

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 10th DAY OF SEPTEMBER IN THE YEAR TWO THOUSAND NINE OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 6:00 P.M.

IN RE: CALL TO ORDER

Chairman Davis called the meeting to order.

IN RE: INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Burrell gave the invocation and led the Pledge of Allegiance.

IN RE: ROLL CALL

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

All members were present.

IN RE: CONSENT AGENDA

The Consent Agenda was presented as follows:

1. Approval of Minutes
 - a. July 29, 2009 work session
 - b. August 10, 2009 regular meeting
 - c. August 14, 2009 semi-annual meeting with Senior Staff
2. Miscellaneous
 - a. Resolution R-51-09 authorizing the Interim County Administrator to execute documents for Homeland Security grants
 - b. Resolution R-50-09 recognizing the services of John A. Budesky
 - c. Request to negotiate and enter an agreement with the Old Dominion Chapter of the Sports Car Club of America to hold an autocross event on the aircraft parking ramp at New Kent Airport
 - d. Road Name Additions
 - i. Cooks Mill Court
 - ii. Weatherburn Way
3. FY09 Appropriations
 - a. Revenue forthcoming from the Farms of New Kent CDA for FY08 administrative expenditures, \$18,176.00
 - b. Funds received from the Schools to assist with the purchase of the Bright & Associates FN.net package to enable employees to view their personnel and payroll records and assist with preparation of school contracts for personnel, \$1,500.00

Total Supplemental Appropriation:
\$(19,676.00) Total

\$ 19,676.00 Money In/Money Out

4. FY09 Appropriations
a. Additional cafeteria funds from excess revenue received over budget and fund balance to cover FY09 expenditures, \$52,126.96

Total Supplemental Appropriation:
\$(52,126.96) Total
\$ 29,266.24 Money In/Money Out
\$ 22,860.72 From Fund 244/Cafeteria fund balance

5. FY09 Appropriations
a. Bottoms Bridge construction funds to cover the annual administration fee for debt service, \$550.00
b. VPSA Loan Subsidy proceeds received for the new high school, \$208,140.13

Total Supplemental Appropriation:
\$(208,690.13) Total
\$ 550.00 From Fund 98/Utility fund balance
\$ 208,140.13 Money In/Money Out

6. FY10 Carry Forward Appropriations
a. Funds for the State special allocation for office space for Social Services, \$24,484.00
b. FY09 capital funds to FY10 for Fire-Rescue Squad 3, \$63,967.18
c. FY09 capital funds to FY10 for the Fire-Rescue radio tower project, \$12,807.16
d. Various FY09 general funds to FY10 for Fire-Rescue grants, donations, revenue recovery, etc., \$41,579.01
e. FY09 funds to FY10 for repairs at the historic school, \$13,096.35
f. FY09 funds to FY10 for completion of the HVAC system upgrade at the New Kent Animal Shelter, \$10,968.06
g. FY09 funds to FY10 for close-out of the DMV *Smart, Safe & Sober* grant for the Sheriff's Office, \$4,491.44
h. Funds for Phase II of the CDBG Plum Point grant not completed in FY09, \$342,095.58
i. Various FY09 capital funds to FY10 for unfinished Parks & Recreation projects to be completed in FY10, \$76,723.47
j. Various FY09 capital funds to FY10 for unfinished General Services projects to be completed in FY10, \$1,687,844.93
k. Various FY09 capital funds to FY10 for unfinished Community Development projects and grants to be completed in FY10 or later, \$179,539.30
l. Various FY09 utility funds to FY10 for unfinished Public Utility projects to be completed in FY10, \$822,799.03

Total Supplemental Appropriation:
\$(3,280,395.51) Total
\$ 265,437.19 Money In/Money Out
\$ 181,277.25 Fund 1 – General fund balance
\$ 1,976,036.62 Fund 7 – Capital fund balance
\$ 40,095.42 Fund 20 – Meals Tax fund balance

