

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Regular Meeting
March 18, 2008

6:00 p.m.

Meeting Convened. A Regular Meeting of the York County Board of Supervisors was called to order at 6:00 p.m., Tuesday, March 18, 2008, in the Board Room, York Hall, by Chairman Thomas G. Shepperd, Jr.

Attendance. The following members of the Board of Supervisors were present: Walter C. Zarembo, Sheila S. Noll, Donald E. Wiggins, George S. Hrichak, and Thomas G. Shepperd, Jr.

Also in attendance were James O. McReynolds, County Administrator; J. Mark Carter, Assistant County Administrator; and James E. Barnett, County Attorney.

Invocation. Priyanka Ranganathan, York County Youth Commission, gave the invocation.

Pledge of Allegiance to the Flag of the United States of America. Chairman Shepperd led the Pledge of Allegiance.

HIGHWAY MATTERS

Mr. Jim Brewer, Residency Administrator, Virginia Department of Transportation (VDOT), appeared to discuss highway matters of interest to the Board. He reported the department was working on drainage projects and trying to catch up on potholes.

Mr. Hrichak stated he had read about a possible third turn lane on Lakeside Drive, and he questioned whether it was a VDOT or a County project, and he asked the status of the project.

Mr. Brewer stated it was still on the County's secondary six-year plan, but he did not know the year. He added that he or County staff would get the construction date for Mr. Hrichak.

Mr. Hrichak asked who held the funding responsibility.

Mr. Brewer stated it was the County's responsibility to set the priorities for the secondary six-year plan, and the County tells VDOT where it wants the roads to be constructed, and VDOT funds the roads as funds become available. He noted it sometimes takes 10 to 12 years for the funding to become available for a road project.

Mr. Wiggins stated he had a call from a lady in reference to Grafton Drive saying that the pavement was broken up at the end of the street, and it tears her car up when she drives on the street. He asked Mr. Brewer if he was aware of the problem.

Mr. Brewer stated he was not aware of any problems on Grafton Drive, but he would check on it.

Mr. Wiggins also reported that Mrs. Upton at 401 Seaford Road was having severe drainage problems. He stated she had VDOT look at the problem, and she was told it was a County problem. He said he had the County look at the problem, and staff said it was not an easement that the County owns.

Mr. Brewer stated he would check; and if it was a VDOT easement, they would take care of it.

Mrs. Noll said the property owner at the corner of Rich Road and 17 had given permission for the County or VDOT to put up some type of barrier to keep people from cutting through to get across going north on Route 17. She added she knew the County had been working with VDOT on the issue, and she asked Mr. Brewer if he had any update on whether or not VDOT was going to put up a barrier.

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Mr. Brewer stated that VDOT cannot go on private property and put up a barrier, even with the owner's permission. He stated the County or the land owner would have to erect the barrier.

Mr. Zaremba asked Mr. Brewer if he had a chance to look at the potholes that needed attention in his district that had been marked for repair.

Mr. Brewer said that the ones on Route 199 had been completed, and he did not find any potholes around Cambridge, but they were working on some delamination repairs in that area.

Chairman Shepperd noted that traffic issues had exploded in his district. He asked how the process would take place for the review of the deceleration request on Hampton Highway near the Villas of Shady Banks.

Mr. Brewer said once he received the request, he would send it to the district traffic engineers. The traffic engineers would come out and do a study and make recommendations as to what they think would help or not help or what they could do make the situation better. He stated the process would take around 60 days.

Chairman Shepperd stated he also had several requests for a "no left turn" designation off of Big Bethel Road onto Victory Boulevard. He stated he knew that VDOT had just widened that road and made improvements at the intersection, but there were still continuing problems with people trying to turn at the intersection.

Mr. Brewer said it would be the same process that he had just explained, and he noted he had been given the request before, and it had already been sent in.

Chairman Shepperd the noted there were potholes on Flag Creek and Old Port Cove, as well as on Heavens Way. He stated he had a call from Mr. Russell at the corner of Mansion Road and Cary's Chapel Road indicating he had asked VDOT to take a look at the ditch on his side, and he asked Mr. Brewer to take a look at it when he had the time.

PRESENTATIONS

INTRODUCTION OF NEW MEMBERS TO YORK COUNTY BOARDS AND COMMISSIONS

Chairman Shepperd introduced and welcomed the following newly appointed members to York County Boards and Commissions and presented each with a Boards and Commissions Handbook and York County pin:

Janis Erickson	Beautification Committee
Lori Fuller	Beautification Committee
John Short	Historical Committee
Donna Gilroy	Senior Center of York Board

YORK COUNTY YOUTH COMMISSION

Mr. Kyle Fiest, Chairman of the York County Youth Commission, provided the Board with the Commission's third quarterly report. On January 28 Parks and Recreation sponsored its annual Wintergreen ski trip with 172 students in attendance. In February the Commissioners co-sponsored the annual Senior Center Valentine Bingo Party with Parks and Recreation and hosted a County-wide talent show at Grafton High School. Mr. Fiest then reviewed the upcoming projects of the Youth Commission, which included a County-wide movie night at Kiskiak Green in May. He thanked Mr. Zaremba, the Commission's new board representative, for serving with the Commission. He stated the Public Relations Committee is in the process of updating the student volunteer newsletter. He noted that the annual town meetings would be held in the high schools in late May, and the Commission was very excited about the town meetings as they bring high school students in direct contact with members of the Board of Supervisors as well as members of the School Board. On March 16 the Commission assisted the Historical Committee with a welcoming reception for the exchange students from Zweibrücken, Germany. Mr. Fiest thanked the Board for its past participation in the Youth Commission's programs as well as its support.

