

COUNTY OF HENRICO, VIRGINIA
BOARD OF SUPERVISORS
SPECIAL MEETING
November 10, 2009

The Henrico County Board of Supervisors convened a special meeting on Tuesday, November 10, 2009 at 4:30 p.m. in the County Manager's Conference Room, Administration Building, Henrico County Government Center, Parham and Hungary Spring Roads, Henrico County, Virginia.

Members of the Board Present:

David A. Kaechele, Chairman, Three Chopt District
Patricia S. O'Bannon, Vice Chairman, Tuckahoe District
James B. Donati, Jr., Varina District (arrived at 4:42 p.m.)
Richard W. Glover, Brookland District
Frank J. Thornton, Fairfield District (departed at 5:16 p.m.)

Other Officials Present:

Virgil R. Hazelett, P.E., County Manager
Joseph P. Rapisarda, Jr., County Attorney
Barry R. Lawrence, CMC, Assistant to the County Manager/Clerk to the Board
Tanya B. Harding, Administrative Assistant/Deputy Clerk to the Board
George T. Drumwright, Jr., Deputy County Manager for Community Services
Angela N. Harper, Deputy County Manager for Special Services
Leon T. Johnson, Deputy County Manager for Administration
Robert K. Pinkerton, P.E., Deputy County Manager for Community Operations
Randall R. Silber, Deputy County Manager for Community Development
Tamra McKinney, Director of Public Relations & Media Services
C. Michael Schnurman, Jr., Legislative Liaison
John A. Vithoulkas, Director of Finance/Special Economic Adviser

Mr. Kaechele called the meeting to order at 4:36 p.m.

Mr. Hazelett briefly referred to the three items listed on the agenda.

Dissolution of the Short Pump Town Center Community Development Authority

Mr. Hazelett recognized Mr. Vithoulkas, who narrated a brief Power Point presentation on the current status of Short Pump Town Center Community Development Authority (CDA). Mr. Vithoulkas noted that the CDA was created by the Board of Supervisors on September 26, 2000 pursuant to the Virginia Water and Waste Water Authorities Act to provide financing for *public improvements associated with the Short Pump Town Center project*. He advised that the Board would be considering a resolution at its regular meeting later in the evening to

dissolve the CDA since the \$25.5 million of taxable special assessment revenue bonds had been paid in full and all obligations of the CDA in connection the bonds had been satisfied. Mr. Vithoukas reviewed the tax revenues generated by the Center and the surplus of taxes over debt service. He concluded his presentation by reviewing CDA criteria, including project size, type of development, necessity of the CDA, debt limits, credit rating, impact on services, financial stability, and hold harmless. Following the presentation, Mr. Vithoukas and Mr. Hazelett responded to questions from the Board regarding the interest rate for the bonds, schedule of payment for the bonds' principal and interest, allocation of sales tax revenues generated by the project, and procedure for sale of the bonds.

Mr. Hazelett recognized the following persons in the audience who were instrumental to the Short Pump Town Center project and CDA: Tommy Pruitt, President of Pruitt and Associates; Wilson Flohr, Chairman of the CDA Board; and Bill Axselle, Counsel to the CDA. Mr. Pruitt addressed the Board. He noted the CDA's instrumental role in the development of Short Pump Town Center, thanked the Board of Supervisors and County staff for taking a chance with the project and the CDA, referred to Mr. Hazelett's early and steadfast insistence on a five and one-half year amortization schedule for the CDA bonds, and thanked Mr. Flohr for his leadership on the CDA Board. Mr. Hazelett responded to a question from Mr. Kaechele concerning the status of revenues generated by the out parcels of the Center. Mr. Kaechele expressed appreciation to everyone who served on the CDA Board and to the members of the County staff who were involved with the project. He commented on the success of the Center and the outlying development stimulated by the Center. Mr. Hazelett closed discussion of this item by predicting that the Center will generate a huge amount of revenue for the County for a long time into the future.

Proposed Ordinance Amendments Pertaining to Noise

Mr. Hazelett recognized Mr. Rapisarda, who in turn acknowledged the efforts of Assistant County Attorney Ben Thorp, Senior Assistant County Attorney Karen Adams, and Deputy Commonwealth's Attorney Duncan Reid for their work on the proposed ordinance amendments. Mr. Rapisarda pointed out that this ordinance is enforced in General District Court by the Commonwealth's Attorney's Office rather than by the County Attorney's Office. He then recognized Mr. Thorp, who narrated a Power Point presentation on the proposed ordinance amendments. Mr. Thorp stated that the proposed amendments were being proposed because of an April 17, 2009 Virginia Supreme Court ruling in the case Tanner v. City of Virginia Beach, whereby the Court found the City's ordinance to be unconstitutionally vague. Like Virginia Beach, Henrico County's ordinance has been using the "reasonable person" standard. In addition to explaining why the amendments were being proposed, Mr. Thorp reviewed the County's current noise ordinance, the volume and type of noise complaints received by the County, two possible approaches to the ordinance, ordinance considerations, the ordinance proposed by staff, enforcement alternatives and penalties under Section 10-71 of the County Code, prohibited noises enumerated in Section 10-73 of the County Code, the eight categories of noise regulated, specific exemptions to the ordinance under Section 10-74 of the County Code, and four categories of noise proposed for elimination.