\$ 817,549.03 Fund 98 – Utility fund balance

7. FY10 Appropriations
 - a. Federal funds for Courthouse Village Improvements/Enhancements grant, \$199,500.00
 - b. Funds for FY10 Fire-Rescue revenue recovery to cover bank fees and charges from DAB to administer account, \$1,847.00
 - c. Funds received to date for Fire-Rescue revenue recovery for Fire-Rescue personnel, \$17,619.00
 - d. Funds for public safety coverage at Colonial Downs and various events for July and August, 2009, \$24,424.00
 - e. Funds for Parks & Recreation program sponsorship revenue, \$900.00
 - f. Additional State funds for operating costs associated with emergency social workers for adult and child protective services, \$626.00
 - g. Funds donated to Fire-Rescue, \$455.00
 - h. Funds donated to New Kent Animal Shelter, \$413.00
 - i. Adjust Victim/Witness budget for FY10 to correspond with amounts awarded by the Virginia Dept. of Criminal Justice, \$1,433.00
 - j. Funds for a Dept. of Justice bullet-proof vest program grant OMB #1121-0235, \$2,676.00
 - k. State Fire Program funds awarded in excess of FY10 budgeted amount, \$2,338.00
 - l. Funds received from the State for postage for the Juvenile & Domestic Relations District Court, \$1,000.00
 - m. FY10 Federal Revenue Recovery funds for Special Education for the Schools, \$150,000.00
 - n. Funds for the FEMA SAFER grant for Fire Rescue for FY10, \$231,473.00
 - o. Social Services emergency food and shelter program Federal grant funds, \$5,059.00
 - p. Adjust Social Services FY10 adopted budget to actual figures approved by the State and allocated to expenditures in the manner they will be expended in FY10, \$9,824.00
 - q. Program income received to date for FY10 from CDBG Plum Point grant participants, \$1,459.03

Total Supplemental Appropriation:	
\$(631,398.03)	Total
\$ 591,498.03	Money In/Money Out
\$ 39,900.00	From Fund 7 – Capital fund balance

8. FY09 Inter-Departmental Budget Transfers
 - a. *Grants:* \$8,130 from Grant Contingency to DMV Grant – *Smart, Safe & Sober*
 - b. *Training:* \$415 from Reserved for Contingency and Professional Services to Travel line items for the Clerk of the Board and Treasurer
 - c. *Fire Rescue:* \$8,527.00 from Overtime, SAFER Contingency, and Part-time Salaries to Salary line items, SAFER line items, and Vol. Supplement
9. FY10 Inter-Departmental Budget Transfers
 - a. *Public Utilities:* \$4,232 from Generator Fuel to Diesel Fuel
 - b. *General Services:* \$2,654 from Landscaping to Repairs and Maintenance Historic School
 - c. *Heating Services:* \$832 from Fire-Rescue to Tower budget

- d. *Social Services*: \$4,262 from Reserved for Contingency to salary line items for emergency social workers
- e. *Schools*: \$31,930 from School Buses and Appropriations from Prior Years to Motor Vehicles
- f. *Sheriff's Office*: \$2,676 from Grant Contingency to Kevlar Vest Grant Program
- g. *Training*: \$26,018 from Reserved for Contingency-Training to Travel and Career Development line items for Clerk of Board, County Attorney, Human Resources, Commissioner of Revenue, Financial Services, Circuit Court Judge, Crater Criminal Justice, Sheriff, Building Development, Dispatch, Building & Grounds, Planning Administration and Social Services

10. Treasurer's Report: Cash in Bank as of July 2009: \$26,380,406.85

Mr. Trout moved to approve the Consent Agenda and that it be made a part of the record. The members were polled:

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

The motion carried.

IN RE: CITIZENS COMMENT PERIOD

Chairman Davis opened the Citizens Comment Period.

Nick Sumner of 8485 Airport Road spoke in opposition to a pending conditional use permit application which would allow a mini-storage facility to be constructed at the intersection of New Kent Highway and Airport Road, commenting about inconsistencies in statements made by the applicant.

There being no one else signed up to speak, the Citizens Comment Period was closed.

IN RE: RESIDENCY ADMINISTRATOR'S REPORT

Torrence Robinson, Residency Administrator with the Sandston Residency of the Virginia Department of Transportation, reported on issues regarding roads in New Kent County.

He advised that maintenance work during the previous month had included blading graveled roads, installing culverts in the Plum Point neighborhood, bridge cleaning, curb and cutter work, litter control, pipe installation, pavement repair, and tree removals.

He referred to information that had been provided regarding Wingapo Road that included a preliminary estimate for bringing that road into the State system for maintenance.

He indicated that pavement repairs on eastbound Route 60 in Bottoms Bridge had been completed and that a replacement sign had been installed on Route 601.

He spoke about the good turnout for the community meeting held the prior evening regarding options for intersection improvements, including a roundabout, for Route 249 and

Route 612. Mr. Evelyn thanked Mr. Robinson and his staff for their presentation which he felt was very informative and had produced some "good input" from his constituents. Mr. Robinson indicated that VDOT would like a decision by the Board on the options for that intersection as soon as possible and, after discussion, it was agreed that the Board would make a determination at its October 13 meeting.

