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PLANNING COMMISSION  
County of New Kent

MINUTES

THE REGULAR MEETING OF THE NEW KENT COUNTY PLANNING COMMISSION WAS HELD ON THE 19<sup>th</sup> DAY OF SEPTEMBER IN THE YEAR TWO THOUSAND FIVE OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING 6:30 P.M.

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IN RE: CALL TO ORDER

Chairman Jay Hubbard called the meeting to order at 6:30 pm.

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IN RE: INVOCATION AND PLEDGE OF ALLEGIANCE

Reverend Milton Hathaway, New Covenant Community Church led the invocation and Pledge of Allegiance.

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IN RE: ROLL CALL

Attendance:

Jack Chalmers	Present
Thomas Evelyn	Present
Howard Gammon	Present
Sylvia Godsey	Present
Mark Hill	Present
Jay Hubbard	Present
Charna Moss	Present
Edward Pollard	Absent
Sam Snyder	Present
Tommy Tiller	Present
Patricia Townsend	Absent

Also attending:

Rodney Hathaway, Planning Manager  
George Homewood, AICP, Director of Community Development  
Phyllis Katz, County Attorney  
Pam Crosby, Recording Secretary  
John Budesky, County Administrator

Chairman Hubbard established that there was a quorum.

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IN RE: APPROVAL OF MINUTES

A motion was made by Ms. Snyder and second by Mr. Chalmers, to approve the minutes of the 15 August 2005 – Regular Meeting amending the results of the motion to approve

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application S-24-05 Paddock at Brickshire Resolution PC-24-05 so that it states that the motion *carried* and not failed.

The members were polled:

Jack Chalmers	Aye
Thomas Evelyn	Aye
Howard Gammon	Aye
Sylvia Godsey	Aye
Mark Hill	Aye
Jay Hubbard	Aye
Charna Moss	Aye
Edward Pollard	Absent
Sam Snyder	Aye
Tommy Tiller	Aye
Patricia Townsend	Absent

The motion carried, 9:0:0

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A motion was made by Mr. Chalmers and second by Mr. Evelyn, to approve the minutes of the 29 August 2005 – Work Session as presented.

The members were polled:

Jack Chalmers	Aye
Thomas Evelyn	Aye
Howard Gammon	Abstain
Sylvia Godsey	Aye
Mark Hill	Aye
Jay Hubbard	Aye
Charna Moss	Aye
Edward Pollard	Absent
Sam Snyder	Abstain
Tommy Tiller	Aye
Patricia Townsend	Absent

The motion carried, 7:0:2

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IN RE: CITIZEN COMMENT PERIOD

Chairman Hubbard reminded the citizens that at this time the citizen comments would be heard and are limited to those on planning related issues that are not scheduled for a public hearing later on the agenda. Those wishing to speak should sign up on the sheet at the back of the room prior to the meeting is required.

Mr. Ed Hayes, Deer Run Road commented on the Agricultural and Forestal District (AFD) Program. Commenting on the statement made by a Commissioner that the land that is in the Agricultural and Forestal District costs the County money is, in his opinion, incorrect. Mr. Hayes stated that money is not collected or lost. There is a shift of

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dollars away from those that are in the AFD towards those that are not in the AFD.

[Mr. Edward Pollard arrived at about 6:40]

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SHERIFF'S DEPARTMENT UPDATE

Sheriff Howard reported on the officers that went to the Gulf to assist in the Hurricane Katrina Effort. The officers returned on Saturday, September 17, 2005. While in the gulf they assisted at the Red Cross distribution sites and road blocks for those limited to Biloxi, MI. They worked closely with other police departments from around the country and the National Guard. The officers reported that the spirit of the people in Biloxi is unbelievable.

Sheriff Howard stated that we are still accepting donations at a location behind the Sheriff's Department.

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IN RE: UNFINISHED BUSINESS

None.

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IN RE: PUBLIC HEARINGS

*PUBLIC HEARING AT 7:00 PM or as soon thereafter as possible*

**Capital Improvement Program:** The proposed FY 2007- 2011 Capital Improvement Program involves general fund as well as utility fund projects. Copies of the proposed CIP/General Fund and CIP/Utility fund (summary as well as detailed version) are available for review in the Department of Community Development. The proposed CIP contains projects totaling approximately \$133 million of which about half are utilities projects.