During Mr. Thorp's presentation, he responded to numerous questions and comments from the Board. Mr. Hazelett, Mr. Rapisarda, Mr. Reid, and Mrs. Adams also responded. The questions raised included how the "per se" approach recommended in the proposed ordinance differs from the "reasonable person" standard, why staff was not recommending a decibel-based ordinance and the use of noise meters, objective criteria such as frequency that would be used with a "per se" approach, the severity of penalties in the proposed ordinance for animal noise, the status of Virginia Beach's appeal of the Tanner decision, the circumstances that initiated the Tanner litigation, the process for citizens to file a noise complaint summons with a magistrate, whether community maintenance staff and police officers can enforce noise ordinance violations, logistical concerns in pursuing noise ordinance violations related to trash and recycling collection, the current absence of civil penalties for noise violations under Virginia state law, whether commercial trash collection is regulated in B-2 districts under the County's zoning ordinance, whether the "plainly audible" standard will be upheld in court, the categories of noise that would be subject to 24-hour prohibition under the proposed ordinance, who is the liable party in noise ordinance violations related to trash and recycling collection, the role of the County Attorney's Office in noise ordinance litigation, the types of noise that would be considered violations in the amplified sound category, the types of animals that would be included in the noise regulation category for animals, the hours during which trash and recycling collection noise would be prohibited under the proposed ordinance, the rationale for using 11:00 p.m. as the trigger time for prohibiting noise in several different categories, whether the proposed ordinance would regulate All Terrain Vehicles (ATVs) and the shooting of firearms, whether exemptions under the proposed ordinance would include religious activities and ambulances, and how miscellaneous noises not enumerated in the proposed ordinance would be handled. There was considerable discussion by Mr. Glover, Mr. Rapisarda, and Mr. Reid pertaining to the enforcement process under both the current and proposed ordinances. Mrs. O'Bannon voiced concern that localities do not have the option of imposing civil penalties for noise ordinance violations under existing State law. Mr. Glover expressed and reiterated concerns about placing the burden on citizens to request summonses from magistrates for noise ordinance violations, particularly those related to trash collection and recycling.

Mr. Hazelett concluded the discussions by advising that staff would like to schedule a public hearing on a proposed noise ordinance for the second meeting in January 2010. He noted that the County Attorney's Office will need time to research and clarify some of the issues raised by the Board and to make changes suggested by the Board. Mr. Hazelett stated that another work session on the proposed ordinance would be scheduled for November 24, 2009 and introduction of a proposed ordinance would be placed on the December 8, 2009 regular meeting agenda.

The Board recessed for dinner at 6:10 p.m. and reconvened at 6:18 p.m.

Proposed State Stormwater Regulations

Mr. Hazelett noted that proposed State stormwater management regulations had been discussed by County officials earlier in the week during the Virginia Association of Counties Annual Conference. He referred to a draft resolution prepared by the Department of Public Works expressing opposition to the regulations. Mr. Hazelett then recognized Jeff Perry, Engineering and Environmental Services Manager for the Department of Public Works, who narrated a

Power Point presentation titled *The Perfect Storm - Effects of Pending Stormwater Program Requirements*. Mr. Perry advised that new stormwater regulations adopted by the Virginia Soil and Water Conservation Board on October 5, 2009 will go into effect on July 1, 2010. He discussed impacts of the regulations on development and redevelopment, impaired waters and their total daily maximum loads (TMDLs) for fecal limits, active management for sediment, National Pollutant Discharge Elimination System (NPDES) and Municipal Separate Storm Sewer System (MS4) permit reissuance, significant staffing impacts relating to Norfolk's draft permit, impacts of the proposed regulations on local policies and programs, the costs of the proposed regulations to the County, Virginia localities that have adopted a stormwater utility tax, stormwater personnel in selected Virginia localities, a bipartisan State legislative committee known as the Joint Commission on Rules (JCAR) with the authority to review the proposed regulations, and a site layout comparing current and proposed regulations. During his presentation, Mr. Perry and Mr. Rapisarda responded to a number of questions from the Board relating to sediment discharge responsibilities and management for road construction and other construction projects, whether the County has the option of bringing suit against the Environmental Protection Action (EPA), whether the proposed regulations could be considered a legal taking of private property, the criteria used by EPA in establishing numerical limits on discharges and pollutants, how fines are imposed for violations of NPDES permits, the number of combined sewer systems in Henrico County, the County's responsibility for complying with TMDL fecal limits placed on the five watersheds in Henrico, how localities with a stormwater utility tax are assessing and collecting the tax, whether any new stormwater or environmental regulations have been proposed for farming operations, and proposals to cultivate a new oyster in waters off of the Eastern Shore.

Mr. Hazelett concluded the discussions by noting that staff had previously briefed Board members individually on the proposed regulations. Mr. Pinkerton distributed a copy of the draft resolution prepared by staff expressing opposition to the regulations. Mr. Hazelett stated that unless there were any objections from the Board staff would bring the resolution to the Board for its consideration at the Board's November 24, 2009 regular meeting. He commented that the resolution would be circulated to other affected localities and the central Virginia State legislative delegation. Mr. Hazelett further commented that the proposed regulations would significantly impact development in Henrico County and result in increased housing costs. He asked that Board members notify him of any suggested changes to the draft resolution.

Mr. Hazelett briefly reviewed the agenda for the evening meeting, which included five zoning cases three other public hearing items, and four general agenda items. He noted that Mr. Rapisarda had previously briefed Board members on the ordinance introduction Board paper that would make technical corrections in the text relating to several polling places in the County.

There being no further business, the meeting was adjourned at 6:56 p.m.

David A. Kaechele
Chairman, Board of Supervisors
Henrico County, Virginia