Mr. Burrell thanked Mr. Robinson and his staff for their participation in the community meeting, commenting that many of the residents who had been skeptical of roundabouts were more supportive after the presentation. Mr. Evelyn agreed.

Mr. Trout thanked Mr. Robinson for the information on Wingapo Road. He indicated that he felt there were other similar situations in the County and State where roads in some of subdivisions were accepted into the State system for maintenance and other roads containing less than three houses were not. He stated that in those instances, by the time more houses were built on those roads, the developer was often no longer around to pay for work needed to bring the roads up to the standards to be accepted, and property owners on those roads often had the misconception that the State was responsible for maintenance. In the case with Wingapo Road, it was his understanding that the original developer did some additional work on the road a few years back and it may have been for the purpose of having it accepted by the State, and further, the State may have actually done some pavement repairs work on Wingapo Road. Mr. Robinson indicated that he would check their records and report back on any work that had been performed during the past five years.

Mr. Trout referred to a constituent request for an additional stop sign at the intersection of Waterside Drive and Rockahock Road. Mr. Robinson reported that the request had been forwarded to their traffic engineer.

Mr. Trout reminded that flooding remained a problem on South Waterside Drive. He asked if CSX had advised when they would return to finish up work on the railroad crossing on South Waterside Drive. Mr. Robinson indicated that they had not received any information from CSX but had asked them to address some rutting problems on the crossing at Route 106. Mr. Trout advised that it was his information that a third track may be installed through New Kent which would require additional crossing work.

Mr. Davis thanked Mr. Robinson for the work done to date in Plum Point and advised that none of the rehabilitation work would affect the remainder of the roadwork to be completed.

IN RE: ALVIS/HORSLEY CONDITIONAL USE PERMIT

Before the Board for consideration was Resolution R-29-09 regarding an application filed by Chester Alvis and David Horsley, Sr. for a conditional use permit (CUP) to construct and operate a mini-storage facility at the southeast quadrant of the intersection of Route 249/New Kent Highway and Route 612/Airport Road.

Planner Matthew Ebinger advised that the subject property was identified as tax map parcels 21-6-8A and -8B. He noted that the Planning Commission had reviewed the application and held a public hearing on June 15, 2009, and the Board had subsequently held its public hearing on July 13, 2009, and deferred its vote.

He advised that the application reviewed by the Planning Commission and by the Board at its work session called for a maximum building height of 20 feet, and the applicant had asked for an increase to 35 feet for the Board's public hearing, but had since changed his

request back to 20 feet. It was clarified that the maximum height restriction in the CUP would only apply to mini-storage uses at that site, and that the 50-foot maximum height restriction provided in the zoning ordinance would apply to any other allowable business uses at that intersection.

Mr. Trout expressed his concern that the proposed language could permit two 20-foot storage units to be stacked on top of each other. Mr. Ebinger reported that the intention was that the structure be limited to 20 feet.

Mr. Trout also advised that the newest sketch showed fewer units than what had originally been submitted. Mr. Ebinger clarified that what had been submitted were only conceptual sketches and the number of units and/or square footage would not be limited by the CUP but would be determined at the site planning stage, based upon having adequate vehicle circulation and access to the units.

Mr. Trout added that he was also concerned that whatever was permitted at that site should complement and have the same scale as the surrounding neighborhood. He was uncomfortable with not having a limit on the number of units or square footage and suggested that the application be returned to the Planning Commission to consider some limitations.

There was discussion regarding other mini-storage businesses in the County, and it was pointed out that the current regulations were not in force when those facilities were constructed.

Community Development Director George Homewood reminded that the only issue under consideration was a CUP for mini-storage and if it were approved with a condition that restricted building height to 20 feet, then anything else built there for another use could be 50 feet in height, as allowed in the zoning ordinance.

Mr. Trout advised that he also had a problem with outside storage of any variety, including recreational vehicles (RVs) and boats. It was confirmed that the proposed language would permit outside storage of those vehicles.

Mr. Burrell and Mr. Davis advised that they were only concerned that outside storage be screened and not visible from the roads. Mr. Ebinger confirmed that the proposed language would require that all outside storage be screened, which could be accomplished with a combination of fencing and the units themselves. Mr. Trout pointed out that RVs or boats could be taller than 20 feet and would be visible.

Mr. Sparks commented that the property could be filled with a variety of business uses over which the County would have no control, and he did not feel that the Board could control what someone did with their property if it did not violate County Code.