The Public Hearing was opened.

Ed Hayes of Deer Run Road spoke in opposition of the CIP commenting on the inadequacies of the CIP. Mr. Hayes commented on previous years CIP meetings. He stated that East West Partners offered to pay for a majority of the water and sewer work in Bottoms Bridge. Mr. Hayes stated that the Board of Supervisors argument seems to be three fold they must have commercial investment/industrial development to broaden the tax base, but what they do not tell people is that commercial and industrial development follows residential growth; the government wants to spend money on a spec building, do you think that C&F will finance this type of building. A year after the Board of Supervisors leave office, taxes will double. Many items in the CIP are made to assist developers not home owners. Our county administrator has stated the CIP is not a wish list, of course it is.

The public hearing was closed.

The commissioners asked questions.

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Ms. Snyder read from a type written statement (attached) for the record, stating that she will be abstaining from voting.

Mr. Chalmers stated that we have discussed this as a wish list: I know that Mr. Hill doesn't like that it is a wish list. The way I understand a CIP, is that once we get to the budgeting part it will change significantly. It is a wish list and we are prioritizing it and the people at the bottom of the list aren't going to get what they want because we will run out of money. I understand that we are not going to raise taxes to meet this CIP.

Ms. Snyder: I feel that it would be helpful to know what is actually allocated in the CIP.

Mr. Hubbard stated that he would like staff to come forward and tell this body what we are actually charged with, have we been charged with prioritizing and to pass it on to the Board of Supervisors. Mr. Hathaway responded that yes the Planning Commission is charged with prioritizing and to make sure that the items are consistent with the Comprehensive Plan.

Mr. Hubbard stated that he feels that the Commission has done what they are supposed to do; he is not saying that they are approving what the citizens will be spending, they are not charged with that.

Mr. Pollard stated that we have not done everything that we were expected to do according to the code.

Ms. Katz responded that the first part of section 15.2-2239 states "A local planning commission may, and at the direction of the governing body shall, prepare and revise annually a capital improvement program..." that is what your function is and what you received is direction from the board on the items that they feel should be in the capital improvement plan and they want you to follow these instructions and look at it, prepare it and revise it and make a recommendation to the board. Who gives you the draft of the document is a clerical function. I think that you are aware that this is not a budgeting process.

Ms Snyder asked about the statement "The capital improvement program shall include the commission's recommendations and estimates of cost of the facilities and the means of financing them..."

Ms. Katz responded that it means just as you read.

Mr. Pollard stated that he has some concern for the request for a speculative building and would like it to not be included, as well as spending more money on the airport.

Mr. Evelyn stated that he agrees that this is a wish list, however it is difficult to approve something that is this much money and not know where the money is coming from. However does understand that it is not the Commission's job to approve it and that we should recommend it and move on.

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Mr. Budesky spoke, stating that because of your diligence; we were able to research some projects, make some changes and answer some questions. I do want to be clear in that while we are asking for some of these projects and looking at the dollar figure, this is not all county tax payer dollars. Many of these will not happen if we do not receive grants, matching funds, donations. A question was raised about the possibility of projects being moved around; many of these projects will not happen when presently scheduled, if they happen at all it could be in the years to come. Depending on if grants come in or matching funds are received. We will not burden our citizens. A question about the water tank was brought it up, this dollar figure was given to us by an engineer to actually go up there drain the tank, sand blast the tank, take it off line, etc. while it is being painted.

Ms. Snyder commented that when we talk about grants, we are still talking about taxes.

A motion was made by Mr. Chalmers and second by Mr. Gammon to forward proposed resolution PC-28-05, CIP FY07-11 to the Board of Supervisors with a favorable recommendation.

