

THE REGULAR MEETING OF THE NEW KENT COUNTY BOARD OF SUPERVISORS WAS HELD ON THE 11<sup>th</sup> DAY OF OCTOBER IN THE YEAR TWO THOUSAND FIVE OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING AT 6:00 P.M.

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IN RE: INVOCATION AND PLEDGE OF ALLEGIANCE

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

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IN RE: ROLL CALL

Mark E. Hill	Present
D. M. Sparks	Present
James H. Burrell	Present
Stran L. Trout	Present
W. R. Davis, Jr.	Present

The Chairman called the meeting to order, welcoming new faces and asking attendees to adjust their cell phones so as not to disrupt the meeting.

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IN RE: CONSENT AGENDA

County Administrator John Budesky presented the Consent Agenda as follows:

1. Approval of Minutes
  - a. Regular meeting of September 12, 2005
2. Miscellaneous
  - a. Resolution R-117-05 proclaiming October 2005 as "Workforce Development Month" in New Kent County
3. Refunds
  - a. \$75.88 to Wayland O'Bier for building permit application
  - b. \$25.44 to Southern States Cooperative, Inc. for mechanical gas permit application
4. Appropriations FY2005-2006
  - a. Funds received for Colonial Downs Law enforcement services performed at the race track for live racing and simulcast from July 1 – 5, 2005, \$3,568.92
  - b. Funds received from insurance proceeds as a result of a lightning loss at the #5 Kentland Trail Location on July 7, 2005, \$12,563.51
  - c. Funds received for Colonial Downs law enforcement services performed at the race track for live racing and simulcast from July 6 – 31, 2005, \$16,845.12
  - d. Funds received from insurance proceeds as a result of a Sheriff's vehicle accident on August 10, 2005, \$1,218.83
  - e. Funds for reimbursement of professional services for New Kent Farms, LLC, Invoice 2FNK-21, \$234.90
  - f. Additional funding due to increased demand for services for View AFDC Working Day Care – Mandated, \$4,500.00
  - g. Funds for a Dairy grant received by the New Kent Schools, \$5,000.00
  - h. Funds received from Colonial Downs law enforcement services performed at the race track for live racing and simulcast from August 1 – 9, 2005, \$4,629.18
  - i. Additional funding due to increased demand for services associated with Dedicated IV-E administration including legal related services, \$1,000.00

- j. Additional State Fire Program funds received from the State over the amount budgeted for FY06, \$8,499.00
  - k. Funds received for reimbursement of professional services for Schiminoe Meadows Waste Management Facility invoice SMDW-03, \$879.14
  - l. Funds received from FY06 for the Litter Control Grant to be used for litter prevention and recycling program activities, \$6,568.00
  - m. Funds received from the National Recreation and Park Association, Inc. for youth baseball grant, \$100.00
  - n. Funds for DMV Grant #154AL-05-51343-3 to be used by the Sheriff's Office for an alcohol awareness project, \$1,500.00
  - o. Funds for DMV Grant #410-05-51330-03 to be used by the Sheriff's Office for Checkpoint Strikeforce equipment, \$3,000.00
  - p. Funds for DMV Grant #154AL-05-51036-39 to be used by the Sheriff's Office for a Checkpoint Strikeforce DUI enforcement trailer, \$3,000.00
- Total Supplemental Appropriation:
- |               |                    |
|---------------|--------------------|
| \$(73,106.60) | Total              |
| \$ 73,106.60  | Money-in/Money-out |
- 5. Carry Forward Appropriations 2005-2006
    - a. School capital Funds, \$361,741.00
    - b. Funds for the CDBG Plum Point Rehabilitation Grant, \$10,765.77
    - c. ISTEAA Courthouse Phase III and IV project funds, \$193,233.18
    - d. VDOT Revenue Sharing funds, \$394,000.00
    - e. School Capital funds, \$1,326,720.60
    - f. Real Estate Reserve to the Capital Fund, 133,554.00
    - g. Funds for Boardroom renovations, \$10,000.00

Total Supplemental Appropriation

\$(2,430,014.55)	Total
\$ 165,352.31	Money-in/Money-out
\$ 1,326,720.60	From Fund 3 – School Capital fund bal
\$ 937,941.64	From Fund 7 – Capital fund bal
  - 6. Inter-Departmental Budget Transfers
    - a. \$500 and \$1,000 from Reserved for Contingency (4-1-91020-1) to Social Services VIEW-AFDC Working Day Care (\$500 to 4-2-53020-0540) and Social Services Dedicated IV-E Admin Pass Thru (\$1,000 to 4-2-53020-8760)
    - b. \$23,909.00 from Part Time Wages (4-1-81050-1100) to Administration vehicles (4-7-94100-1000)
  - 7. Treasurer's Report: Cash in Bank as of August 2005: \$16,532,587.23

Mr. Burrell moved to approve the Consent Agenda as presented and to make it a part of the record. The members were polled:

Mark E. Hill	Aye
D. M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE:           CITIZENS COMMENT PERIOD

Chairman Davis opened the Citizens Comment Period.

Wyndell Merritt explained that he had a misconception that the Board would be discussing rifle hunting, and that he'd like to see New Kent pass legislation similar to that adopted by some of its neighboring localities. He commented that there is little reason to be so fearful of rifles and there is no data to support some of the commonly held beliefs. He reported that 95% of injuries from rifles (and shotguns) are within ten feet of the person injured, that the chance of such injuries is remote, and it is rare to sustain such an injury from a distance. He said that injuries would be even less likely with the wooded nature of New Kent. He also spoke in favor of discontinuing County decals, stating that it would save residents a lot of trouble, as well as save the County the cost of mailing and postage.

Mr. Burrell commented that it is his understanding that Charles City County is in the process of eliminating its use of county decals and will use the State licensing system to help collect personal property tax. Vehicle owners who have not paid their personal property tax will not be permitted to purchase their state tags.

Mr. Davis confirmed that elimination of the County decal is under consideration in New Kent, but that it would take about year to implement.

Mr. Trout concurred, stating that he has had conversations with the Treasurer on the same issue.

Raymond L. Cole expressed his support of permitting rifle hunting in New Kent County, stating that there is no reason to prohibit it. He commented that rifles pose no more danger than buckshot and that most rifle accidents occur within 10 feet of a vehicle. He indicated that he does not feel there would be a problem in New Kent, whether or not there was shooting from an elevated stand or not.

Thomas W. Brooke identified himself as having served 34.5 years in the Air Force and a long-time rifle hunter. He disputed information in a recent newspaper article regarding a rifle's capability to shoot six miles, stating that most rifles would shoot no farther than 450 yards.

Carl N. Callis asked for the Board's confirmation of the width of a right-of-way on a private road off Route 612, between I-64 and Route 249. He commented that he lives along the road and has "rescued and rebuilt it at considerable expense". He reported that he has used the road since 1973 and is the "sole keeper and maintainer". It is his information that it once belonged to the County but was later abandoned. He talked about the County's issuance of building permits for property along Route 612, and referred to a survey prepared by Dean Raynes which shows a 30-foot right of way.

Mr. Davis explained that neither the County nor the State has any control over the road and suggested that Mr. Callis and his neighbors seek the help of a surveyor who can search the land records to establish the information he is seeking. He further explained that the County does not own any roads, and that if Mr. Callis and other property owners want to fix up the road and turn it over to the State, they could do so.

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Mr. Callis indicated that there was one property owner who has no interest and it was the intent of the remaining property owners to determine the width of the right-of-way so they will know how much they can use.

Planning Director Rodney Hathaway indicated that this road is near a subdivision that was recently approved, and that the plat shows that the width of the right-of-way changes in some areas. He suggested to Mr. Callis that he obtain the advice of a surveyor who could research the title and put in some stakes that show where the boundaries are. He did admit that this is an old road, pre-dating the Civil War and possibly having been one of the first wagon trails in New Kent, and there may not be a lot of documentation. He commented that the property owners will need to have the property surveyed and agree upon a boundary, and that the right-of-way could be a little as 12 feet. He indicated that in order for someone to obtain a building permit, there has to be access to the property. Although there are some road requirements for building in subdivisions, for existing parcels there only has to be "adequate" access, and 12 feet is considered "adequate".

Mr. Davis suggested that Mr. Callis work with the other landowners to establish the right-of-way, and reiterated that this is not a County issue. He asked Mr. Hathaway to assist Mr. Callis in any way he can.

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

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IN RE:           RESIDENT ENGINEER'S REPORT

Tracy Lassiter with the Virginia Department of Transportation introduced Richard Wood, who has replaced Gary Jennings as the Assistant Resident Administrator.

Ms. Lassiter reported that crews have been mowing, blading the unpaved roads, performing brush control and guardrail work, ditching, and patching potholes. She indicated that brush had been cut at the Route 60 transfer station to improve the line of site, and sweeping was performed on Route 33.

She reported that in November they will be meeting with the Board to review the proposed Secondary Six Year Plan. She also reviewed the Revenue Sharing Plan, indicating that there are insufficient funds to pave the four graveled roads that are currently in the Rural Rustic Roads program because the estimates have increased substantially. It was reported that the County has paid some funds into the program, and there is approximately \$520,000 for this use. She indicated that she will need the Board to make a decision at the work session on November 1 as to how it wants to proceed. There was consensus to review this at the work session.