It was reported by staff that the proposed use would have to comply with the screening requirements set forth in the County's landscape ordinance, and that those requirements could be enhanced by a CUP, which in this case called for the existing vegetation to remain as part of the buffer. It was also confirmed that the proposed use would also have to comply with the lighting requirements in the zoning ordinance, with an added condition that no site lighting would exceed 20 feet in height.

Mr. Davis asked how future intersection improvements would impact the project. Mr. Ebinger confirmed that the design took into account the amount of property needed for right-of-way for either a roundabout or a turn lane, and would not be an issue.

Mr. Evelyn moved to adopt Resolution R-29-09, with the following amendment: no structure containing mini-storage units shall exceed 20 feet in height. The members were polled:

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

The motion carried.

IN RE: COURTHOUSE DEVELOPMENT DISTRICT

The Board received a briefing on a proposed Courthouse Development District from Community Development Director George Homewood.

Mr. Homewood distributed additional handouts and clarified that his presentation was to provide information only and no action was being requested by the Board at this time. He indicated that the proposal was scheduled for review by the Planning Commission at its September meeting and would thereafter come to the Board to review and discuss in detail.

He reviewed that New Kent's Comprehensive Plan adopted in 2003 contained very strong "smart growth" concepts to concentrate the County's growth in the proposed village and hamlet areas, all of which would be areas of comparable designs that provided for multiple uses to allow residents to live, work and play all in the same vicinity, and that the Zoning Ordinance Rewrite Committee (ZORC) had worked hard to develop a recommendation on how to implement the Plan as it pertained to villages and hamlets.

He noted that John Crump, developer of the Maidstone and Preservation Office Park, had begun construction and encountered a "very real road block" caused by the County's existing zoning not being in line with the concept of where his developments were heading. He indicated that everyone agreed that the direction of Mr. Crump's developments was what the Comprehensive Plan envisioned and, for that reason, a partial solution was being recommended that dealt with the Courthouse village only. He indicated that staff would be back in the next month or so with recommendations on the remainder.

Mr. Homewood stated that ZORC had proposed a floating district overlay with a voluntary "opt in" component for the Courthouse area covering parcels on the north and south of Route 249, including a substantial amount of undeveloped property. He noted that staff's recommendation was 95% the same as that of ZORC, with the difference being that it proposed to establish a fixed district that would only encompass the property on the south side of Route 249 which would include the Maidstone and Preservation Office Park developments, the school properties, courthouse, County government campus, and the post office property. He pointed out that Village areas could have densities of between four and fifteen units per lot, which could generate between 800 and 3,000 units in the Courthouse area if ZORC's recommendation was adopted. He advised that staff was recommending the adoption of its proposal in a limited area to make sure that it worked before applying it to a larger one.

He noted that there was a provision included in the proposal that should a Transfer of Development Rights (TDR) program be adopted, then development rights from elsewhere in the County could be moved into the Courthouse area to help keep the rest of the County rural. He admitted that ZORC was not aware of the proposed TDR program when it was working on its recommendation, but he felt ZORC would agree that it was something that made sense for New Kent.

Mr. Evelyn asked if meetings were ever held with the landowners in the proposed district, as had been proposed by ZORC. Mr. Homewood advised that there had been some miscommunication among staff regarding whether such a meeting was needed because of the latest recommendation of a more limited area with just three landowners.

Mr. Homewood reviewed maps with the Board that reflected those parcels that were proposed for inclusion in the Courthouse Development District.

ZORC Chairman, Julian Lipscomb, was asked to comment on the latest proposal. Mr. Lipscomb stated that ZORC had spent a lot of time on this and had been told that the State was requiring every locality to have an Urban Development Area (UDA) that could absorb population growth that had to include public and private property, residential and commercial, and utilities, and that the Courthouse area was the only one that would meet those requirements. He admitted that the ZORC did not like the title "Urban" and had called the district a Rural Development District instead. He maintained that he felt that ZORC's recommendation was the better option, and if Mr. Crump's development was being impeded, then the process could be sped up if the Planning Commission and Board of Supervisors were to hold a joint public hearing. He indicated that ZORC had worked closely with the County Attorney on meeting the requirements for a UDA.

Mr. Summers explained that UDAs, as originally enacted, were designed to absorb 20 years' worth of growth and every locality was supposed to have one. He admitted that the County could adopt ZORC's recommendation and be "off the hook" with the State, but he reported that there were no State enforcement mechanisms in place and he predicted that the General Assembly would be modifying the UDA requirements because they did not work in rural areas.