ZWEIBRÜCKEN STUDENT EXCHANGE PROGRAM

Ms. Sandy Hesper, York County School Division, gave a presentation on the Zweibrücken Exchange Program and introduced the following exchange students from Germany accompanied by their American host counterpart:

Bruton High School

Heidi McDonough
Abby Moul
Erika Piotrowski
Brennan Pritchard

Zweibrücken

Janna Jung
Katrin Schnur
Meike Petsch
Philipp Juhn

Grafton High School

Christopher Heft
Calvin Winkowski

Maximilian Fuss
Karoline Herrmann

Tabb High School

Rachel Mackey

Lana Damm

York High School

Maeve Hoyt
Alaina Nunn
Molly White

Julia Badt
Amanda Wrzos
Mareike Marhofer

CITIZENS COMMENT PERIOD

Chairman Shepperd noted that a request had been made to remove the public hearing item on tonight's agenda, and he would continue into Citizens Comment Period.

Mrs. Noll suggested that the fact be announced that the applicant for the public hearing had requested that the application be removed from the agenda, and then hear those individuals who have come to speak, and table the matter.

Chairman Shepperd indicated his concern was that the applicant could request that his application be removed, and there was no requirement for the Board to have a public hearing. He noted, however, that he understood there were modifications being made to the application, and he felt the citizens had a right to speak to those changes.

Discussion followed.

Mr. Zarembo moved that consideration of Application No. UP-705-06, T-Mobile Northeast, LLC, be tabled.

On roll call the vote was:

Yea: (5) Zarembo, Noll, Wiggins, Hrichak, Shepperd
Nay: (0)

Chairman Shepperd then opened the Citizens Comment Period.

Mr. Carlos Roithmayr, 117 Water Fowl Drive, expressed his extreme disappointment at the matter concerning the cell tower application being tabled. He stated the citizens had been waiting a month to address the Board of Supervisors and were very disappointed that the matter was not being voted on this evening. He added he had not heard any overriding reasons why the application should be tabled at the last minute. He asked the people in attendance who were at the meeting in opposition to the application to stand up so the Board could see how many were in opposition.

Mr. Steven Savage, 103 Tern Court, appeared representing the Board of Directors of the Lakes of Dare Home Association, stating appreciation for what the Board was doing to make the County the best County to live in. He asked how T-Mobile could come in at the eleventh hour

and say they wanted to change what they were proposing and ask for a 30-day extension, yet the citizens could not come in at the eleventh hour and ask the Board to table the application while they try to get themselves together and present their case. He stated he would be back next month to present his case.

Mr. Bill Eutsler, 118 Tern Court, Lakes of Dare, stated he spoke for the entire Dare Community to say they are disappointed at the tabling of the T-Mobile application. He stated it was unfair to the citizens, and something has to be done to make sure this did not happen again. He thanked the Board members for taking their phone call and emails on this issue.

Mr. Eric Ancarrow, 112 Creek Circle, spoke regarding the proposal for the development at 102 Creek Circle, asked if the citizens have been tasked with enforcing laws and codes solely because York County failed to fulfill its obligations to enforce them. He stated the Bay needs protections, as well as the citizens having their rights.

Mr. Jim Troeschel, 301 Blue Heron Drive, addressed the aesthetics of having a cell tower as proposed by T-Mobile, and he asked the Board to help his community and deny the tower application.

Mr. Steve R. Nesbitt, 400 Water Fowl Drive, stated he had reviewed the Comprehensive Plan, and he believed the T-Mobile application did not rise to the level of the demonstration required for the Board's approval according to the plan. He stated he believed there needed to be a credible process that withstands public scrutiny and that which would demonstrate that a need exists for the cell tower.

Mr. Phil Rea, 203 Blue Heron Drive, asked for the Board's help by denying the T-Mobile application.

Ms. Jessica Wright, 4720 Tameo Road, Glen Allen, Virginia, representing Verizon Wireless, spoke regarding Verizon's request for a minor enlargement of a conforming Dominion Virginia Power pylon. She noted that Condition 13 called for an 8-foot chain link fence for the property, but the homeowners association would prefer a wooden fence. She noted that Verizon Wireless had no objection to amending the condition to require a wooden fence.