Mr. Trout thanked Ms. Lassiter for the brush clearing work performed at Route 60 and Route 612, and the culvert work on Terminal Road.

Mr. Burrell asked about the closing of the Lord Delaware Bridge between October 18 and October 23. Ms. Lassiter admitted that she was not aware of that announcement, as that project is located in another residency. Mr. Burrell read aloud the press release notifying that Route 33 traffic will be detoured around the Lord Delaware Bridge between October 18 and October 23 between 9 p.m. and 6 a.m. for bridge repairs. Suggested alternate routes include I-64, Route 295, Route 360 and Route 17.

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Mr. Sparks reported a brush problem affecting line of site at Route 1208/Longview and Route 60. He asked for repairs to a bad pothole on the I-64 exit ramp at Bottoms Bridge. He thanked her for the work she had done during the month.

Mr. Hill thanked Ms. Lassiter for the job she had done filling in during the Assistant Resident vacancy. He expressed his concern about the poor condition of Route 607/Steel Trap Road, traveling towards the boat ramp, and the complaints from residents about VDOT's non-responsiveness to telephone calls. Ms. Lassiter agreed to address that problem by the end of the week.

Mr. Hill commented on the steep grade near the intersection of Routes 612 and 606, and asked that the "stop sign ahead" warning sign be moved closer to the top of the hill and that a "trucks use low gear" sign be installed as well. He reported broken signs along Airport Road, near the transfer station, and a stop sign that has fallen over on Tunstall Road near the exit from Greenwood Estates. He inquired about the status of the paving scheduled for Greenwood Estates and Kentwood Farms, and Ms. Lassiter agreed to check on that. He thanked Ms. Lassiter for taking care of Cosby Mill Road and asked her to look at some potholes that are developing at the intersection of Cooks Mill Road and Quaker Road.

Mr. Davis expressed his thanks to Ms. Lassiter for the work she has been doing. He commented on the "washboard" effect of some of the unpaved roads.

Mr. Burrell reported that citizens are inquiring about the completion date of the bridge work on Route 33. Ms. Lassiter explained that she did not have that information but will obtain it for the Board.

Mr. Hill asked about upcoming work on the westbound I-64 rest area. Ms. Lassiter confirmed that bids should go out by the end of the year and a contract could be awarded in January 2006.

There was discussion regarding a traffic fatality on Farmers Drive at Plum Point this past Friday. Sheriff Howard reported that the incident was still under investigation by the Virginia State Police.

Mr. Davis asked about the status of the County's request for truck restrictions along Farmers Drive. Ms. Lassiter reported that this will be on the agenda for the next meeting of the Commonwealth Transportation Board.

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IN RE: INTRODUCTION OF NEW EMPLOYEES

Building Official Clarence Jackson introduced his department, which included Woodson Cotman, who was hired in November 4 as an inspector and on July 25 was promoted to the position of Chief Building Inspector/Plans Examiner; Charlie Ross, residential building inspector who has been with the County for 14.5 years; Tim Harris, the newest building inspector, who started work on September 19; and Stephanie Ripchick, who started in the Permit Center in June of 2004 and was promoted to Permit Center Manager on July 1, 2005. Mr. Jackson reported that Dana Boothe, Permit Technician, was hired August 15, 2005, but was attending a class and was unable to appear.

County Administrator John Budesky introduced Michelle Lauter, New Kent's new Social Services Director.

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Public Utilities Director Alan Harrison introduced Bobby Jones, who was recently hired as New Kent's Engineer.

The Board members extended welcomes to the new staff.

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IN RE:           SHERIFF'S DEPARTMENT AWARDS

Sheriff F. W. Howard, Jr. reported to the Board on three awards received by the New Kent Sheriff's Office.

The first was a first place award in the 2004 Virginia Law Enforcement Challenge in Category III (26 – 50 deputies). It was reported that New Kent has won first place 10 years in a row. Lee Bailey explained that New Kent competed this year in Category III (26 – 50 deputies) and the entrants were judged based on education, prevention and enforcement.

The second award was the 2004 Virginia Law Enforcement Challenge Occupant Protection Award. Sheriff Howard reported that nine of his deputies work on this child safety seat project, with five being certified and four others that have undergone two-day training. He reported that two of New Kent's career firefighters have also been certified to install child safety seats.

The last award was the 2004 Occupant Protection Award from The National Sheriffs' Association & National Highway Traffic Safety Administration. Sheriff Howard stated that he was especially proud to receive this award in that New Kent competed on a level playing field with all other Sheriffs' departments, and this was one of the biggest awards his department has ever won. He attributed this award to the three-step program conducted to promote the use of seatbelts among the high school students, and stated that the program would not have been a success without the cooperation of the School Board.

Mr. Hill commented that these are national awards and since most of the general public does not have an opportunity to visit the Sheriff's Office, he would suggest that the awards be displayed in the County Administrative Building.

Mr. Burrell commented that Sheriff Howard's department consistently wins awards and he described how the deputies serve New Kent and its residents with professionalism and respect. He moved that the Board adopt a resolution at its next meeting, expressing its appreciation of all of the members of that department, including the deputies, the dispatchers and the auxiliary personnel.

Mr. Trout moved for a separate resolution acknowledging the Sheriff's Department's relief efforts in Biloxi, Mississippi. He commented about the tremendous amount of work that was done and the impact that it had on that devastated community.

Sheriff Howard commended the five deputies and two dispatchers who were deployed to Biloxi as well as dispatcher Sandra Bowles who coordinated the food, clothing and supply drive. He also recognized those deputies who stayed behind and worked double shifts to cover for the deployed staff. He stated that all who participated in the deployment "came back better men and women" and were able to reap the benefits of helping others.

Lieutenant Joe McLaughlin introduced George Peyton, Jr., Vice President of Government & Community Relations with the Richmond Retail Merchants Association. Mr. Peyton reported that the Retail Merchants Association, which has been in existence for 99 years, wants to expand its footprint and move into Goochland, Powhatan, New Kent, Hopewell, Petersburg

and Colonial Heights. He described Retail Merchants' desire to help out in the Katrina relief effort, and was delighted to assist the New Kent Sheriff's Department by contributing to help pay some of the expenses incurred in the trip to Biloxi. He presented a check for \$2,400 to the Sheriff and stated that Retail Merchants looks forward to working with New Kent County in supporting its retailers.

Corp. Steve Long showed some slides of pictures taken of the devastation in the region and he described some of the conditions they encountered. He reported that it was estimated that about 30% of Biloxi's population was forced to relocate. It is his understanding that conditions are improving every day, but recovery is going to take a long time. He described how appreciative the storm victims were. He reported that the New Kent Sheriff's Office stands ready to deploy another group to Biloxi, but has been held up by federal red tape.

The Board members expressed their thanks to the Sheriff's Department for all of the work they did, both in Biloxi and here in New Kent. Sandra Bowles was recognized for the fine job she did in collecting food and supplies, and finding trucks and delivery drivers. Also recognized were Top Gun Trucking, Ukrops, and Copeland Trucking.

The members were polled on Mr. Burrell's motion:

D. M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	Aye
W. R. Davis, Jr.	Aye

The motion carried.

The members were polled on Mr. Trout's motion:

James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	Aye
D. M. Sparks	Aye
W. R. Davis, Jr.	Aye

The motion carried.

Mr. Hill suggested that these Resolutions be presented in the Sheriff's Department so that all of his staff could participate. Chairman Davis indicated that he had no objection but that space may be a problem.

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IN RE:           CONDITIONAL USE PERMIT APPLICATION FILED BY PEGASUS TOWER

Under consideration by the Board was a Conditional Use Permit application, CUP-03-05, filed by Pegasus Tower Company, Ltd., to construct a 189 foot free-standing steel lattice structure for cellular communications on a 23.58-acre parcel identified as tax map parcel number 45-59 located at 2340 Creeks End Road, which would be approved by the adoption of Resolution R-118-05.

Planning Manager Rodney Hathaway reported that the proposed tower location is on the east side of Hubbard Lane, south of Route 60, and west of the James City County border. The property contains one single family dwelling. The proposed tower area is not located

within the Chesapeake Bay Resource Protection Area or its floodplain and the majority of the property is wooded. The subject parcel and adjacent parcels are zoned A-1, Agriculture and the majority of the properties in the surrounding area are also zoned A-1. There are properties to the west along Route 60 that have commercial/retail uses (in the vicinity of Lanexa Plaza) and zoned B-1, B-2, M-1 and M-2.

Mr. Hathaway indicated that Section 98-213 of the County Code allows communication towers that exceed 50 feet in height on A-1 property with a conditional use permit. He reported that the Comp Plan designates the property as Village and a very small portion as Suburban Housing. He reported that villages are intended to involve a mixture of land uses on a pedestrian scale. He reviewed the guidance provided by the Comp Plan regarding communication towers. First was that facilities shall co-locate whenever possible and existing facilities should be improved to provide future co-location opportunities where possible. Pegasus Tower has proposed to have a minimum of six antenna spaces and Cingular Wireless and Nextel Communications have submitted letters of intent to co-locate on the proposed tower. The tower owner will also provide space for an antenna and ground equipment for the County. Mr. Hathaway stated that under the circumstances, he feels that the co-location requirement has been met.