The members were polled:

Jack Chalmers	Aye
Thomas Evelyn	Aye
Howard Gammon	Aye
Sylvia Godsey	Nay
Mark Hill	Abstain
Jay Hubbard	Aye
Charna Moss	Aye
Edward Pollard	Nay
Sam Snyder	Abstain
Tommy Tiller	Nay
Patricia Townsend	Absent

The motion carried, 5:3:2

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*PUBLIC HEARING AT 8:00 PM or as soon thereafter as possible*

**PUD-01-05, New Kent Farms, LLC:** New Kent Farms, LLC has applied to reclassify 36.96 acres of land from A-1, Agricultural to PUD, Planned Unit Development and to include the subject property into Land Bay III of The Farms of New Kent Planned Unit Development. The amendment would allow one additional dwelling in Land Bay III to accommodate an existing dwelling on the subject property. The property is located at 8100 Emmaus Church Road (SR 106) and is identified on the New Kent County Tax Map as parcels 22-3B & 22-3E. The Vision 2020 Comprehensive Plan designates this property as Rural Lands. Rural lands are intended to incorporate traditional rural development patterns including agriculture and silviculture.

Staff commented to the Commission that this application has been deferred to the October meeting.

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IN RE: PRESENTATION

Ms. Katz gave a brief presentation on Conflict of Interest.

Ms. Katz stated in reference to conflict of interest that there are at least two members of this commission that may have a conflict of interest. There are at least two types of conflicts that may exist, one is a disqualification that has to be made if a certain type of conflict exist. The other is a disclosure of the conflict. It must be in the minutes of full disclosure or a form which can be attached to the minutes.

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Mr. Hubbard stated in reference to CUP-03-05, Pegasus Tower Company, LTD, "I will disclose from the Code of Virginia, § 2.2-3115 G § 2-A that I am an adjacent land owner and will make a Declaration that I will participate fairly, objectively, and in the public interest."

Ms. Godsey stated in reference to CUP-03-05, Pegasus Tower Company, LTD, "Through my employment with the law firm representing the applicant, I am disqualifying myself and will not participate in the discussion and the vote. The record should reflect this statement."

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**CUP-03-05, Pegasus Tower Company, LTD:** Pegasus Tower Company, LTD. has requested a conditional use permit to authorize the construction of a 189' free-standing steel lattice structure for communications on a 23.58 acre parcel located on the west side of Creeks End Road and south of Pocahontas Trail. The property is further identified as tax map parcel number 45-59 and the address is 2340 Creeks End Road. The subject property is zoned A-1, Agriculture and is designated on the Comprehensive Plan's Vision 2020 Future Land Use Map as a Village, Villages are intended to incorporate a mixture of uses at a pedestrian scale.

Staff gave a presentation on the proposed Conditional Use Permit.

Mr. Hill asked if a company could co-locate a radio station on the tower. Staff referred the question to Mr. Harold Timmons, representative for Pegasus Tower Company, LTD. Mr. Hill restated the question. Mr. Timmons responded, yes it could; however there may be some additional measures that should be done to allow a radio station.

Mr. Hubbard asked who owns the tower across from Lanexa Plaza. Staff responded that tower is a Virginia Power transmission tower.

Mr. Hubbard asked if the tower across from Lanexa Plaza is full and is the County using that tower at this time. Staff responded that we are not sure if the County is currently utilizing the tower. [Later it was reported that the tower is capable, both by virtue of the engineering capacity of the "Ft. Worth mount" and Dominion Resources policy of supporting only one antenna array and it is therefore full.]

Mr. Gammon asked what guarantee the surrounding citizens have that there will not be

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interference. Staff stated that the applicant will be required to apply for a building permit for each installation of an antenna and will need to have an engineer sign an affidavit stating that there will not be any interference of any kind.

Mr. Tiller stated suppose there is interference. Staff responded that if there is interference then a building permit will not be issued.

Mr. Gammon asked if the tower is governed by the FCC. Staff responded yes.

Mr. Chalmers asked where the access road is. Staff responded off of Hubbard Lane.

Mr. Chalmers asked about the buffering. Staff responded that the majority of the property is naturally buffered at the time of a site plan; one of the items that they are required to show us is limits of clearing.

Ms. Snyder asked if this tower will be visible. Staff referred to the map and the house locations and stated that the adjacent property owners could see it. Ms. Snyder asked how far is it to the first house. Staff responded approximately 753 feet.