Mr. Anthony Bavuso, 114 Creek Circle, spoke on the proposed development at 102 Creek Circle, stating his concerns about the future of Chesapeake Bay. He stated his concern was with the policies and decisions of York County in this matter and the failure to uphold the County's obligation to protect the Bay. He expressed his hope that the Board of Supervisors would correct this wrong by sending an appeal to the Circuit Court.

Ms. Mary Loesch, 106 Creek Circle, addressed the construction being considered at 102 Creek Circle, stating her concern about the Chesapeake Bay and minimum size requirements.

Chairman Shepperd indicated the Board did not exchange information during this part of the meeting. He noted that when the Board makes its comments later in the meeting, some of their comments might answer some of the questions raised at this time. If the citizens wish an exchange with the Board, he indicated it would need to be done through email, phone calls, or other correspondence.

Mr. Frank Ancarrow, 110 Creek Circle, addressed the proposed development at 102 Creek Circle, stating he believed that the decision reached by the Chesapeake Bay Board to allow the requested exceptions was not the correct decision, and it needed to be reconsidered.

Mr. Carl Birkholz, 103 Stellar Circle, indicated he was asked by some of the Lotz Acres members to address traffic issues dealing with the volume of traffic coming out of Poquoson from 7:00 to 8:45 a.m. making it impossible to make a left hand turn out of the subdivision. He stated the speed limit was 55 MPH, and entering and exiting the subdivision was quite dangerous, and there was about one accident per week. He requested a double yellow line be put in front of the subdivision to keep traffic from passing, and he asked for a traffic study to install a traffic light at Heavens Way and Victory Boulevard.

Mr. Norm Knight, 303 Heavens Way, spoke of the long-term drainage issues in the Lotz Acres subdivision since 1989. The beginning of the problems probably started with the acceptance of the streets in the subdivision over the objection of the County. Drainage worsened when Lotz

Realty began building the Tabb Meadows subdivision in 1996 and directed the runoff water from its three retention ponds into the drainage swales that run behind his house and behind houses on Polaris Drive. He stated he contacted the County in early in 1997 about his concerns, and the County responded with letters to Lotz Realty directing it to seed and correct the problem, which they then delayed because there were no houses built at that time. He noted there has been numerous correspondence about the problem since August of 1997, and the residents are now told that peak drainage rates are not exceeded. Mr. Knight asked that the County relook at this situation and contact the residents.

Mr. David MacDonnell, 107 Polaris Drive, Lotz Acres, also spoke of the drainage situation in Lotz Acres, specifically about the communication process of letting the homeowners know when there was going to be a development built that would directly affect their properties. He stated it would behoove the County not to assume that everyone was well aware that this new development was planned all along and that the residents did not need to be notified. He stated the County should have sent out letters out to learn what the residents knew about drainage and traffic situations for the current subdivision. He stated such notification would have actually helped the County alleviate some of the issues prior to them becoming larger issues if the residents would have had a chance to get into the process sooner.

Mr. Don Smart, 1008 Dare Road, also appeared to speak in opposition to the proposed T-Mobile cell tower, and he asked the Board to deny the application. He stated no height would be acceptable to the community.

Mr. Robert Green, 111 Paradise Point Road, stated he had a petition with at least 50 or 60 names on it stating the community did not want the cell tower where T-Mobile proposed for it to go.

COUNTY ATTORNEY REPORTS AND REQUESTS

Mr. Barnett stated that since the General Assembly session was over, he would put the list of legislation he had been following into final form showing what happened to it and send it to the Board.

COUNTY ADMINISTRATOR REPORTS AND REQUESTS

Mr. McReynolds reminded the Board of the public hearing on the proposed budget and tax rates scheduled for March 20 at 7:00 p.m. in the Board Room, and the public hearing on the proposed tax rates for March 25 at 7:00 p.m., also in the Board Room. He reminded the Board of its Regular Meeting on April 1 when the Board is scheduled to adopt the proposed FY09 budget and set the tax rates for this calendar year, and the Board's Regular Meeting on April 15.

MATTERS PRESENTED BY THE BOARD

Mrs. Noll noted that Dr. Jim and Cooka Shaw had been named Citizens of the Year by the Daily Press. She thanked all the parents who had contacted the Board through this budget cycle, noting that the Board had gotten copies of all the pink cards that had been sent in, in addition to the emails and letters the Board members received. Mrs. Noll stated that because a citizen had not gotten a direct answer, it did not mean the Board was not taking their words to heart, and it would make the best decision it could for the good of all, regardless of the issue. She then noted she had attended the annual Arbor Day ceremony which was the 100th anniversary of Arbor Day in Virginia and the 30th in this area. She added that York County employee Joanne Chapman was honored with an individual award. She noted Ms. Chapman did a great deal of work on the beautification efforts for the 2007th celebration in the patriotic gardens, as well as work that had been done down at the waterfront, and all the plantings around the government buildings.

Mr. Wiggins expressed his appreciation to the citizens who took their time to come out tonight to speak on issues that were on the agenda. He indicated he realized their frustration because the issues are things they truly believe in. He stated the Board was elected to represent the people and groups of the five districts, and the Board members appreciated the attendance at

tonight's meeting. Mr. Wiggins noted he had worked closely with many of the residents from his district for the past three or four weeks, and said he was also drained from working on the issues himself. He stated it was a process of government, and he commended the residents for taking an active part in it.