Mr. Hathaway reported that the second guidance provided by the Comp Plan is that applicants are encouraged to seek out existing structures (water towers, buildings, silos) on which to locate antennae as an alternative to traditional tower structures. The applicant has submitted a signed Affidavit that there are no other suitable structures in the area that would satisfy their needs to provide adequate communication services.

Mr. Hathaway indicated that the third guidance in the Comp Plan is that facilities should be located to minimize impact on existing and future areas of development and should be buffered as a means of minimizing adverse visual impacts. He reported that staff feels that the conditions that are contained in proposed Resolution R-118-05 satisfactorily enforce building and setback requirements, buffering requirements, and also that as a part of the approval of construction of the tower, the applicant will submit a site plan at which time staff can further review the plans and make sure that there is adequate buffering, screening and setbacks in place.

Mr. Hathaway stated that if this permit is approved, Cingular Wireless and Nextel Communications will provide coverage for the Lanexa community and residents along the Diascund Reservoir. Staff finds that the application meets the basic criteria of the Zoning Ordinance and Comprehensive Plan and recommends adoption of Resolution R-118-05. Included in that resolution is a list of conditions that staff is recommending accompany the Use Permit.

Mr. Hathaway pointed out that his staff report and the Resolution are different as some changes were made at the last minute as the result of meetings with the applicant and with surrounding property owners. One of the differences is that the applicant will be required to perform a structural analysis of the culvert on Hubbard Lane to ensure that construction equipment will not damage it and if it does, the applicant will be responsible for culvert repairs. There has also been a revision to one of the conditions regarding the space that the tower owner has agreed to offer at no charge to the County. The staff report sets forth that they will provide a ground space of 16x20 feet; the applicant has asked that the space be reduced to 12x20 feet. The change has been submitted to the County's E911 vendor who is comfortable with the 12x20 foot space, and therefore that change has been incorporated into the resolution.

Mr. Sparks asked about the reason for the change. Mr. Hathaway indicated that information on the new lease area that was included in the Board's Friday packet shows a different location for the County ground space which is basically right next to or almost under the tower. He was not sure of the reason for that proposal but all vendors felt that the proposal was adequate.

Mr. Hathaway introduced Harold Timmons, Zoning Manager of Pegasus Tower Company.

Mr. Timmons reported that his company is a small business located in Tazewell County, Virginia, in its seventh year of business and has about 22 employees. He indicated that his company has reviewed the conditions proposed by County staff and finds them agreeable and it will be able to abide by them.

He reported that his company proposes to use a 100x100 square on this 23.58 acre parcel. It has located the site of the proposed communications facility in accordance with the setback standards that require a 120% height separation from all property lines and a 120% or 500-foot separation from any residence located on the property. There is a residence on the parcel and basically the setback requirements have dictated where the tower had to be located, and in addition, there are some wetlands on the property that have to be avoided. The property is heavily vegetated and he believes that that will help screen the project. His company does not intend to clear any more than what is absolutely necessary for the construction of the facility. It plans to access the property via Route 60 and it has provisions in place in its agreement with the landowner to deal with the maintenance of the road.

Mr. Timmons indicated that the structure will be a high steel strength, highly stable structure, the design of which will comply with national industry standards. The tower will be surrounded by a six-foot chain link fence topped with one-foot of barbed wire to prevent unauthorized access. It will be gated and locked at all times. The design of the structure will allow for co-location, and will be designed for at least five carriers to be located on the tower, and his company believes that the added structural integrity and co-location space will help to minimize the overall number of towers used for wireless carriers in the area.

Mr. Timmons stated that his company expects there to be no interference with existing communications signals, and should there be any signal interference, it will be the responsibility of Pegasus Tower and the tenants on the structure. He reported that the service providers themselves have an obligation under their FCC licenses to avoid any conflict issues. FAA has determined that there is no hazard as far as the structure is concerned, and has imposed no requirements to light the structure and his company does not intend to light the structure.

Signs will be located at the site in conformance with County regulations and will be designed to reflect the name of the tower owner and other safety-related information.

He reported that his company has no intention of painting the structure, and the color will remain as galvanized grey. They will be utilizing electrical power and telephone service, and expect to have no impact on water, sewer, or debris disposal services.

Mr. Timmons indicated that tower facilities are visited sparingly, with maintenance personnel visiting the site on a routine and sometimes as-needed basis, and that towers do not normally attract traffic or visitors. During the construction process, traffic to the site will increase slightly but should resume normal level after it is completed.

Mr. Timmons reported that all equipment is self-contained and there should be no noise, or at least not any noise that would be at a nuisance level to surrounding property owners.

He stated that drainage should not be an issue, as the terrain is not so severe as to cause concern and the development will be in accordance with the erosion and sediment control required by the County.

He indicated that his company has submitted information to the State Conservation Office which has issued a determination of no adverse affect.

Mr. Timmons reported that an environmental study has been conducted and the Department of Fish and Wildlife responded with a finding of no impact on endangered species in terms of radio frequency emission from the structure. Even while the carriers are responsible and assure that they operate their equipment within the specifications set forth by the FCC, there is normally an agreement that the site will be operated in accordance with those requirements.

Mr. Timmons stated that his company has provided with its submittal, letters of intent from Cingular Wireless and Nextel Communications, along with affidavits supporting their claims that there are no existing structures in the area available to fulfill their proposed coverage objectives. Propagations studies were submitted with the application to diagram the reasons why no existing facilities existed and show the coverage that would result from the proposed site.

He indicated that it is his company's opinion that the application represents sound engineering and design, and a responsible attempt to conform to the letter, spirit and intent of all requirements of federal and state regulations, accepted industry practices, and specific New Kent County ordinances regarding siting and construction of a telecommunications tower facility. He stated that he hoped that the Board would view this request as an appropriate development and grant approval.

Mr. Burrell asked about radio frequency. Mr. Timmons responded that there are studies that have been done, but as a general rule of thumb, the FCC regulates that and there are accepted standards. He referenced a letter he identified as being from a radio frequency engineer that stated that the maximum permissible output per channel is 1640 watts of effective radio power. He reported that the effective radio power of the proposed site would be 631 watts, and the signals being transmitted should not interfere with the operation of commercial radio, cellular, televisions, telephones or any FCC-approved equipment. The maximum permissible power for a PCS service is 1640. With the output of the proposed structure at 38.5% of the maximum allowed power, his company does feel that it will pose any danger to health or safety. He set forth that within 600 feet of the tower, the signal will not need to be as strong; consequently the antenna is designed to limit the signal towards the ground to approximately one-half watt. When this one-half watt of power reaches the ground, its energy has been greatly reduced to a point where the radio frequency exposure level is 0.00000017 milliwatts per centimeter square, or at ground level, the power is two ten thousandths of a percent of the maximum level that the FCC allows.

Mr. Sparks commented that everyone uses cell phones but no one really knows what their impact is.

Mr. Burrell commented on the exposures in the area near the tower. Mr. Timmons indicated that as he understands it, if there is one-half watt at the base of the tower, as one moves away from the tower, it decreases even further.

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Mr. Davis asked about requirements for digital service on the proposed tower. Mr. Timmons explained that each array will have a three-sided panel and antennas can be added to all three sides, if needed, in order to provide 360 degree coverage.

Mr. Davis asked about the width of the right-of-way. Mr. Timmons stated that he felt it was currently built to 20 feet, and is a private road that is largely on the Petska property. Mr. Hathaway added that the right-of-way is a private road, the applicant has the right to access that road, and as a part of the conditions of the use permit, prior to the issuance of any building permit, the applicant must submit proof that it has access. Mr. Davis asked about other owners of the road. Mr. Hathaway admitted that ownership of the road is in question and he is not sure who all the owners are or who has access to it. The tower owner will have to submit proof to the County that they have the right of access.

Mr. Sparks asked if the applicant has that information or that right or privilege at this point in time. Mr. Hathaway stated that the tower company will have to search the deeds and the records to see what legal documents it can find. If it cannot find the necessary records, then it can come to some agreement with the adjacent property owners to have them grant access. Mr. Sparks asked when that would take place; Mr. Hathaway reported that it would be after tonight's vote but prior to the County's issuing any permit for construction of the tower. Mr. Sparks commented that this was "putting the cart before the horse".

Mr. Davis agreed, stating that it looks like this should be resolved before the application came before the Board or the Planning Commission. Mr. Timmons stated that the road is largely on the Petska property and, as landowners, they have the right to issue access to the road. But he pointed out that it is not the only means of access and if it had to, his company could create a brand new road. However, by being a user of the existing road, Pegasus can contribute to the maintenance of the road which would, in turn, help those who actually utilize the road significantly more than his company will. He stated that his company's staff will mainly be there once a month, where residents will be using the road on a daily basis. His company will be contributing to the maintenance and he thinks that's a positive. In terms of determining right-of-way, his company will have to do a title search before going any further, and if a problem comes up, then he would come back to the County and ask for permission to access the property from a different means. He asserted that there are a number of ways of accessing the site, but the Petskas own the majority of the road and they have the right to grant his company access to use it.