Mr. Homewood added that UDAs were required to be a part of a comprehensive plan but were not required in the zoning ordinance. He indicated that the State Code requirement that UDAs provide a minimum floor area ratio of 0.4 per gross acre for commercial development was one of the more difficult requirements to meet and that staff had been able to locate only one locality in the State that could meet that requirement, and he agreed with Mr. Summers that there would likely be changes to the UDA in 2010. He indicated that there were several competing positions being studied and staff would continue to move forward to prepare to meet whatever the requirements were.

He reiterated that no action was needed from the Board at this time and he was only bringing the Board up to date on what was happening.

Mr. Evelyn requested that staff meet with ZORC members to obtain their input on the recommended changes. Mr. Homewood advised that he would report back to the Board at its September 23 work session.

Mr. Sparks suggested that in the future, providing an Executive Summary would be most helpful to the Board members so that they would know what the main issue was and what

recommendations were being made to address it.

IN RE: ELECTED OFFICIALS' REPORTS

Mr. Trout announced September 11 commemoration activities as well as other events planned for September and October.

Mr. Burrell reported that electronic recycling had been temporarily suspended at the main refuse site because of a violation by the vendor, and a search was underway for a new vendor. He suggested that signs be erected at the site to notify citizens.

Mr. Sparks announced details of an upcoming flu vaccine clinic.

Mr. Evelyn thanked those who had attended his recent community meeting, and welcomed Mr. Whitley to his first meeting as Interim County Administrator, commenting that he felt it had been an easy transition for everyone.

Mr. Davis expressed similar sentiments. He also displayed a sample of the new permanent vehicle decal that would be in effect beginning with the 2009 tax season.

IN RE: STAFF REPORTS

Mr. Whitley reported that fourteen bids had been received for the Reclaimed Water Line Project, with Godsey & Sons being the apparent low bidder at \$2.84 million. He advised that five bids had been received on the other portion of the project which involved modifications at the Chickahominy plant, with Enviroscape Inc. being the apparent low bidder at \$1,145,500, bringing the total project to a little less than \$4 million. He indicated that once it had been confirmed that the proposals met all of the requirements, the Board would be asked to make the contract awards. There was discussion to the effect that bids for projects nationwide were coming in under estimates and that there were a lot of companies looking for construction work.

Mr. Whitley reported on expected impacts from the recent budget announcements by the Governor. He advised that it appeared that funding for the school system would not be impacted for the current year, and that funding reductions for the County, including that for the constitutional officers, would be around \$118,500. However, he cautioned that it appeared that the State was using next year's funds to minimize impacts for the current year, which would make next year's budget even more challenging. He advised that he would keep the Board apprised as to any changes. He noted that in years past, the Board held a budget retreat in October and it might want to schedule that a little later in the year so that there might be more definitive information from the State.

IN RE: DISTRICT APPOINTMENTS

There were none.

IN RE: NON-DISTRICT APPOINTMENTS

Mr. Trout explained that alternate appointments to certain regional boards were needed to replace John Budesky. He noted that the bylaws for one of those groups required that the appointee live in the County.

Mr. Trout moved to appoint William H. Whitley as one of New Kent's alternate representatives to the Metropolitan Planning Organization to complete a term ending December 31, 2011.

Mr. Trout moved to appoint Rodney Hathaway as New Kent's alternate representative to the Richmond Regional Planning District Commission to complete a term ending December 31, 2011.

The members were polled:

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

The motions carried.

IN RE: MEETING SCHEDULE

The Chairman announced that the Board of Supervisors would hold its next regular business meeting at 6:00 p.m. on Tuesday, October 13, 2009, and its next work session at 3:00 p.m. on Wednesday, September 23, 2009, both in the Boardroom of the County Administration Building, New Kent, Virginia. It was also announced that the Board would meet at 6 p.m. on October 1, 2009, in closed session to review applications for the County Administrator position.

IN RE: CLOSED SESSION

Mr. Burrell moved to go into Closed Session for consultation with legal counsel pursuant to Section 2.2-3711A.7 of the Code of Virginia regarding specific legal matters that require advice, to discuss a personnel matter pursuant to Section 2.2-3711A.1 involving compensation for an employee, and for discussions relating to business and industry development pursuant to Section 2.2-3711A.5 of the Code of Virginia. The members were polled:

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

The motion carried. The Board went into closed session.

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

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

The motion carried.

Mr. Evelyn 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:

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

The motion carried.

IN RE: ADJOURNMENT

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

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

The motion carried.

The meeting was adjourned at 8:10 p.m.