Mr. Hrichak stated he appreciated the support and the comments from everyone on the budget, on the cell tower, and on everything that was going on right now. He noted he was also disappointed that the cell tower would not be voted on at this time. He added he would like to get the issue resolved. He said he appreciated the comments on the issues, and the Board was taking them to heart and would do the right thing for the citizens.

Mr. Zaremba assured the citizens that the Board would not be worn down next month when the cell tower issue returns to the agenda. He stated the Board was quite proud of the way it resolved the different issues, regardless of the issue or where in the County the issue happened to be. The Board was not going to let anything get by without properly weighing the pros and cons and making a decision based on the merits. Mr. Zaremba then addressed the budget process, asking the citizens to make sure they contacted their district supervisor and let the Board know their comments on the budget as soon as possible because the proposed date for budget adoption was April 1. He stated there were some tough times up ahead, and York County was not immune. He talked about the reassessments that take place every two years and the impact it will have on the tax rates and the taxes the citizens pay. He stated one of the goals of the Board of Supervisors was to hold the line on taxes, and try to reduce the tax rate which never compensates for the incremental increases in taxes because as the County grows, so does the requirement for services and programs. He spoke of the proposed shortfall of revenue coming from the State and what it would mean to the County and the School Division.

Chairman Shepperd spoke of the laws that the Board was governed by, and of the appeal processes for just about everything. He stated he felt the need to explain this because he hoped it would help the citizens understand the processes so that they would also understand the stress brought on sometimes by the process. He addressed the comment that was made earlier by a citizen that the Board has the opportunity to table any proposal, and he stated that there are times when the Board realizes it does not have all the information necessary to make the best decisions, and it tables an issue and directs staff to provide the needed information. There are times when an applicant has a need to make significant modifications to its application, and generally the Board goes along with it because it is in the interest of getting the best result. Mr. Shepperd stated that the most important part of the process is for the citizens to give the Board input on the issues by way of email, letters, phone calls, and attending meetings, and the same is true for providing the Planning Commission with the same input. He stated the Board will then fight for the citizens' position, but the process also requires fairness to the property owner, the applicants, and to the residents that they be heard, that the issues be evaluated, that they are voted on, and that was what democracy is all about. He stated the citizens' comments tonight were very important, and if some of them could not make it to the next meeting when the issue was heard, the Board would remember what was said tonight. Mr. Shepperd then noted that tomorrow he has a meeting with the Hampton Roads Planning District Commission, and tied to that was a meeting of the Hampton Roads Transportation Authority (HRTA). He stated he received an email from an individual who said the HRTA was unconstitutional. Mr. Shepperd stated the Supreme Court did not do away with the HRTA, but only stated that the HRTA cannot raise taxes. He stated the HRTA can actually do other things, and he thought establishing tolls was one of them. He reminded everyone of the Board's unanimous vote not to approve the HRTA; but because it was established, the County was required to participate. Mr. Shepperd then addressed the YMCA, stating several years ago the Board established a gift of land to the YMCA and provided some money for the YMCA on Hampton Highway to be built in exchange for the services the YMCA provides to the citizens of York County. He noted that the program there provides a lot of opportunities for the County's young people, and he stated he had the statistics for the Board to review.

PUBLIC HEARING

APPLICATION NO. UP-705-06, T-MOBILE NORTHEAST, LLC

By action taken by the Board of Supervisors earlier in the meeting, the subject application was tabled.

CONSENT CALENDAR

Mrs. Noll moved that the Consent Calendar be approved as submitted, Item Nos. 2, 3, 4, and 5, respectively.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Hrichak, Zaremba, Shepperd
Nay: (0)

Thereupon, the following minutes were approved and resolutions adopted:

Item No. 2. APPROVAL OF MINUTES

The minutes of the February 19, 2008, Regular Meeting of the York County Board of Supervisors were approved.

Item No. 3. ENDORSEMENT OF FAIR HOUSING PRINCIPLES: Resolution No. R08-25

A RESOLUTION ENDORSING THE PRINCIPLES OF FAIR HOUSING AS SET FORTH IN TITLE 36, CHAPTER 5.1 OF THE CODE OF VIRGINIA (1950) AS AMENDED AND DECLARE APRIL AS FAIR HOUSING AND EQUAL OPPORTUNITY MONTH IN YORK COUNTY

WHEREAS, the Commonwealth of Virginia has, through Section 36-96.1 of the Code of Virginia (1950, as amended), established a policy to: "provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity and general welfare of all inhabitants of the Commonwealth may be protected and insured"; and

WHEREAS, Section 36-96.8 et.seq., of the Code of Virginia (1950 as amended) empowers the Virginia Real Estate Board to receive complaints and conduct investigations of alleged violations of the Fair Housing Law; and

WHEREAS, April is National Fair Housing and Equal Opportunity Month and it is the desire of the York County Board of Supervisors that it be so recognized in York County;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 18th day of March, 2008 that the Board does hereby reaffirm its endorsement of the principles of the Virginia Fair Housing Law and does hereby state that it is the policy of the York County Board of Supervisors that said principles are, and continue to be, adhered to in this County.