Mr. Davis asked about the useful life of towers. Mr. Timmons said that was undetermined at this time, but he would estimate 100 years. Mr. Davis commented that in 100 years a lot of things could happen, and he referred to Mr. Callis' description of his right-of-way problems earlier in the evening. Mr. Timmons stated that an easement is not a right-of-way but an easement can be granted from one land owner to a number of others, and coming from the parent parcel (which is the Petska property), he would say that if anyone has the right to that access road it would be the Petskas, and they can grant access to whomever they choose. He does not think that access is the real issue here, and certainly not one that they cannot work through. His company will work to minimize the impact that it will have on the road and on adjacent properties. If it were to find out that the access would not work, it would just have to create a new road on another part of the Petska property. There have been conditions placed on his company to minimize the impact on the road and it is going to be doing some things that will possibly help the road and help the other landowners who utilize it.

Mr. Sparks repeated that this was "putting the cart before the horse". He asked that the tower company determine what access it really has before it goes any farther and he questioned why it wouldn't want to do that up front. Mr. Timmons stated that there was no indication of that at this point in time. The survey shows the road on the Petska property so there is no reason to think that it would not have that access. If the road was on someone else's property, it might be an issue.

Mr. Sparks asked about the closest cellular tower to the proposed site. Mr. Burrell stated that he believes there is one on the north side of Route 60 west of the site. Mr. Timmons stated that he did not know exactly, but he would say that it would be a couple of miles away from this site. Mr. Sparks asked if there were co-location spots available on the existing tower that is a couple of miles away. Mr. Timmons stated that the nearest structure is a transmission power line and that is about 80 feet in height and the engineers for both Cingular and Nextel have indicated that a structure of that height doesn't provide coverage.

Mr. Sparks asked what Cingular and Nextel were trying to accomplish. Mr. Timmons stated that they were trying to develop a network that would cover Route 60; they already have some coverage areas on I-64 and by adding coverage along Route 60, they would be covering the areas between the two.

Mr. Timmons and the Board members reviewed propagation maps which showed what the coverage currently is and what coverage would be provided with the proposed tower.

Mr. Sparks asked if any other providers had expressed interest in this location. Mr. Timmons stated that Pegasus has only Cingular and Nextel, but as a telecommunications tower company, it is actively pursuing co-location. Mr. Sparks commented that Cingular has no market share in this area, even though it is one of the largest providers in the United States. He stated that it was his understanding that other carriers, including Verizon, have coverage in this area. Mr. Timmons stated that they all have licenses to operate in the area and they all have to have a fair opportunity to compete.

Mr. Sparks stated that what that means to him and to other citizens of the County is that if they allow everyone to compete, there are going to be towers all over the place, and they are getting served now. He went on to state that he would "dare to say" that there are 100 Cingular customers in New Kent County, although he admitted he may be totally wrong. Mr. Timmons responded that in the past, Cingular did not have a license to operate in this part of Virginia at all and since its merger with AT&T, it now has access to the area and is trying to obtain sites and provide coverage to residents. Cingular now has all of the licenses that AT&T once had and is trying to get its services to a large portion of Virginia.

Mr. Sparks stated that he saw a lot of issues here. One is the property. The sad thing is how many towers will end up in this County. The industry is consolidating, there are going to be a very few players in a very short amount of time, and he is worried that there will be towers with nothing on them. Mr. Timmons stated that he respected Mr. Sparks' opinion, but that he has two carriers who want to be in this location at this particular point in time. They do not have service or coverage in the area but have licenses to operate. He stated that there are federal rules that state that there cannot be unreasonable discrimination among providers. If providers have licenses and are allowed in a community, then that community cannot discriminate as to which ones can and cannot be there. All Cingular and Nextel are asking is to allow them to locate on this parcel of land. In his opinion there is no access issue, because access is readily available in light of the considerable amount of road frontage that this property has.

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Mr. Sparks said he would assume that Cingular and Nextel have talked with Verizon, who probably owns its tower and they have no interest in being on that, and that there are no other towers in this area on which they can co-locate. Mr. Timmons stated that there are no other towers in this area, and the only thing is an existing power line in the area that, for the most part, doesn't have any structure. There is definitive need to provide service for these carriers and there is a lack of structures they can use to do that, so they are asking the County to allow this structure so that they can be in this area.

Mr. Sparks stated that they are trying to provide service but one has to be a Cingular customer to get service from that tower. Mr. Timmons stated that service would be for Cingular customers, Nextel customers, or a GSM service provider who has agreement to roam on a Cingular network, who at this point would be SunCom and possibly TMobile.

Mr. Sparks asked about Sprint. Mr. Timmons stated that Sprint uses a totally different technology and would probably not be a candidate for co-location on the proposed tower.

Mr. Burrell asked if a company like Verizon would be interested in co-locating on the tower. Mr. Timmons responded that any wireless carrier could co-locate on their structure. He explained that was the benefit of having a tower company involved because there are no competitive issues. He said initially all wireless companies were building their own structures, and counties had to force co-location on these carriers. A tower company wants everybody on their structure so they will negotiate and pursue them to get them on the tower. For every carrier they get on their structure, that is one less tower request being made of the County. He thinks that's a positive. There has to be a structure somewhere for somebody to use in order to co-locate.

Mr. Davis asked about the height above sea level for this site. Mr. Hathaway did not have that information. Mr. Burrell estimated 15 – 20 feet. Mr. Davis commented that he believed it is the lowest point in the Lanexa area.

Mr. Davis asked if the existing tower (that is a mile west) was 185 feet in height, or as tall as the proposed tower, would it provide the same coverage. Mr. Timmons stated that if the existing structure was 185 feet tall, he wouldn't be making this request because Cingular and Nextel would be on it. He stated that the existing structure was only 80 feet and is owned by a power company that is not going to increase its height.

Mr. Davis asked if the existing tower had a conditional use permit. Mr. Hathaway stated that because they are on an existing structure, they do not have to have a CUP. Also those types of structures can only accommodate one antenna so there would be no additional opportunities to co-locate on that particular structure. There may be some transmission towers nearby but they can only accommodate one antenna.

Mr. Hill pointed out a section of the application where it states that "the tower owner shall provide a space on the tower for public use in a mutually agreed upon location, both horizontally and vertically, at no cost to the county", and asked if that meant that the County will have one antenna on one side. Mr. Timmons stated that not knowing the configuration of the County's communications, it was hard to answer that question. Most public service providers use a whip-type antenna. The reason that his company asked for the change was because it found a location within its compound that it felt would better accommodate the County and not decrease the number of spaces it has for commercial carriers. Pegasus has placed the County closer to the tower in a separate location that he would think that EMS and County police would find to be more secure. Mr. Timmons

indicated that this was not an attempt to do anything negative but was just a matter of finding a location within the compound that they thought would work. He presented a diagram of what was proposed, and stated that it would make it easier for construction because, being closer to the tower, the cable runs could be shorter.

Mr. Hill asked Fire Chief Gallaher how this would affect the County's communications. The Fire Chief disqualified himself as an expert witness on communications, but stated that if the County was to use this particular site, it would be used most likely as a site for a repeater that would "see around the bluff" that shadows Chickahominy Shores and that area, and he could see that as an ideal site for that. As far as the antenna to be used, he stated that there would be two whip antennas, 21-feet long that must have 30 feet of vertical separation. One antenna should be near the top and the other 30 feet below that. Separation is needed because it is a repeater and if the receiver and transmitter are at the same height, it would essentially talk to itself.

Mr. Hill asked Mr. Timmons if the space reserved for the County on the structure would accommodate these two whip antennas 30 feet apart. Mr. Timmons stated that there was an opportunity for that to occur. In all communities where his company has located, every one asks for that free space and it has agreed to that free space.

Mr. Davis asked if the whip antennas would interfere with an array, or vice versa. Mr. Timmons stated that because of the frequency at which they are operating, there should be absolutely no interference. They are probably operating at 800. He said that there may have been some problems with Nextel and public service providers in general, and Nextel has gone to the FCC and actually proposed to move all public service providers to a new frequency, but he doesn't know where that is so he thinks that would be an issue that will have to be worked through. Nextel already operates in the County and should have worked out those issues already.

Mr. Gallaher stated that the County's frequencies are about 153 megahertz. Wireless carriers' frequencies are all 1900, so there is virtually no way to interfere as he understands it. As far as the County's public safety radio system becoming 800 megahertz in the future, he really doesn't think that's going to happen because it is probably going to be 700. If there is an 800 megahertz on the tower, it still shouldn't interfere with the County's system.

Mr. Hill stated that he wanted to make sure that he was clear on that issue. He asked if Mr. Gallaher was saying that right now, in The Colonies, fire and rescue personnel cannot communicate with the dispatch office, and that this tower would fix that. Mr. Gallaher stated that if the County used that site, it would probably enhance communications behind that bluff at Chickahominy Shores.

