESTRIAN IMPROVEMENTS PROJECT, PHASE IV

Community Development Director George Homewood, together with Chuck Roadley and Jim Orrell of Williamsburg Environmental Group, reviewed with the Board the next phase of the pedestrian improvements project in the Courthouse which related to installing sidewalks and making other improvements along the section of New Kent Highway in front of the Historic School.

Mr. Homewood explained that this was the final phase of the sidewalk project, which had been postponed in order to see what was going to happen with the Historic School renovations and to make sure that the sidewalk design was compatible with the project. He pointed out that the design had been changed from the original master plan where the sidewalk had "meandered" in that area, to a design where the sidewalk was straight and had the same spacing in relation to the road as the other portions of the sidewalk.

He indicated that he wanted to make sure that the Board was aware of a few issues before the project proceeded, the first of which was the removal of the existing cedar trees, to be replaced with willow oaks to match what was used in the previous phases of the project. Another issue was the proposed removal of the existing turn lane in order to install the sidewalk in that area and avoid the costly relocation and/or possibility of damaging an existing fiber optic cable. He confirmed that VDOT had approved the removing of the turn lane and the installation of the sidewalk within its right-of-way. He explained that such turn lane removal would also help to slow down traffic through the Village area.

He reported that VDOT had suggested that the County consider removing one of the four entrances to the Historic School property, and he was looking for guidance from the Board on that issue.

The Board discussed current uses of the existing entrances, and decided against removal of any of the entrances. Also discussed was whether the turn lane should be removed, traffic patterns in and out of the parking lot in front of the Historic School, and the speed limit through the Village area.

Mr. Homewood explained that as soon as it was determined that the Board had no objections to any of these issues, the project would move ahead, but had to be approved by the Department of Historic Resources since that area had a historic designation.

It was the consensus of the Board to move forward with removal of the turn lane and replacement of the cedar trees, but not to close any of the entrances to the parking lot.

Mr. Homewood added that the project also included placing curbing around the large oak tree near the elementary school to keep cars from parking in its root zone area.

The Board took a short break and then resumed its meeting.

IN RE: UTILITY LINE EXTENSION POLICY

Assistant County Administrator Bill Whitley and Public Utilities Director Larry Dame reviewed a proposed Utility Line Extension Policy and development agreement template.

Mr. Whitley explained that the proposed policy provided a process through which the County could extend its water and sewer lines to properties not currently being served in order to facilitate development. He credited the County Attorney for the putting the document together and confirmed that by adopting the policy, the Board would define the responsibilities of both the County and the landowner in order to provide these services on a cost-sharing arrangement. He indicated that the County, in consideration of the economic development rewards including increased tax revenue and employment opportunities, would install the utilities to the developer's property line in exchange for a surety in the amount of the cost of the extension and an agreement to bear the costs of connection to the County's systems.

There was discussion regarding whether this would apply to those areas not designated to be served by County water and sewer. Mr. Dame explained that the Board was able to designate the sewer service areas, but that water service areas still required the approval of the Department of Environmental Quality, a process which took a minimum of six to eight months.

There was discussion regarding the reclaimed water lines and staff indicated that it would amend the language in the proposal in order to include those lines as well. Staff also explained that a conscious decision had been made not to allocate costs of any such extension to any property owners in the area who might benefit from the extension but were not parties to the agreement.

Mr. Trout expressed his concerns that the proposed agreement, as written, did not impose an obligation to actually bring a business to the site, and staff agreed to make language changes that would clarify that obligation.

Mr. Evelyn commented that the County might be "opening a can of worms". Mr. Whitley assured that the policy was setting up a process that would help support viable business development and that only serious developers would be in a position to provide the required surety and commitments.

Staff did admit that once a business was built and the surety had been released by the County, there was no way to guarantee the success of the development.

The Board discussed various scenarios where this policy would be helpful, and staff indicated that it could also help with development in Providence Forge.

It was confirmed that all agreements would have to be approved by the Board.

Staff indicated that the proposed agreement template would be in the Board's March 14 Consent Agenda for approval. Mr. Burrell suggested that he might have a conflict since he owned property on Route 33 and it was the consensus of the Board and the County Attorney that it would not be a conflict for him to vote on approval.

IN RE: UTILITY ORDINANCE CHANGES

Assistant County Administrator Bill Whitley and Public Utilities Director Larry Dame reviewed proposed changes to the Utility Ordinance.

Mr. Dame indicated that the biggest change would be moving from quarterly to monthly billing. He conceded that the Board had concerns when he first proposed that change three years earlier but he felt he had a better "feel" for the system now and was convinced that monthly billing would be better for both the County and its customers. He explained that quarterly billing cost the County in increased late fees and collections, as well as fielding customer calls, and was more expensive for customers in that it was harder for them to measure their usages and budget for payments, especially during irrigation months, and led to delays in detecting leaks.