BE IT FURTHER RESOLVED that the Board of Supervisors declares April as Fair Housing and Equal Opportunity Month in York County and joins with the rest of the nation in so recognizing and celebrating these essential rights.

Item No. 4. RENTAL SUBSIDY PROGRAM: Resolution No. R08-27

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO TAKE ALL ACTIONS NECESSARY TO ACCEPT FUNDING AND CONTINUE TO IMPLEMENT RENTAL SUBSIDY PROGRAMS FUNDED THROUGH THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE VIRGINIA HOUSING DEVELOPMENT AUTHORITY

WHEREAS, the Board of Supervisors has a long standing commitment to assisting the

County's low and moderate income citizens in meeting essential housing needs; and

WHEREAS, the rental subsidy programs funded and administered through the U.S. Department of Housing and Urban Development and the Virginia Housing Development Authority (VHDA) provide annual outside funding that assists eligible County citizens.

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 18th day of March, 2008 that the County Administrator be, and he is hereby, authorized to accept funding in the amounts offered the County by the Virginia Housing Development Authority, execute any necessary grant agreement, contracts or other documents with VHDA, and to participate fully in the Section 8 Housing Choice Voucher Rental Subsidy Program for FY2009; provided that all documents shall be approved as to form by the County Attorney.

Item No. 5. STREET NAME CHANGE: Resolution No. R08-5

A RESOLUTION TO ESTABLISH THE NAME OF THE NEW STREET CONNECTING ROUTE 17 WITH THE EXTENSION OF GRAFTON DRIVE

WHEREAS, the Virginia Department of Transportation is currently managing a road construction project that will result in the extension of Grafton Drive in a southerly direction toward an eventual connection with Burts Road; and

WHEREAS, this project will include the construction of a short street segment connecting between the Route 17/Dare Road intersection and the relocated Grafton Drive; and

WHEREAS, the adjoining property owner from whom much of the right-of-way for the road construction was acquired has requested that the Board consider naming the short connector street "Martin Farm Road" in recognition of that family's ownership dating back to the establishment of the Martin Farm in 1850; and

WHEREAS, the name Martin Farm Road is consistent with County street naming policies; and

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 18th day of March, 2008 that "Martin Farm Road" be, and it is hereby, approved as the name of the new street that will, upon completion, connect Route 17 and the relocated Grafton Drive.

NEW BUSINESS

VERIZON WIRELESS

Mr. Carter gave a presentation on proposed Resolution R08-32 to authorize a minor enlargement of a conforming Dominion Virginia Power pylon from 120 to 140 feet in height to allow construction of a communications tower with antenna arrays. He noted that if the homeowners association would prefer a wooden fence as indicated by Ms. Wright, staff did not see any difficulty in that. He indicated the fence simply encloses the leased area for the equipment, and it would probably be more attractive from the residents' standpoint. He stated staff recommended approval of the application.

Mr. Zaremba asked for the position of the homeowners' association on this matter.

Mr. Carter said the homeowners association was the co-applicant as it was their property. He indicated the association was in favor, and it will derive some lease revenue from it.

Mr. Hrichak moved the adoption of proposed Resolution R08-32(R) that reads:

A RESOLUTION TO AUTHORIZE MINOR ENLARGEMENT OF A CONFORMING DOMINION VIRGINIA POWER PYLON FROM 120 TO 140 FEET IN HEIGHT TO ALLOW CONSTRUCTION OF A COMMUNICATIONS TOWER WITH ANTENNA ARRAYS

WHEREAS, Verizon Wireless has submitted Application No. UP-740-08 requesting authorization to enlarge a conforming special use, pursuant to Section 24.1-115(d)(2) of the York County Zoning Ordinance, by establishing a 140-foot communications tower within an existing 120-foot Dominion Virginia Power pylon on property located at 800 Running Man Trail (Route 606) and 101-A Coinjock Run (Route 1781) and further identified as Assessor's Parcel Nos. 37-18-8-1 (GPIN U03d-3512-1280) and 37-18-8-2 (GPIN U03d-4528-0153); and

WHEREAS, said application constitutes an expansion of 16.7% and therefore is considered a minor enlargement of a conforming special use requiring approval by the York County Board of Supervisors without public hearings or Planning Commission review; and

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 18th day of March, 2008 that Application No. UP-740-08 be, and it is hereby, approved to authorize enlargement of a conforming special use, pursuant to Section 24.1-115(d)(2) of the York County Zoning Ordinance, through the establishment of a 140-foot communications tower within an existing 120-foot Dominion Virginia Power pylon on property located at 800 Running Man Trail (Route 606) and 101-A Coinjock Run (Route 1781) and further identified as Assessor's Parcel Nos. 37-18-8-1 (GPIN U03d-3512-1280) and 37-18-8-2 (GPIN U03d-4528-0153), subject to the following conditions:

1. This use permit shall authorize construction of a communications tower within an existing Dominion Virginia Power pylon on two parcels of land located 800 Running Man Trail (Route 606) and 101-A Coinjock Run (Route 1781) and further identified as Assessor's Parcel Nos. 37-18-8-1 and 37-18-8-2.
2. The height of the tower shall not exceed 140 feet.
3. A site plan prepared in accordance with the provisions of Article V of the York County Zoning Ordinance shall be submitted to and approved by the County prior to the commencement of any land clearing or construction activity on the subject property. Except as modified herein, said plan shall be substantially in conformance with the sketch plan submitted by the applicant titled "Running Man Collocation Power Tower," prepared by Clark-Nexsen Architecture and Engineering and dated 2/6/08. As part of the site plan submittal, the applicant shall prepare a frequency intermodulation study to determine the impact on current communication transmissions for the York County Departments of Fire and Life Safety and General Services, Sheriff's Office, School Division, and the Intrac Sewer Telemetry System. Should any equipment associated with this facility at any time during the operation of the tower be found by the County to cause interference with County communications, the applicant shall be responsible for the elimination of said interference within twenty-four (24) hours of receipt of notice from the County.
4. Construction and operation of the tower shall be in conformance with the performance standards set forth in Sections 24.1-493 and 24.1-494 of the Zoning Ordinance.
5. Prior to site plan approval, the applicant shall submit to the County a statement from a registered engineer certifying that radiofrequency radiation emitted from the tower shall not exceed the applicable maximum permissible exposure standards as set forth in the Code of Federal Regulations, Title 47, Chapter 1, Federal Communications Commission (FCC). Such certification shall be prepared in accordance with the currently published FCC Office of Engineering and Technology Bulletin 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields."
6. A report from a registered structural or civil engineer shall be submitted indicating tower height and design, structure installation, and total anticipated capacity of the structure (including number and types of users that the structure can accommodate). These data shall satisfactorily demonstrate that the proposed tower conforms to all structural requirements of the Uniform Statewide Building Code and shall set out whether the tower will meet the structural requirement of EIA-222E, "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
7. The access easement shown on the above referenced sketch plan shall be established for the benefit of tower users for purposes of ingress, egress, and installation and main-

tenance of utilities associated with the proposed telecommunications facility prior to site plan approval.

8. Advertising and signage on the tower shall be expressly prohibited, except for warning signs associated with the operation of the tower or its equipment.
9. Prior to site plan approval, the applicant shall submit written statements from the Federal Aviation Administration, Federal Communications Commission, and any other review authority with jurisdiction over the tower, stating that the proposed tower complies with regulations administered by that agency or that the tower is exempt from those regulations.
10. If at any time use of the communications tower ceases, the owner of the subject property on which the tower is located shall dismantle and remove it within six (6) months after ceasing to use it, unless:
 - (1) A binding lease agreement or letter of intent with another wireless communications provider has been executed in which case an additional six (6) months shall be granted. If a letter of intent is provided, the execution date for a binding lease agreement shall not extend more than (12) months beyond the time the use of the tower ceases, or
 - (2) The County requests, in writing, that the tower be reserved for County use.
11. Accessory facilities shall not include offices, vehicle storage, or outdoor storage unless permitted by the district regulations.
12. Evidence shall be provided prior to receipt of a building permit that the Virginia State Corporation Commission has been notified that a communication facility is to be constructed.
13. The proposed lease area shall be surrounded by a wooden fence, a minimum of six (6) feet in height, and deemed acceptable for screening purposes by the Zoning Administrator. Trees and shrubs shall be planted around the perimeter of the compound area in accordance with Zoning Ordinance requirements.
14. The communication tower shall be gray in color. Should Federal Aviation Administration requirements dictate special markings, tower lighting shall be used in lieu of multi-color painting. If painting is required, a tower maintenance plan shall be submitted to and approved by the County.
15. No microwave dishes, conical shaped antennae, or other dish antennae shall be permitted on the tower.
16. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this Special Use Permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court and documentation of recordation shall be submitted to the Division of Development and Compliance prior to or in conjunction with any application for site plan approval.

BE IT FURTHER RESOLVED that this Special Use Permit is severable, and invalidation of any word, phrase, clause, sentence, or paragraph shall not invalidate the remainder.

On roll call the vote was:

Yea: (5) Wiggins, Hrichak, Zaremba, Noll, Shepperd
 Nay: (0)

CHESAPEAKE BAY BOARD DECISION APPEAL

Mr. Shepperd stated this was a matter that was tabled at the Board's last work session, and it was a continuation of the discussion only. He added the Board had already conducted its

closed session, and there would be no public hearing.