Mr. Sparks asked if there were other towers in the area that would accomplish the same thing. Mr. Gallaher said there were none that he was aware of. He said that although he is not a proponent or an opponent of the tower, it is pretty much in an optimum location for that purpose and could be helpful.

Mr. Sparks asked about the cost to equip the structure for the County's radio system. Mr. Gallaher estimated that it would cost \$70,000 - \$80,000 to put a repeater system on the proposed structure.

Mr. Trout stated that he thinks that the Board will be hearing from the residents about the road access and that is a legal problem between the tower company and the property owners that has to be worked out. The County cannot authorize the tower company to go

on somebody else's property or property that it has no right to go on, and that is a legal matter that has to be handled because the County does not have any stake in it. The County would have a stake if it had to access a County antenna.

Mr. Trout asked how long Pegasus Tower has been in operation. Mr. Timmons indicated seven years, and it does not currently have any structures in New Kent County. Mr. Trout asked how many towers it currently owns, does it construct them, and does it continue to own them. Mr. Timmons stated that Pegasus does construct tower and the way that its finances are set up, it may end up managing the structure.

Mr. Trout asked how many towers Pegasus current manages and how many it has constructed. Mr. Timmons did not have the exact number but indicated that it was more than 50.

Mr. Trout confirmed with Mr. Timmons that Pegasus does not operate a cell phone company itself, but builds the tower and then rents space to those who need it, and that it anticipates six tenants on this structure, or the capability to serve six. Mr. Timmons stated that although Pegasus likes to be optimistic, it also has to be realistic. If there are six companies who have licenses in this area, it would not make any sense not to build a structure that would handle them, but it will have to work to get them on their tower. At this point in time, there are only two expressing a need.

Mr. Trout stated that he had traveled to the site and spoken with a few of the landowners along the road, and a lot of the conversation dealt with the ownership of the road itself. He said he had driven to the end of the road and tried his cell phone all the way up and down the road and out on Route 60. He has Verizon service, and he had the maximum number of bars and found that he had excellent service down there. He admitted that he was not sure where the Verizon tower is, but there certainly is coverage. There may not be coverage for a couple of companies that are new to the area, but it is not an area that lacks coverage over all.

Mr. Trout stated that in looking at the map, it shows that there are 231.8 feet from the proposed tower site to a public road. He asked how far it was to the nearest home. Mr. Timmons stated that the distance to the nearest residence that he is aware of is 1,753 feet. Mr. Trout stated that was the residence that is on the parcel, but not the nearest residence. Mr. Timmons stated that the ordinance requires that his company separate itself from the nearest residence on the property and that's what it has adhered to. He was not able to answer exactly how far the nearest off-site residence is.

Mr. Trout said that by looking at aerial photographs, it appears that the nearest residence not on the property is 300 – 325 feet away. The Board examined the maps to determine which residence that was and it was unclear whether that was the Davis or Taylor property. Mr. Timmons stated that based on the scaling of the map, he would say that it was about 400 feet to the Davis property line.

Mr. Trout stated that one of his concerns is the distance from the actual residences and not just the one on the property. There is a high tension line within a mile or so of that location, which he thinks is at a higher elevation near Lanexa Plaza, and that has a number of tall towers that can be used to site cell phone antennas. He asked if that was the one that Mr. Timmons' clients decided cannot be used for cell phone antennas. Mr. Timmons stated that Cingular Wireless and Nextel have both provided justification letters on which their engineers have signed off (Cingular has provided a notarized affidavit) justifying the location of this tower and the fact that they could not utilize the existing transmission tower

for the coverage that they need and which would be served out of the proposed site. If there is an attempt to try to force them to use that structure, they are just going to come down the road and find another location for a new tower.

Mr. Sparks asked if that was because of the frequencies they are on, and Mr. Timmons responded that it was. If this were 800 megahertz or something like that, one could get all kinds of distance. On PCS, 1900 and 2200 range, there would not be much coverage out of that site because digital signals now contain a significant amount of information and has to be compressed, so all of the new technology (voice mail, pictures, e-mails, etc.) require data which is compressed, and the technology continues to grow. Mr. Sparks stated that in effect, what the proposed resolution would do is accommodate two cellular providers who use frequencies that require a tower that is 185 feet tall. Mr. Timmons stated that was correct - that is the height that they need to provide service.

Mr. Trout asked about the height of the high tension line tower that is within a mile of the area. He said that there was one visible from Route 60 that appears to be pretty tall, but he is not sure what the height is. Mr. Timmons stated that these power structures are generally 80 – 100 feet tall. He stated that the structure to which Mr. Trout is referring could be an 80-foot structure but if it has adequate elevation, it would appear to be much taller than it actually is. It depends on the elevation of the land where the tower is. Mr. Trout stated that this is essentially uphill from the proposed site, probably another 100 feet, and it seems like it would be something that could be used. Mr. Timmons explained that a wireless carrier has to consider how much time it will take to get a site, where it can potentially put its setup, and the time to market. If it is going to locate on an existing transmission tower, and all it has to do is deal with Virginia Power with whom it already has an agreement, it would seem to be logical that it would have done that already and would have been online within 40 – 60 days. When it was apparent that it wouldn't work and a new structure was needed, it had to go through the Zoning Office and that's why he's here and why they are not on it. The carriers would be there if they could.

Mr. Trout asked what their letter of justification was based on. Mr. Timmons stated that they are only required to justify the site based on the comprehensive study and the technology they use to determine where their tower has to be located, and that's what those maps represent.

Mr. Trout asked if the justification was based on coverage area or cost of building another tower. Mr. Timmons responded that it was based on availability of structures, height of available structures, where they need to be located in relation to existing structures so as not to leave a halo, as coverage areas have to overlap in order to prevent dropped calls.

Mr. Trout asked if there were other companies licensed in this area that are operating narrowly in this part of Virginia that do not have coverage and might be prospective tenants of this tower. Mr. Timmons stated that he did not currently know of any, and that at this point in time Cingular is the only new player to the market - everybody else is already here. Cingular is the last to market because of the licensing issue. SunCom and AT&T didn't build out their initial network (he suspects because of downtrend in 2001 economy). Mr. Trout commented that he wasn't so sure that the economy was doing any better now, particularly the construction industry and the number of people driving up and down the road at \$3.00/gallon.

Mr. Davis acknowledged the Board has most likely tried Mr. Timmons' patience, and thanked him for all of his answers.

The Board took a short break.

Chairman Davis opened the Public Hearing.

Bobby Dupree of 2100 Hubbard Road stated that he disagreed with a lot of the things that Mr. Timmons had said. The first was about the existing tower at the top of the hill. In looking at the elevation, he doesn't see why it can't be used. He also doesn't see why these two carriers can't be split up and put on existing towers in the County. Even the County, if it wanted to increase its communications, should be able to strike a deal with an existing tower. He stated that according to a printout from the GIS department, any alternate access to the tower site would have to be built through wetlands, and he doesn't think the State would approve that. He stated that five families disapprove of this. No one he has spoken with, including those surrounding the proposed tower, wants it there. Most are thinking about health reasons. He said the information on emissions has not been proven and he has a lot of literature and has done research on the Internet. There will be multiple antennas, each one carrying 21 channels, and those channels could each have 3 transmitters, and if the tower is fully loaded, it could end up with 500 – 600 transmitters. A big concern is the non-thermal radiation that is not measured. The non-thermal, even at lower levels, has been proven to cause DNA changes, problems with brain tumors, and cancer. California and Florida won't let towers be built anywhere near a school, and there is a pre-school right across the street from the proposed site. He indicated that the property of the Stewarts and the Browns goes to the other side of Hubbard Road and he really doesn't think that the Petskas own what they are claiming, and that the road is primarily through other peoples' property. He would never let it run across his property to put up a tower. He is concerned with health issues. The fact that there are alternate places to put the tower is very important to him and his neighbors, none of whom want the tower. The only ones who want it are the Petskas and the tower company.

Helen K. Dupree of 2100 Hubbard Road described herself as a "victim of what if" and she wonders what could happen to them 5 – 10 years down the road. She stated that she is having her 19<sup>th</sup> surgery soon, indicating that she is a victim of "this is safe, this will not hurt you". Research has shown that a lot of people have become very ill and died. She related her family's tragedies and indicated that she has two disabled children, one with severe brain damage and the other crippled. She bought this property many years ago and it sits in front of Liberty Baptist Church. She hasn't slept and has had nightmares worrying about what this tower will do to her, and whether it will cause more tumors. She stated that she has to stay alive and healthy for her children. She subdivided her property for her two children, but she can't put them there now with the possibility of a tower being built. She said that towers are put up to last 5 – 10 years and some towers aren't even taken down. With new technology, in 5 – 10 years towers may not be needed. If the tower is built, she will have to move. She has spent 14 years on this property with her children. She has done a lot of research about Pegasus, which has had some bankruptcy problems and does not take down its towers but leaves them. She stated that towers are dangerous and emit a lot of radiation. There is cancer in her family and she has elderly and sick neighbors. She pleaded that the Board not approve the tower for this location as there are many other places to put it.