The public hearing was opened.

Rick Taylor of Hubbard Road spoke in opposition of the proposed conditional use permit stating that it would be 457 feet from my house and was told that it should be 750 feet from a residence; Mr. Taylor also stated that property values would be hurt. He currently maintains the Hubbard Road. Mr. Taylor asked why they want to put another tower when there is another one less than a mile away.

Bobby Dupree of Hubbard Road spoke in opposition of the proposed conditional use permit stating that there would be health issues caused by the towers and his family already suffers from health issues. Mr. Dupree goes on to say that it is proven that radio towers cause certain health issues.

Helen Dupree of Hubbard Road spoke in opposition of the proposed conditional use permit stating that she came to Hubbard Road because of health issues, we already have two children that are brain injured and have concern that this could cause more problems for them. Ms. Dupree stated that she spoke with her doctors and they say that she could get worse if this tower was installed.

Larry Haynes of Hubbard Road spoke in opposition of the proposed conditional use permit stating that his wife has issues with cancer and we have concern that it could get worse.

Roy Potter of Hubbard Road spoke in opposition of the proposed conditional use permit stating that if your not sure why, why devalue my property, will my taxes be lowered if this is approved.

Cheryl Petska of Creeks End Road and co-owner of the property on which the proposed tower would be located, spoke in favor of the proposed conditional use permit stating

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that it is not an open field it is completely wooded and no one will be able to see the tower. We have requested that a minimal amount of trees be cut to put this tower in and everyone wants a cell phone but no one wants to put a tower in.

The public hearing was closed.

Harold Timmons, Pegasus Towers Company Ltd stated that we have complied with all setback regulations. The property is heavily forested which will assist in buffering the visibility and only enough property will be cleared to build this tower. We would gain access from Rte 60 down Hubbard Road to the site. The majority of Hubbard Road is located on the Petska property and we do have an agreement with the landowner to maintain that road.

Mr. Chalmers how often would you grade the road. Mr. Timmons stated that we will grade it as often as it is needed. Mr. Timmons also stated that we want to share the road, the tenants will obviously be using the road more often than we will. We will be accessing the site maybe once or twice a month.

Ms. Snyder asked about sharing the maintenance of the road. Mr. Timmons responded that if we are contacted we will come in and fix the road.

Ms. Snyder asked how high above the tree line. Mr. Timmons stated that it may be 100' to 150' in height above the trees. Tower visibility depends on where you are on the ground.

Mr. Timmons stated that we have designed it to structurally hold at least 5 additional carriers. Each site is grounded for electricity, there will not be any interference, there will be signs at the site with contact information, there will not be any noise, and there will be permanent power.

Mr. Timmons addressed the issue of property value; referring to a report that was pulled from the web page. Stating that appraisers don't take in consideration where a tower is located. Mr. Timmons stated that the existing tower is a Virginia Power tower which is not designed to carry more than one carrier. The FCC has done extensive studies on the health issues and that there are no apparent concerns.

Mr. Evelyn asked about the roads and will there be a written agreement. Mr. Timmons responded that we have a written agreement with the land owner. Mr. Evelyn asked about the adjacent property owners that use the road on a daily basis. Mr. Timmons responded we are going to do what we are required to do.

Ms. Snyder asked if the County will enforce the maintenance of the road. Staff responded that the County will not be able to enforce that agreement and that there are deed restrictions stating that the road be maintained. Staff stated that Mr. & Mrs. Petska are required to share in the maintenance of the road.

Mr. Hubbard asked if it is safe to say that you are going to use heavy equipment during the construction. Mr. Timmons responded that we would have to do it geotechnical and

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we would use a crane.

Mr. Hubbard stated that at the intersection of Hubbard Road and Route 60 there is a perennial stream, with an old piece of concrete in it that was built to state specifications at that time, I am concerned that the heavy equipment will destroy that culvert. Mr. Timmons stated that he would imagine that there would be more than one way to gain access to the site to avoid that issue.

Mr. Hubbard stated that the application says that you will be accessing the site by Hubbard Road. Mr. Timmons responded yes we plan on using Hubbard Road, however if there are issues we will find another way.