Mr. Wiggins provided background information on the subject property on Creek Circle and how it was previously used. He stated everything in the area basically falls within the protection of the Chesapeake Bay Act, and it was the Board's duty to protect the Chesapeake Bay. He noted it was one lot and would never be anything but one lot and could not be subdivided. The Chesapeake Bay rules state that a property owner is allowed to build a house on the property, and nobody has said that they disapprove of a house being built on this piece of property. Mr. Wiggins then reviewed and discussed the criteria in the Chesapeake Bay Act that must be met once a property owner is given the right to build, including the minimum amount of encroachment allowed into the buffer area. He spoke of County staff reviewing the plans and deciding to forward the request for exception to the Chesapeake Bay Board for resolution. Mr. Wiggins indicated he did not feel the application met the minimum standard and should not have been approved. He stated the citizens are very upset and think the ruling was wrong, and he expressed his agreement. He stated it was the wrong decision, and the Board needed to do whatever was necessary to change it if at all possible.

Mr. Hrichak agreed this was an emotional issue and touched people in a lot of different ways. He indicated he had studied and watched the last board meeting on the videos since he was not at the meeting, and he had read through all the information and talked with the County Attorney on this issue trying to make some sense of it. He noted the property was formed pre-Chesapeake Bay Protection Act as were all the other properties in that area, and the law does not always make common sense; but is legal, and the issue has to be looked at from the legal content and whether it would stand up in court. Mr. Hrichak stated he was trying to look at the whole issue with common sense to see how this will all play out in terms of other homes in the area. He noted this property owner has same rights as the other area homeowners to build on his property. He also noted the property owner was planning on doing things that will minimize damage to the Bay. He stated he feels the property owner was within his rights, that he followed the process, and everything seemed to be in order; and he could not find anything that seemed to be out of line or showed favoritism or that was contrary to the Chesapeake Bay Protection Act.

Mrs. Noll expressed her agreement with Mr. Hrichak on this issue. She indicated she went through all of the information material that the Board has received from both sides of the issue, and the Board could not make a decision based on emotion, but one based on fact and as objectively as possible. She stated the property owner has a right to develop the property, and was trying to preserve the environment as best they can, being innovative in what they are proposing to do. Mrs. Noll stated she felt the Chesapeake Bay Board used a very reasoned approach in making its decision, and she felt the Board should not appeal its decision.

Mr. Zaremba expressed appreciation for the input from those who opposed the project. He then asked Mr. Hudgins how the County defined minimum encroachment into a buffer area.

Mr. John Hudgins, Director of Environmental and Development Services, indicated the buffer being discussed was the 100-foot Resource Protection Area (RPA) which was designated from the edge of wetlands in landward. He explained that in determining minimum encroachment in other applications, staff has used as a basis the surrounding properties that were similar to the subject one. In this particular case, because the property was so unique, and because of some of the benefits that the applicant proposed in this application, the staff chose to tell the applicant that he would have to take his application before the Chesapeake Bay Board for a decision. He stated the staff, in turn, provided technical information to the Chesapeake Bay Board in support of that decision.

Mr. Zaremba asked Mrs. Drake to explain the buffer criteria.

Mrs. Drake stated that the 100 foot buffer is divided into two portions. The 0 to 50 foot portion is the area closest to the water and is considered the most sensitive area. The second 50 foot portion, 50 to 100 feet, is the area in which staff has the initiative authority to grant encroachments. She stated anything below 50 feet must go to the Chesapeake Bay Board for decision.

Discussion followed concerning the buffer area.

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Mr. Zaremba asked what the Chesapeake Bay Board's rationale was in coming to its decision on the project.

Mr. David Rolston, Member of the Chesapeake Bay Board, explained the rationale of the Chesapeake Bay Board in its decision to approve the exception to the application. He noted that the application actually came before Board twice, and the first time it was not rejected; but it became very clear to the applicant that the Board had a great deal of concern because the project was extending outside the allowable area. The applicant then chose to table it, and he made significant changes. Mr. Rolston noted that the term "minimum" was not defined, and the Chesapeake Bay Board members did not really want to define it very specifically because they did not want to be in the business of trying to tell a property owner how much of a house he needs. He stated they would address such things as garages and swimming pools, and in the applicant's case, he had done a good job in pulling back within the minimum area. He stated there are no specific guidelines established to determine minimum.

Discussion followed on the Chesapeake Bay Board's deliberations of the application, the applicant's environmental proffers, pervious vs. impervious surfaces, and the difference between the first application submitted and the amended one. Discussion also took place regarding guidance received from the Virginia Department of Conservation and Recreation.

Mr. Zaremba asked about setting a precedent making it hard to turn down similar requests, and he asked if this might be setting a bad precedent for the County's wetlands.

Mr. Rolston indicated he did not think it was setting a bad precedent. He stated the Chesapeake Bay Board was very aware of its responsibilities, and one of the considerations it has with an application was whether or not approval would be doing something unique for the applicant that must now be applied to everyone. He stated he did not feel in this case there was anything that was extraordinarily unique.

Mr. Zaremba stated his position is that the amount of space for this house is much more than it should be to meet the standard that is in the County's ordinance.