Kenneth Amos of 2260 Hubbard Road said he was opposed to the tower. He stated that he was out of town at the time of the Planning Commission public hearing, and he was glad that he could be here tonight to say that he is opposed. He and his wife own their property and their plat shows they actually own the road, as their property goes across the road. He does not want the tower company coming across his property, and he does not think that the Petskas should be able to give someone access to use his property. He said that he

hasn't met the Petskas and he's never seen that they've done anything to maintain the road. He indicated that the Petskas did put up "no trespassing signs" and posted their property. He stated that he doesn't want the tower there and he lives closest to the proposed site. He showed the plat to the Board members and reported that he was married to Mary K. Davis.

Roy Potter of 2050 Hubbard Road stated that his neighbors had conveyed the same feelings that he has. He feels that the right-of-way needs to be determined. He stated that he is definitely concerned about possible health hazards. He commented that no one really knows about new technology, and that if somebody is subjected to something now, it might be ten years before the effects are known. He feels there are opportunities to put the tower somewhere else away from people, rather than sticking it right in the middle of where people live. It is not the right thing to do.

Larry Haynes of 2060 Hubbard Road said he has concerns with the health issues. He stated that California is on the cutting edge of technology and setting standards, and it won't let these towers be built next to schools. He reported that he bought his property and plans to retire here and doesn't want to see a tower over his tree line when he comes out in the morning. He is opposed to the tower and agrees with his neighbors.

Cheryl Petska of 2220 Creeks End Road identified herself as an owner of the property and stated that the proposed site is heavily wooded with mature trees. It is not close to anyone and they wouldn't put it close or where someone could see it. This is a wooded area and they have asked that the tower company remove the least amount of trees as possible. They did not go into this to upset any of their neighbors. She said that the Dupree home is 2000 feet from the tower and she does not think that there is anybody living that close to where the tower is. She and her husband both hunt on their property and they didn't want to see anything happen to it. They are nature lovers and have asked that the smallest amount be done to it. She has concerns about that and wants to make sure that they will be able to supervise what the tower company does as far as taking trees down. The site will be buffered and is not in an open area. As far as proximity to the school, their house is a quarter mile off the road, so it is not close to anything. She is sympathetic with her neighbors but she does not feel that it will be something that is going to be wide open and visible like it would be if it were in a subdivision.

Mark Petska of 2220 Creeks End Road also addressed the Board. He stated that he has no animosity toward the neighbors and didn't want to damage to them in any way. He and his wife thought the tower would help the community and the County. He understands there is a dispute over the road but his survey shows that about 75% of the road is on their property. As far as trucks using the road, Va. Power and Verizon both use the road, and he doesn't use it at all. The neighbors don't see them there because they don't use it as they have another access to their home. He apologized if the neighbors think they are evil by posting signs but that was done because of people with metal detectors coming in and digging holes.

There being no one else signed up to speak, the Public Hearing was closed.

Mr. Burrell commented on a few of his observations. He said that most everyone has a cell phone and what used to be a luxury is now considered a necessity. He travels frequently and has experienced having calls dropped in the middle of a conversation, and he knows that additional towers would help to prevent that. As far as the site goes, everyone wants peace and quiet and wants these towers to go in somebody else's backyard, so the things that everyone enjoys in life often come at the cost of others. These towers have to be in

someone's backyard. As far as the right-of-way is concerned, he stated that would be something that the County would dictate – if there is no right-of-way, it can't be constructed. Although he feels that it is necessary to have towers, his basic concern is the health aspect. He stated that Mr. Timmons had given a good presentation, but his biggest concern is the proximity of the closest residence to the tower. As far as visibility of the tower, he does not think he would make a decision to deny the application because of that, but he does have concern that there may be some health defects if one is that close to a tower. From the map it appears that it is about 440 feet to the nearest residence. All of the other things that were said are not important to him. He feels most everybody has cell phones and the towers are visible from somebody's property wherever one travels. He repeated his concern with the fact that the tower would be close to two residences.

Mr. Burrell asked Mr. Timmons if a site that was farther east and not so close to a residence would provide the same coverage, stating that he was thinking somewhere on the north side of Route 60, near the lake. Mr. Timmons stated that he did not think that possibility exists. The setback requirements that the County has - which is 120% or 500 feet from any residence on the site – basically dictate that the property be of a substantial size. In that area many of the properties are smaller and would automatically be eliminated. Owners of those properties that would qualify are not interested in having a tower on their property. The other factor controlling where a site is located is from an engineering aspect. Therefore this is probably one of the only properties where this tower actually could sit from a setback standpoint. Mr. Timmons also pointed out the wetlands that are on the Petska property and stated that because of the setback requirement, the site couldn't be moved closer to Route 60 or the residence. The tower site is where it has to be, based on the requirements. Mr. Timmons also pointed out the engineering requirements and stated that another site may not provide the coverage needed along Route 60. Mr. Burrell clarified that he was not suggesting moving it east or west, but to the north side of Route 60.

Mr. Trout commented that the proposed resolution requires that all tower structures must be dismantled by the owner of the structure if not properly maintained for a period of 24 consecutive months, and the applicant shall post surety in an amount sufficient to cover the cost of dismantling and removing the tower and restoring the site to its undeveloped condition. So one of the conditions is that it would be torn down or the County would be able to rely on the surety to take it down itself. His question concerned the provision regarding setbacks. In reading it, he's not sure if it is written correctly because it states that "the tower shall be set back from any property line a distance equal to 120% of the tower height and in no event shall any tower be constructed or erected nearer than 120% of the tower height or 500 feet, whichever is greater, to a residential dwelling unit located on the parcel upon which the tower is proposed." He asked if that only applied to the Petska residence. Mr. Hathaway said that it did. Mr. Trout commented that the way it is written, the tower can be closer than 500 feet to a neighboring house. Mr. Hathaway confirmed that, stating that this language was taken directly out of the zoning ordinance.

Mr. Trout said that the next paragraph was somewhat contradictory in that it stated that "setbacks from residential dwelling units shall not apply to adjacent property owners' construction of a residential dwelling subsequent to the erection of the tower" and the implication would be that it does apply to an adjacent property owners house that existed at the time of the construction of the tower. This doesn't make sense otherwise.

Mr. Hathaway stated that this was taken word for word from the County's Code. Mr. Trout stated that it certainly leaves room for interpretation when one has the provisions in paragraph 5.i. and no meaning, unless there is a restriction of 500 feet from the existing residence. Mr. Davis stated that he interprets it to say that it doesn't have to be 500 feet

from an adjoining property owner, and if someone wants to build afterwards, that person can build up to within 200+ feet of it. Mr. Trout stated that it said that if someone wanted to subsequently build on an adjacent property within 500 feet, that doesn't affect the tower. He maintained that paragraph 5.i. does not make any sense unless there is a restriction of 500 feet from existing residences. Mr. Hathaway stated that he recalls reading in a previous amendment (that does not apply now) that there were setbacks to adjacent property owners of 750 feet, and he believes that what happened was when the ordinance was revised, Section i. was left in instead of being taken out as it should have been.

Mr. Trout stated that this was something that needed to be cleared up before a vote is taken. The Board needs to have counsel and the planning staff look at it because as it reads now, it doesn't make sense. There is a problem there somewhere.

Mr. Timmons stated that this was part of the County's Code and in order to change the Code, the County will have to amend its ordinance. He insisted that it is really not relevant to the tower itself and he saw no reason why the Board would want to table the matter based on that when it really doesn't have any real relevance to the tower or its location. He stated that he did not see any reason why, unless there are other issues to delay this matter.

Mr. Trout stated that there was conflicting language - language that doesn't work the way it is written - and it appears in paragraph 5.i. that the intent is to provide setbacks from residential use not on the property. It doesn't say what it is, and 750 feet might be what it is supposed to be, but that is something that needs to be looked at from a legal standpoint before the Board either approves or denies the application.

Mr. Sparks said that he thinks the Board needs advice from counsel. Mr. Hill reminded that the ordinance can't be changed without a public hearing. Ms. Katz advised that the Community Development Director is authorized to give interpretations of this statute and he may consult with her on it, but he has the authority to interpret it. He may have interpreted it in the past. Or there may be an inherent conflict that through rules of statutory construction (which is where she'll play a part) where the Court has said how to construe when there is a conflict so as not to defeat the provisions. She can give some guidance on that, but there may have been a previous interpretation and the Board can certainly wait to hear from the Community Development Director and for her opinion on statutory construction if there is an inherent conflict within the statute.

Mr. Davis said that when the Board looks at this again, it should include language that requires anyone who applies to build a tower to have a deeded right-of-way. Mr. Sparks agreed. Ms. Katz stated that the zoning ordinance is currently being revised and that certainly can be considered.

Mr. Davis suggested that the cost of a tower might be around a quarter of a million or more. Mr. Timmons agreed that was about right. Mr. Davis stated that this was on a piece of property where there isn't a clear right-of-way. He thinks that needs to be addressed in the ordinance as well and so instructed Mr. Homewood.