Mr. Pollard asked how many towers are there in the County right now. Staff responded that we do not have that number with us. Mr. Pollard stated that he believes there are more than 20.

Ms. Snyder asked if the County has done any independent studies. Ms. Katz stated that health conditions and environmental conditions are continuously brought up. The courts have repeatedly rejected the power of planning commission and boards to consider those factors.

Mr. Hathaway stated that he was not sure if the stream crossing Hubbard Road was protected by the Chesapeake Bay preservation provisions and they can include conditions that the applicant provides us with an engineering report regarding the suitability of the Culvert being able to handle heavy loads going across.

Mr. Hathaway stated that this stream does not show up on our Chesapeake Bay Preservation Areas maps and may not be protected and we will not know until an analysis is done.

Ms. Snyder asked how expensive would an engineer study be. Staff responded that we are not sure how much the study would be.

Ms. Snyder asked if Mr. Timmons would agree on providing an engineering study to verify if the intersection would be suitable for heavy equipment. Mr. Timmons responded that he is hesitant to a study, however would agree to have a structural engineer examine the intersection and provide a statement.

Ms. Katz asked Mr. Timmons if they would agree to adhere to the load rates that would be stated in the analysis. Mr. Timmons responded yes.

Mr. Pollard stated that he believes that this is an issue that staff can deal with.

A motion was made by Mr. Pollard and seconded by Mr. Chalmers to forward the proposed CUP-03-05, Pegasus Tower Company, Ltd Resolution PC-27-05 to the Board of Supervisors with a favorable recommendation.

Mr. Hubbard stated that he would like for the applicant to state for the record that the

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applicant agrees to the resolution. Mr. Timmons stated for the record that the applicant does agree to the conditions as stated in the resolution.

The members were polled:

Jack Chalmers	Aye
Thomas Evelyn	Aye
Howard Gammon	Aye
Sylvia Godsey	Disclosure
Mark Hill	Abstain
Jay Hubbard	Nay
Charna Moss	Aye
Edward Pollard	Aye
Sam Snyder	Aye
Tommy Tiller	Nay
Patricia Townsend	Absent

The motion carried, 6:2:1

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IN RE: NEW BUSINESS

**S-34-04, The Oaks Subdivision:** The Oaks Development L.L.C. has applied for preliminary subdivision approval for phase one of The Oaks subdivision. The applicant proposes to ultimately create 140 lots that range from approximately 20,800 square feet to 103,071 square feet; however this approval is for the first 50 lots only. Detached single-family dwellings will be constructed on each lot.

Staff commented to the Commission that this application has been deferred to the October meeting.

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IN RE: CHAIRMAN'S REPORT

None.

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IN RE: RRPDC REPORT

Mr. Evelyn stated that he was unable to attend the meeting so there is no report.

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IN RE: COMMISSIONER'S REPORT

None.

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IN RE: STAFF REPORT

PROJECT UPDATES:

Mr. Hathaway reported that the Farms of New Kent PUD Ordinance amendment and The Oaks Subdivision will come before the Commission at the October meeting. We also have a rezoning application in Weir Creek industrial park, which consist of two parcels that are being requested to be rezoned from A-1 to M-2.

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Staff would like to recognize John Yerby, Zoning Code Compliance Inspector and Kenneth Vaughan, Zoning Administrator, who attended a Planning and Zoning Officials Conference in Roanoke this month. Mr. Vaughan took the Certified Zoning Officials exam while attending the conference.

Staff handed out information regarding the taxes that are deferred and collected on property that is in an Agricultural and Forestal District.

Mr. Hubbard asked is it fair to say that the AFD program cost the citizens \$316,000 per year in lost tax revenue. Staff responded that would be correct, that is the amount that would be collected if land was not in the AFD program.

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IN RE:           NEXT MEETING

The regular meeting of the Planning Commission will be on Monday, 17 October 2005 in the Boardroom of the County Administration Building at 6:30.

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IN RE:           ADJOURNMENT

A motion to adjourn was made and seconded by all.

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Respectfully submitted:

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Pam Crosby  
Recording Secretary