Chairman Shepperd indicated his whole focus on this was not whether he liked the project or not, but on the issue of an appeal and the process for an appeal. He stated the issue now is whether or not this was an appealable issue for the Board of Supervisors. He noted that if the County staff had never asked the Chesapeake Bay Board for a decision and had just done it on their own, this action would have never happened, and there would not have been an appeal which was in the process. Mr. Shepperd indicated the question before the Board was did it have valid grounds for appeal, and he had found nothing yet. He spoke of the need to establish a minimum because of the trouble that lack of one was now causing.

Mr. Wiggins stated York County has 213 miles of waterfront, and it is the Board's obligation to protect it. He stated he felt the intent of the Chesapeake Bay Act was to allow someone to build but with the minimum necessary to afford the homeowner some relief. He indicated if the County staff does not know what minimum means, then a judge should decide what minimum means.

Chairman Shepperd then polled the Board as to its consensus in this matter. The result was:

No Appeal	Noll, Hrichak, and Shepperd
Appeal	Zaremba, Wiggins

CLOSED MEETING. At 8:57 p.m. Mr. Zaremba moved that the meeting be convened in Closed Meeting pursuant to Section 2.2-3711(a)(1) of the Code of Virginia pertaining to appointments to Boards and Commissions.

On roll call the vote was:

Yea:	(5)	Hrichak, Zaremba, Noll, Wiggins, Shepperd
Nay:	(0)	

Meeting Reconvened. At 9:15 p.m. the meeting was reconvened in open session by order of the Chair.

Mrs. Noll moved the adoption of proposed Resolution SR-1 that reads:

A RESOLUTION TO CERTIFY COMPLIANCE WITH THE FREE-
DOM OF INFORMATION ACT REGARDING MEETING IN CLOSED
MEETING

WHEREAS, the York County Board of Supervisors has convened a closed meeting 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 2.2-3711.1 of the Code of Virginia requires a certification by the York County Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 18th day of March, 2008, hereby certifies that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the York County Board of Supervisors.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Hrichak, Shepperd
Nay: (0)

APPOINTMENT TO THE PENINSULA DISABILITY SERVICES BOARD

Mrs. Noll moved the adoption of proposed Resolution R08-26 that reads:

A RESOLUTION TO REAPPOINT A YORK COUNTY REPRESENTA-
TIVE TO THE PENINSULA DISABILITY SERVICES BOARD

BE IT RESOLVED by the York County Board of Supervisors this 18th day of March, 2008, that Jane B. Dickson be, and she is hereby, reappointed to the Peninsula Disability Services Board for a term of three years, such term to begin on April 1, 2008, and end March 31, 2011.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Hrichak, Zaremba, Shepperd
Nay: (0)

RECOMMENDATION FOR APPOINTMENT TO THE BOARD OF EQUALIZATION

Mrs. Noll moved the adoption of proposed Resolution R08-34 that reads:

A RESOLUTION REQUESTING THE JUDGE OF THE CIRCUIT
COURT TO APPOINT A MEMBER TO THE YORK COUNTY BOARD
OF EQUALIZATION

WHEREAS, the term of Donald J. Keenan as a member of the York County Board of Equalization will expire on March 31, 2008, and

WHEREAS, Mr. Keenan, who was reappointed by the Judge of the Circuit Court on April 1, 2005, has served for a period of nine years and is not eligible for reappointment;

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NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 18th day of March, 2008, that the Judge of the Circuit Court be, and he is hereby, requested to appoint James B. Majka to the York County Board of Equalization of Real Estate Assessments as provided by Section 58.1-3373 of the Code of Virginia for three years, such term to expire March 31, 2011.

On roll call the vote was:

Yea: (5) Wiggins, Hrichak, Zaremba, Noll, Shepperd
Nay: (0)

APPOINTMENT TO THE TRANSPORTATION SAFETY COMMISSION

Mr. Zaremba moved the adoption of proposed Resolution R08-41 that reads:

A RESOLUTION TO APPOINT A MEMBER TO THE YORK COUNTY TRANSPORTATION SAFETY COMMISSION

WHEREAS, Bonnie Baffer will complete her first term on the York County Transportation Safety Commission on March 31, 2008; and

WHEREAS, Ms. Baffer wishes to be considered for reappointment; and

WHEREAS, the Board has carefully considered the qualifications of candidates who have expressed interest in the Transportation Safety Commission;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 18th day of March, 2008, that the following individual be, and is hereby, appointed to serve on the York County Transportation Safety Commission for a term to begin April 1, 2008 and expire March 31, 2011:

Bonnie Baffer

On roll call the vote was:

Yea: (5) Hrichak, Zaremba, Noll, Wiggins, Shepperd
Nay: (0)

Meeting Adjourned. At 8:17 p.m. Chairman Shepperd declared the meeting adjourned to 7:00 p.m., Thursday, March 20, 2008, in the Board Room, York Hall, for the purpose of conducting public hearings on the proposed Fiscal Year 2009 Budget and the 2008 Tax Rates.


James O. McReynolds, Clerk
York County Board of Supervisors


Thomas G. Shepperd, Jr., Chairman
York County Board of Supervisors