Mr. Sparks moved to deny Resolution R-118-05 as presented.

Mr. Trout moved to table that motion until the next meeting in order to hear from counsel and the Director of Community Development.

Chairman Davis explained that it is required that a vote be taken on the second motion first.

The members were polled on Mr. Trout's motion to table this until the next meeting:

Stran L. Trout	Aye
Mark E. Hill	No
D. M. Sparks	No
James H. Burrell	Aye
W. R. Davis, Jr.	No

The motion to table failed.

The members were polled on Mr. Spark's motion to deny Resolution R-118-05:

Mark E. Hill	No
D. M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye

The motion to deny the application carried.

Mr. Trout suggested that there were some options. He could make a very rare motion that would take care of the problem, which would be to "reconsider and enter in the minutes" which means a motion to reconsider the motion and "enter in the minutes" means it is brought up at the next meeting for reconsideration.

Chairman Davis advised Mr. Timmons that his company needs to look for another site. Mr. Timmons thanked the Board, stating that he thinks that health and safety issues weighed very heavily and suggested a review of the Telecommunications Act to see if there had been any violations.

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IN RE:           TRANSPORTATION GRANTS

Under consideration by the Board was Resolution R-116-05 authorizing the submittal of two transportation grant applications for the continuation of the sidewalk project in the New Kent Courthouse area and the placing of bicycle signage along various routes throughout the County.

Community Development Director George Homewood explained this is an application to apply for grants. If either grant is approved, there is no obligation on the part of the Board to accept.

He reported that the smaller grant will help to install some signage for bicycle riders along New Kent's roads. This would be a small amount of money from VDOT (\$9,000) and the County's match would not be in cash but "in kind" services (staff would install the signs).

The second application is much larger and is for sidewalk landscaping and lighting in New Kent Courthouse area, which would be Phase V of the sidewalk project. He explained that Phase I and Phase II were for actual construction of the sidewalk that exists today. Phase III, applied for and received before he started to work for the County, he described as a "rather ambitious" program of removing all of the overhead wiring and installing lights and landscaping. Mr. Homewood indicated that the amount of the Phase III grant was so miniscule that it was not possible to accomplish even a portion of the project. At that point,

after having done a planning exercise in which a number of the board members were involved, and receiving approval from the Board for a basic plan, his department went back to VDOT and asked for additional funds (Phase IV) which was granted. Staff began moving the project along but ran into one roadblock after another, either with the Federal Highway Administration or VDOT, who wanted the County to leap through all of the National Environmental Policy Act hoops for a project that consisted of planting trees and shrubs and installing lighting. By the time those issues were resolved, staff found itself with other problems, having to reach out and try to find disadvantaged business enterprises to find a contract and there ended up being only one bid which was about amount three times what was anticipated and was far more than what was budgeted. Staff has now decided, before doing a whole lot more, to re-evaluate the project and look at the costs, and then advise VDOT and the CTB, based on current estimates with reasonable inflation factors added, as to what it will take to finish the project and determine if the State wants to give the County money to finish the project or does it want New Kent to use the money already allocated to do the best it can. He stated that the County cannot complete the scope of the work with the dollars that are available. If the County doesn't know if there will be additional funds available, it doesn't know how to use the money it has. He stated that once there is an answer from the State as to whether it would be willing to put more money into it, staff will come back to the Board.

Mr. Sparks asked when Mr. Homewood expected an answer. Mr. Homewood stated that typically in April or May but if the County is still in the running, there will probably be some preliminary indication earlier than that. There are several screenings where it is possible to fall out at any given point. Mr. Homewood confirmed that neither application has been filed, although the staff report indicates that they have.

Mr. Sparks asked about the County's match. Mr. Homewood stated that for the bike sign grant, the County's match will be the labor to install the signs, and would not require any cash. For the sidewalk project, there would be cash match of \$120,000 that would need to be paid.

Mr. Davis asked how much is left over from previous phases to which Mr. Homewood reported that there was \$200,000. Mr. Davis asked if the County received the other grant, would it be in good shape (to finish the project). Mr. Homewood stated that it would.

Mr. Davis commented that he did not think that the newest members of the Board had seen the plans.

Mr. Sparks asked about the timetable. Mr. Homewood reported that the bicycle signage project would be simple to complete. The sidewalk grant is much more complex. The County has hired Williamsburg Environmental Group to be project manager for the design and bidding process so it will bear the brunt of the detail work on that particular part of the project. There will be some bookkeeping work required by the County.

Mr. Budesky stated that the local match for the sidewalk grant would not need to be paid from contingency this year and if the application is successful, the County could budget for its match during the next budget cycle. Mr. Homewood stated that the County wouldn't be authorized to spend the money until after July.

Mr. Trout asked if any of the \$120,000 County's match could be made "in kind". Mr. Homewood stated that it could not, and added that if the CTB authorizes the full amount that is being asked for, and if the Board chose to accept the full amount, then \$120,000 is the amount that would need to be allocated.

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Mr. Homewood stated that this was a request to submit the applications only. It will be the decision of the CTB whether to grant it, and the decision of the Board of Supervisors whether to accept it, either in whole or in part.

Mr. Hill asked if a separate public hearing and vote should be held on each grant. Mr. Homewood stated that it could if that's what the Board wanted, but the MPO plans to submit a single application for all of the projects in the region, but if the Board wants one and not the other, then they will need to be separated.

Mr. Hill asked about the plans for lighting. Mr. Homewood apologized that the newest board members haven't seen the plans and explained that the plan is to install lighting along Route 249 from the Post Office to the intersection of Egypt Road. Mr. Hill asked about Crump's village. Mr. Homewood stated that it is expected that Market Square would be required to extend the sidewalk through its development and down Egypt Road and Route 249 and use complementary lighting fixtures and continue the same thematic approach throughout its development.

Mr. Trout asked if this will be only on current County property. Mr. Homewood stated that there was a piece of property owned by Mr. Crump's uncle that sits between the Courthouse and the middle school that would be included (within the right-of-way).

Mr. Budesky asked Mr. Homewood to explain to the Board about the funding that it already has and what happens if it does not move forward with the grant application. Mr. Homewood clarified that the County is holding \$200,000 from the funds granted for Phases III and IV, and can use those funds to accomplish as much of the plan as it can, whether that would be putting in lights, or just putting in shrubs and trees. There is not enough money to do both, and probably not enough to install all of the lights, but maybe enough for all the lights at the Courthouse.

Mr. Davis agreed that it would make more sense to do the project all at one time. Mr. Homewood indicated that it would be more cost effective, considering that usually 25 – 30% of a project is for mobilization costs alone.

Mr. Sparks asked about restrictions on the funds currently held by the County. Mr. Homewood explained that the County is required to file a report each year to show that it is continuing to try to spend the money. It has been able to do that so far. Mr. Sparks asked if the funds would be in jeopardy if the County waited until April or May to spend them, and Mr. Homewood indicated that they would not.

Chairman Davis opened the Public Hearing. There being no one signed up to speak, the Public hearing was closed.

Mr. Sparks moved to adopt Resolution R-116-05 as presented. The members were polled:

D. M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	No
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE:           VEHICLES FOR COMMUNITY DEVELOPMENT DEPARTMENT

Community Development Director George Homewood explained that when his department budgeted and added new positions, it also added vehicles for the new positions and well as a request for one replacement vehicle. The total of those discussed were three vehicles and the budget estimate on each one, for a 4WD Extended Cab Colorado pick up truck, was \$18,500. When Building Official Clarence Jackson was working with the vendor under the state contract, he discovered that if the County scaled back a couple of the vehicles from 4WD extend cabs to 2WD regular cabs, it could acquire four vehicles instead of three. Staff consequently submitted a Purchase Order request to purchase four trucks instead of three. He stated that "to his great amazement" he finds himself standing before the Board asking for approval. His department thought that it was allocated a certain amount of money to acquire vehicles and if it stayed within that budget, it could get four vehicles for the price of three and replace two vehicles instead of just one.

Mr. Budesky stated that he must have been the one that "amazed" Mr. Homewood by requiring him to appear this evening but this Board approved three 4WD vehicles based upon the need that his department submitted to the Board. Mr. Budesky related that he has subsequently talked with Mr. Homewood and reviewed the department's vehicle allocations. They now feel that the department can be well served by this and can get four vehicles for the price of three. Mr. Budesky indicated that he is supporting this request but warned he will continue to "amaze" other department managers whenever they do things outside of the budget. He stated that the Board approves new vehicle requests based on need, and not necessarily dollar amounts. The costs of ongoing maintenance and fuel also have to be considered.

Mr. Homewood explained that they intend to replace two vehicles now instead of one.

Mr. Sparks said that he thinks if Mr. Homewood and Mr. Budesky feel that it is a logical thing to do, and the Board has appropriated a given dollar amount of money, it doesn't bother him if they buy four vehicles for the price of three and in fact he kind of likes that.

