

THE REGULAR WORK SESSION OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 24TH DAY OF FEBRUARY IN THE YEAR TWO THOUSAND TEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 3:07 P.M.

IN RE: CALL TO ORDER

Chairman Sparks called the meeting to order.

IN RE: ROLL CALL

Thomas W. Evelyn	Absent (arrived at 4:15 p.m.)
David M. Sparks	Present
James H. Burrell	Present
Stran L. Trout	Present
W. R. Davis, Jr.	Present

Chairman Sparks announced that Mr. Evelyn would be late because of a work commitment.

IN RE: SUPPORT OF HISTORIC HORSE RACING BILL

Before the Board for consideration was Resolution R-11-10 supporting Senate Bill 513 introduced by Senator Norment which would permit historic horse racing at Colonial Downs and all off-track betting parlors.

It was reported that the bill had moved to the House Rules Committee and if adopted, not only would it provide funding for transportation, but it would also bring in additional revenue to New Kent as well as to the localities hosting the off-track betting parlors. It was suggested that copies of the resolution be e-mailed and hand-carried to all members of the subcommittee which was due to meet on the following day.

Mr. Burrell moved to adopt Resolution R-11-10 as presented. The members were polled:

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

The motion carried.

IN RE: SUPPORT OF THE LOCAL COMPOSITE INDEX FREEZE

Before the Board for consideration was Resolution R-10-10 supporting a freeze on the Local Composite Index (LCI) to complement a similar resolution recently adopted by the New Kent County School Board.

Mr. Davis moved to adopt Resolution R-10-10 as presented. The members were polled:

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

David M. Sparks

Aye

The motion carried.

IN RE: AGRICULTURAL AND FORESTAL DISTRICT (AFD) ORDINANCE CHANGES

County Administrator Cabell Lawton reviewed that staff had made some recommendations for changes to the AFD ordinance to streamline the process; however, since that time it had been discovered that there were some deficiencies in the County's program that needed to be addressed as well. He reported that staff was in the process of developing a new set of recommendations that would bring New Kent's program into compliance with the State Code and would like to come back to the Board at a future work session to discuss those recommendations.

There were no objections to staff's suggestion that the districts be reorganized so that so that there would be fewer districts than the current 25. Environmental Planning Manager Amy Walker advised that she would try to keep as many of the parcels in AFDs as she could.

There was discussion regarding the advantages of being in a conservation district instead of an AFD.

Ms. Walker did report on a current request from the children of a deceased AFD landowner, where it was proposed that the parcel be subdivided among the children and all of them except one wanted their parcels to remain in the AFD, and whether the Board would have an objection to that one subdivided parcel being withdrawn. There were no objections expressed by any of the Board members.

IN RE: PURCHASE OF DEVELOPMENT RIGHTS APPLICATION FROM MICHAEL HENRY

Planner Kelli Le Duc reviewed the current status of the application for purchase of developments rights (PDR) filed by Mr. Michael Henry. Present on behalf of the applicant was an appraiser, Ms. Edwards.

Ms. Le Duc reported that Mr. Henry's PDR application was the only one filed in 2009, and reminded that Mr. Henry had previously met with the Board who directed him to choose which of two parcels he wanted to pursue. The chosen parcel, tax map parcel 26-70, contained 130 acres and a recent appraisal ordered by the County reflected a value of \$385,000 – a value acceptable to Mr. Henry.

It was explained that there was local funding of \$310,000 in the County's PDR program and \$150,000 in available matching funds from the State, and should this application be approved by the Board, \$150,000 in State funding and \$235,000 in local funding would be used to purchase the development rights on the parcel.

There were concerns expressed by Board members that the proposed price was too high for the land in question, especially taking into consideration the lack of access, topography and wetlands involved. There was confusion as to whether the property was eligible for a parent tract subdivision. Community Development Director George Homewood commented that a parent tract would not be permitted because of the lack of public road frontage, and he felt that the maximum number of lots that could be put on that parcel would be five, with none smaller than 25 acres. Ms. Le Duc advised that the appraisal was based upon the ability for twelve lots, and had deducted for the cost of constructing the road.

Mr. Davis questioned the property's appraised value, remarking that a similar parcel had recently sold for around \$99,000. Mr. Trout expressed similar concerns, noting that the subject parcel was not under any threat of development and whether it was it worth the appraised value to keep five lots from being developed. Mr. Burrell commented that the PDR program had been set up for the betterment of New Kent and he did not see any benefit to the County in the proposal. Mr. Sparks, Mr. Trout and Mr. Davis agreed.

Ms. Le Duc reminded that Mr. Henry's was the only application that was received and the State matching funds would not be available after June of 2010.

Mr. Lawton expressed his concerns with language in the proposed agreement.

Mr. Trout commented that there were other areas in the County that were under threat of development for which the money would be better used. There was discussion whether the application could be denied or if a lower price could be negotiated, and County Attorney Michele Gowdy advised that either option was available to the Board.

After further discussion, Mr. Lawton was instructed to advise Mr. Henry that the Board was not willing to purchase his development rights for the appraised price. The Board thanked Ms. Le Duc for all of her work on the proposal, and staff indicated they would work out the issue of whether or not the property could be subdivided under the parent tract provisions of County ordinances.