Mr. Davis agreed, stating that he did not think there would be too many complaints about the change.

Mr. Trout noted that the County had three kinds of customers: water only, water/sewer, and water/sewer/irrigation, and asked if quarterly billing could be maintained for water only customers. Mr. Dame indicated that it was possible, but not with the County's current billing software.

Mr. Whitley commented that it was important to set up a process that would serve the County as the systems grew. It was reported that the County currently had 2,100 water customers and 900 sewer customers.

Mr. Dame explained that monthly billing would enable staff to more quickly identify "walk-away" customers and cut down on the time spent in trying to track down these customers and effect collection. He indicated that there was approximately \$18,000 in outstanding utility accounts.

It was confirmed that the amended ordinance also contained the provision for liens on properties where owners have unpaid utility bills.

Mr. Dame indicated that the ordinance would also put some "teeth" into the mandatory connection process in the Bottoms Bridge Service District, and would provide mandatory connection customers with a way to finance their connection fees at no interest over five years, which would be an incentive to connect.

He also indicated that deposits would no longer be required in light of the ability to place liens on property for unpaid bills.

He added that another change would be the ability for a customer to pay extra for after-hours reconnection when service had been shut off for non-payment, rather than having to wait until the next day.

He reviewed that the ordinance also provided for emergency water conservation when required by DEQ.

He noted that although the County had allowed "pump and haul", there was nothing in the County's ordinance to allow it, and the revisions would add that authority but set a time limit.

Staff indicated that there had been some conversation with DEQ about prohibiting private well installation and that part of the ordinance may be removed before adoption.

Mr. Dame indicated that the part of the ordinance dealing with pretreatment ordinance was based on regulations from the Environmental Protection Agency and DEQ, and when those regulations changed, a public hearing would not be needed to change the County's ordinance.

Mr. Davis asked about the possibility of the wastewater treatment plant taking waste from septic haulers. Mr. Dame explained that the County could accept that waste if it had its own laboratory and could test it, but otherwise there was no indication "where it was coming from" and could not be accepted.

He indicated that the only other changes were in format.

Ms. Gowdy advised that a section would be added on reclaimed water once DEQ had completed some work on its regulations in that area. Mr. Dame indicated that he had requested to be on a committee formed by DEQ working on that issue.

Mr. Dame stated that he knew of Mr. Sparks' resistance to monthly billing and wished he could have been present for the discussion and he would meet with him individually to review his concerns.

None of the other Board members expressed any objection to switching to monthly billing and there was consensus to schedule a public hearing on the ordinance changes at the April 11 meeting, since it would impact the FY12 budget.

IN RE: BASIC CONSTRUCTION BORROW PIT OPERATIONS ON OLD RIVER ROAD

Mr. Whitley advised that he had received notice that Basic Construction would begin intermittently hauling sand from its borrow pit on Old River Road over the next three to six weeks and Board members might receive complaints from residents along the road.

IN RE: GENERAL ASSEMBLY UPDATES

Legislative Liaison George Homewood updated the Board on General Assembly bills of interest to New Kent.

He indicated that the Senate budget was more favorable to New Kent than the House of Delegates budget; that "spice" would become illegal; that the bill to streamline the AFD process had passed both houses without a single "no" vote but that it would not address the taxation side of the process by the Commissioner of Revenue; that the surviving stormwater management bill would allow nutrient credits outside of the watershed in which the credits were needed; that VDOT would have until the end of the year to review regulations in a bill dealing with traffic impact analysis management to see which ones "made sense"; and that the worst bill was a constitutional amendment proposal to change eminent domain requirements that would substantially add grounds for claiming damages and dramatically increase the cost of land acquisition for public projects.

He noted that there were a couple of bills that would affect the County's FY12 budget process dealing with taxes on property owned by the elderly and disabled veterans, and the Business Professional Occupational License tax.

He indicated that none of the bills that would permit historic horseracing passed.

Mr. Davis asked about the Verizon suit. Ms. Gowdy explained that the case was on hold during the General Assembly session and that a conference was scheduled for April 14 on a pending motion to dismiss and motion for summary for judgment.

IN RE: MEETING SCHEDULE

The Chairman announced that the next meeting of the Board of Supervisors would be held at 6:00 p.m. on March 14, 2010, in the Boardroom of the County Administration Building, New Kent, Virginia.

IN RE: ADJOURNMENT

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

David M. Sparks	Absent
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye

The motion carried.

The meeting was adjourned at 5:55 p.m.