Mr. Budesky stated if the Board wanted to give him authority to deal with whatever is in the dollar line, then he will do that. Mr. Burrell stated that Mr. Budesky did the right thing in having Mr. Homewood request approval, but he agrees with Mr. Sparks. Mr. Budesky stated that the Board needed to be aware of some underlying issues. There are two pool vehicles available. A number of staff in that department has vehicles and he was concerned that the County is adding too many vehicles to a department. He subsequently reviewed this with Mr. Homewood and told him he would support this, but it was the Board's decision and he wanted to make sure that the Board heard it. He does not like to "amaze" his department managers and have them come in like this. Now that the Board has given direction, he'll gladly support it.

Mr. Trout commented that if the three vehicles approved in the budget could be purchased for less than what was in the budget, then the County could save some money. Now it has a request for an additional vehicle at no additional cost, and he would leave it up to Mr. Budesky and Mr. Homewood to determine if this fourth vehicle is needed. If it is, then it is good that it can be purchased at no additional cost.

Mr. Burrell moved that the Board grant the request of Mr. Homewood. The members were polled:

James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	Aye
D. M. Sparks	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE: INCREASE IN WATER AND SEWER FEES

Under consideration by the Board was Ordinance O-27-05 which would increase water and sewer connection fees and availability fees by 5% and include such rate changes in Appendix A of the Code of New Kent.

Mr. Budesky pointed out that this is not an increase in the rates but only in connection and availability fees for new customers.

Chairman Davis opened the Public Hearing. There being no one signed up to speak, the public hearing was closed.

A vote will be taken at the November 1 work session.

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IN RE: COMMUNITY DEVELOPMENT AUTHORITIES

Under consideration by the Board was Ordinance O-28-05 which would authorize the Board to accept petitions to create Community Development Authorities.

County Attorney Phyllis Katz stated that a couple of years ago, the Board discussed whether to consider CDAs and had adopted guidelines at that time. On July 1, 2005, a new State law was enacted setting forth that any county may pass an ordinance agreeing to consider CDAs and this ordinance must be in place in order to consider CDA petitions.

Chairman Davis opened the Public Hearing. There being no one signed up to speak, the Public hearing was closed.

Mr. Trout moved to adopt Ordinance O-28-05 as presented. The members were polled:

Stran L. Trout	Aye
Mark E. Hill	Aye
D. M. Sparks	Aye
James H. Burrell	Aye
W. R. Davis, Jr.	Aye

The motions carried.

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IN RE: ELECTED OFFICIALS REPORT

Mr. Trout announced several events that are taking place in New Kent during October, which included four performances of *Jesus Christ, Superstar* on October 20, 21 and 22 at New Kent High School (a joint effort of New Kent and Kent, England); the Greater Lanexa Studio Tour October 22-23 (12+ artists from The Colonies, North Waterside Drive, and Chickahominy Shores); a country music festival at Rockahock Campgrounds on October 15; Kent/New Kent golf tournament at Brickshire on October 28 (winning team and one team

picked by drawing will travel to Kent, England next year to compete in a tournament); and the Fall Festival and Farmers Market hosted by Farms of New Kent on October 30. He also announced that the trash transfer station on Route 612 will be closed for concrete work through the end of the week.

Mr. Burrell asked if the public transportation service had started. Mr. Budesky replied that it had, and that the local Social Service agencies have the information. Mr. Burrell suggested an ad be placed in The Chronicle. Mr. Trout reminded that riders need to call 24 hours in advance. Mr. Davis asked if there were permanent pick up spots. Mr. Burrell stated that they are looking at that. Mr. Trout provided the telephone number and information on the fares.

Mr. Sparks announced that because of inclement weather, Community Safety Day had been postponed until October 22. He indicated that he and Mr. Hill had attended orientation for Habitat for Humanity on Saturday.

Mr. Hill stated that he has had contact with the Executive Director of Habitat for Humanity and that New Kent's new Social Services Director will help get this program up and running. He indicated that he had participated with the *New Kent in Motion Club* in County clean-up efforts on October 1, picking up trash on Route 612. He noted that not all of the litter is coming out of the back of pickup trucks on the way to the refuse sites, and asked the Sheriff and his deputies to be on the lookout for vehicles whose occupants are throwing out bottles and cans. He thanked the *New Kent in Motion Club*.

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IN RE:           STAFF REPORTS – MUTUAL AID

County Administrator John Budesky advised the County has received correspondence from Henrico County about the increasing number of mutual aid calls and he has been working with career staff and the volunteers on the problem. It was reported that the amount paid to James City County to date for mutual aid is approaching \$80,000. Mr. Davis asked how many of these calls are responding to the jail, to which Mr. Budesky responded that those were just a small number. Most are rescue calls, with a few fire calls. Henrico has put the County on notice that by January 2006, New Kent will need to have a plan to remedy the situation dealing with the increase in mutual aid calls. New Kent will need to continue to look at this situation and find a solution. He indicated that he met with the Charles City County Administrator, noting that Charles City County's mutual aid numbers are also increasing and is in the same or worse situation because it has no career staff and doesn't own apparatus or a fire department building. He is looking at a regional solution as well as other avenues on how to curb the use of mutual aid. He emphasized that volunteers will be key to this solution. He reported that there have been 1200 runs since January 1 made by Providence Forge Volunteer Rescue Squad and Company 2. The career staff has answered 400 calls during the day.

Mr. Davis asked about mutual aid from Hanover. Mr. Budesky reported there has been none for this year, and three calls from West Point.

There was discussion about the increasing number with Henrico. Mr. Budesky reported that the number of calls on the eastern side of Henrico has risen because it is serving New Kent and Charles City. There is a need to create a long term solution and work with the volunteers.

Mr. Trout indicated that he has worked with Dr. Dean Williams, the Medical Director for New Kent, who is interested in getting involved in this.

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Mr. Budesky emphasized the importance of the volunteers in this process. Volunteers are now required to undergo more rigorous training and make time commitments, while trying to find a balance between their jobs and family commitments. Their help is vital.

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IN RE: STAFF REPORTS – FINANCE

Under consideration by the Board was a request for a budget transfer of \$1,880 from the contingency account to communications equipment. Mr. Budesky explained that this involved installation of the security system that was originally an FY06 project moved up to FY05. This will cover an upgrade in the wiring for the project that was not originally in the budget and will finish up the project.

Mr. Hill moved to approve an inter-departmental budget transfer of \$1,880 from Reserved for Contingency to Communications Equipment. The members were polled:

Mark E. Hill	Aye
D. M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE: DISTRICT APPOINTMENTS

There were no appointments for Districts One, Two, Three or Five.

Mr. Trout moved to appoint Satoshi Ito as District Four's representative to the New Kent County Social Services Advisory Board to serve a term ending June 30, 2008.

The members were polled:

D. M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE: APPOINTMENTS TO BOARDS AND COMMISSIONS NOT DELEGATED BY DISTRICT

Mr. Burrell appointed Julia Taylor as a representative to the New Kent/Charles City Transportation Advisory Board. The members were polled:

James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	Aye
D. M. Sparks	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE: MEETING SCHEDULE

Chairman Davis announced that the next regularly scheduled meeting of the Board of Supervisors would be held at 6:00 p.m. on Wednesday, November 9, 2005, in the Boardroom of the County Administration Building. The next work session will be held on Tuesday, November 1, 2005, at 6:00 p.m. in the Boardroom of the County Administration Building.

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IN RE: CLOSED SESSION

Mr. Hill moved to go into Closed Session for discussion of award of public contract pursuant to Section 2.2-3711A.30 of the Code of Virginia involving the expenditure of public funds, and the discussion of the terms or scope of such contract, where discussions in open session would adversely affect the bargaining position or negotiating strategy of the County; to discuss a personnel matter pursuant to Section 2.2-3711A.1 of the Code of Virginia involving the performance and compensation of an employee; and for briefing by legal counsel pursuant to Section 2.2-3711A.7 of the Code of Virginia regarding certain federal mandates. Mr. Trout amended the motion to add consultation with legal counsel pursuant to 2.2-3711A.7 of the Code of Virginia regarding specific legal matters that require advice. The members were polled:

Stran L. Trout	Aye
Mark E. Hill	Aye
D. 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:

Mark E. Hill	Aye
D. M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye

The motion carried. Mr. Sparks made the following certification:

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

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Chairman Davis 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:

D. M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE:           BORROWING FOR HIGH SCHOOL CONSTRUCTION

Under consideration by the Board was a request from the County Administrator to authorize the County to obtain interim financing to perform site work and for other expenses relating to construction of the new high school.

Mr. Hill moved to authorize the County to borrow an amount not to exceed \$3.75 million for site work and other expenses relating to construction of the new high school. The members were polled:

James H. Burrell	Aye
Stran L. Trout	Aye
Mark E. Hill	Aye
D. M. Sparks	Aye
W. R. Davis, Jr.	Aye

The motion carried.

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IN RE:           ADJOURNMENT

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

Stran L. Trout	Aye
Mark E. Hill	Aye
D. M. Sparks	Aye
James H. Burrell	Aye
W. R. Davis, Jr.	Aye

The motion carried.

The meeting was adjourned at 11:12 p.m.

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