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

IN RE: FARMS OF NEW KENT PLANNED UNIT DEVELOPMENT ORDINANCE CHANGES

Mr. Homewood reviewed the latest version of a proposed ordinance to amend the Farms of New Kent Planned Unit Development (PUD) ordinance. Attorney Chuck Rothenberg monitored the discussion by telephone and Mr. Evelyn arrived during the discussion. Present for the applicants were Pete Johns of New Kent Vineyards, Jim Evans of Republic Properties, and Attorney Matthew Foote. It was noted that the public hearing was concluded at the Board's February 8 meeting and a vote had been deferred until the Board's meeting on March 8.

Mr. Homewood advised that the latest version of the ordinance incorporated the direction received from the Board at its last meeting, adding that since that version was sent to the Board for review and feedback, the applicant had provided additional comments which were subsequently sent to the Board as well.

He reported that it appeared that there seemed to be agreement between staff and the applicant on all issues except a few – the first being was the number of 60-foot wide lots in Land Bay IV that would be broken down between 1,500 square foot and 1,750 square foot minimums. Jim Evans advised that because of parcel layout, they were requesting that only 17 lots be allowed to have a minimum size of 1,500 square feet and 18 homes a minimum of 1,750, which was the reverse of the numbers proposed by the County. Mr. Homewood pointed out that the applicant's proposal was more stringent and there was no objection to that change.

The next issue involved construction of roundabouts on Route 106 at the interstate interchange. Mr. Homewood noted that staff's latest version of the ordinance changes included a requirement regarding completion of the roundabouts. He indicated that the

proposed schedule had been reviewed with VDOT and deemed "doable". He advised that the current ordinance provided that the roundabouts were to be constructed by the time that the 500th dwelling unit had been constructed; however, it was his understanding that CDA funding was not sufficient to complete this construction, nor did the applicants "have the money in their wallets" to finish them and would need revenue from the sale of lots in order to complete the work.

There were inquiries about why there was insufficient CDA funding when those monies were supposed to pay for the road improvements. Mr. Johns advised that some of the CDA funds were needed to put in the nest of observations wells unexpectedly required by DEQ in the issuance of the groundwater withdrawal permit, and the remaining funds were not sufficient to complete the roundabout construction. He indicated that the total cost of the roundabout construction was about \$3.6 million, with work totaling \$1.2 million worth done to date and \$2 million worth left to complete. He reported that they did plan on proceeding with some of the work as the weather improved -- notably work on the eastbound off-ramp which seemed to be the bottleneck for trucks, and there was still some drainage and leveling work that needed to be done and they had selected that section because it was "the most dangerous corner". He indicated that they were working with their contractor to change the scope of that work in order to decrease the cost. He explained that the project was bonded at 20% by the contractor directly with VDOT. Mr. Evans added that they would like to be able to finish it up completely but it was not yet required and they needed revenue from the sale of lots in order to move forward.

Mr. Trout read language from the existing ordinance that pertained to completion of the roundabouts that set forth that the construction needed to be completed by the issuance of the 500th building permit of any type, not counting utilities. Mr. Homewood advised that although that trigger was approaching, the proposed construction did not affect the lifestyle of anyone except the truck drivers and there was no benefit to the County by speeding it up and it was his opinion that it would be best to leave that provision the way it was and allow the developer to use its funding in its development.

Board members agreed that the section regarding completion of the roundabout should remain as it was in the existing ordinance.

Mr. Homewood reviewed issues regarding the trigger for construction of the recreational facilities. He noted that the original request from the developer was to change the trigger from the platting of lots to the issuance of certificates of occupancy, based on the rationale that having recreational facilities for empty lots didn't make sense because it was the people living in homes that needed those facilities. He suggested that leaving that provision unchanged would be best because the platting of lots was something that the developer controlled. However, he noted that in the case of Land Bays I, IV and V, the 10% trigger had already been passed, which went unnoticed by both staff and the developers. He pointed out that in Land Bay I most of the facilities would be owned by third parties and not the developer or the homeowners association. Mr. Johns explained that a lot of the amenities in Land Bay I were already in place and much of the remainder was tied to the Mirbeau Spa project that was sharing amenities with the rest of the Land Bay. He reported on the problems that the spa owner was having with locating financing, despite the fact that they would have 50% equity.

Mr. Homewood suggested that an option open to the applicant would be to abandon the platting of 12 lots in Land Bay I so that it would be below the threshold and then they could continue to do what they were doing and those particular lots would not exist until they

were platted again. Mr. Johns indicated that he would discuss that option with his partners and let Mr. Homewood know of their decision.

The Board did not express any objections to Mr. Homewood's recommendation regarding leaving the roundabout construction and triggers for recreational facilities the way they were, nor with the applicants request for the number of homes in Land Bay IV that would be permitted to have reduced sizes.

Ms. Gowdy indicated that in that event, it would not be necessary to advertise the matter for another public hearing.

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 8, 2010, in the Boardroom of the County Administration Building, New Kent, Virginia.

IN RE: CLOSED SESSION

Mr. Davis moved to go into Closed Session to discuss a personnel matter pursuant to Section 2.2-3711A.1 of the Code of Virginia involving the assignment of employees. The members were polled:

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

The motion carried. The Board went into closed session.

Mr. Davis moved to return to open session. The members were polled:

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

The motion carried.

Mr. Burrell made the following certification:

Whereas, the New Kent County Board of Supervisors has convened in 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.

The Chairman inquired whether there was any member who believed that there was a departure from the motion. Hearing none, the members were polled on the certification:

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

The motion carried.

IN RE: ADJOURNMENT

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

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

The motion carried.

The meeting was adjourned at 5:21 p.m.