

VIRGINIA:

At the regular meeting of the Board of Supervisors held at the Charles City County Government and School Board Administration Building thereof on Tuesday, **May 24, 2011** at 7:30 p.m. in the 235th year of the Commonwealth and in the 377th year of the County.

PRESENT: Gilbert A. Smith, Chairman
Sherri M. Bowman
Timothy W. Cotman, Sr.

RE: ADOPTION OF AGENDA

Motion was made by Timothy W. Cotman, Sr. to adopt the agenda as presented upon replacing the notation of “unidentified citizen” with the name of Lloyd Carter. The motion carried as follows:

Timothy W. Cotman, Sr. Aye
Sherri M. Bowman Aye
Gilbert A. Smith Aye

RE: CONSENT AGENDA

Motion was made by Timothy W. Cotman, Sr. that the following consent agenda be approved:

- a. Approval of the minutes of the April 26, 2011 regular meeting.
- b. Approval of payment to CH2MHill in the amount of \$13,400.66 for landfill professional services for the period of March 19, 2011 through April 15, 2011.
- c. County appropriations request for the month of June, 2011, as follows:

General Fund Agencies	
Board of Supervisors	6,121
County Administrator	16,766
Legal Services	-
Non Departmental	-
Non Departmental-Telecom	-
Audit	-
Commissioner of Revenue	6,265
Treasurer	10,346
Management Services	14,637
Information Technology	26,675
Motor Pool	5,577
Central Gas	-
Memberships	-
Electoral Board	5,286
Registrar	6,851
Circuit Court	-
Combined GD/JD Court	-
County Magistrate	-
Clerk of Circuit Court	22,025
Sheriff Judicial	10,964
Asset Forfeiture - Sheriff	4,864
Courthouse Security Fund	3,163
Crater Criminal Justice T.C.	-
Commonwealth's Attorney	15,219

Asset Forfeiture - Comm Attorney	-
Sheriff Law Enforcement	114,611
IDA Sheriff Support	1,110
Fire Protection	2,283
Emergency Medical Response	32,500
E 911	2,625
Wireless E911	1,100
Correction & Detention	170,147
VJCCCA	-
Col Com Correction jb	-
9th District Court Services	9,000
Codes Enforcement	9,601
Animal Control	5,315
Medical Examiner	-
Emergency Services	23,372
Landfill Monitoring	20,693
General Properties	62,791
Health Department	47,125
MH/MR Services Board	55,330
Contributions	7,459
John Tyler Community College	-
Parks and Recreation	10,692
Library/Cultural	-
Center For Local History	-
Planning Commission	1,185
IDA Eco Dev. Support	-
Planning Department	30,977
Com Development Cont	-
Environmental Mgt Cont	-
Cooperative Extension	7,505
General Fund Contingency	-
Cap Outlay-Repair/Renovation	-
Debt Service	-
Total General Fund	\$ 770,180
Public Utility Fund	88,786
Total Board of Supervisors	\$ 858,966
Crater Criminal Justice T.C.	-
ALL FUNDS APPROVED	
<i>Board Of Supervisors</i>	858,966
<i>Social Services</i>	114,826
<i>Comp. Services Act</i>	51,799
<i>Special Funds</i>	103,322
GRAND TOTAL ALL FUNDS	\$ 1,128,913

The motion carried as follows:

Timothy W. Cotman, Sr.	Aye
Sherri M. Bowman	Aye
Gilbert A. Smith	Aye

RE: SCHOOL APPROPRIATIONS REQUEST FOR JUNE, 2011

The School Board requested the unexpended School FY2011 Budget balance be appropriated in June, 2011. Due to the sum equaling approximately \$3,600,000 the Board of Supervisors deferred the consideration of appropriating the funds until further discussion and information was gained at the Board's upcoming quarterly work session, June 1, 2011.

RE: DEPARTMENT OF TRANSPORTATION MONTHLY REPORT

County Administrator, John F. Miniclier, Jr., read the following VDOT monthly report:

Current Maintenance Activities

- Shoulder Repair - Rt. 5 (East of Rt. 155)
- Shoulder Repair - Rt. 106
- Grass Mowing - Rt. 5
- Litter Control - Primary and Secondary roads
- Broke Beaver Dams - County wide
- Pot hole repair - Secondary roads
- Debris removal and mowed grass along the VA Capital Bike Trail
- Pavement repair at Rt. 106 and Rt. 609 (Rail road crossing)
- Cleaned tree debris - Rt. 603 and Rt. 5

Next Month Maintenance Activities

- Continue Mowing - Primary and Secondary roads
- Litter Control – Primary and Secondary roads
- Sign Maintenance
- Beaver Control
- Debris Removal along the VA Capital Bike Trail
- Shoulder Repair - Rt. 5 and Rt. 106
- Clean Ditch - Rt. 609
- Debris Removal – Primary roads

Traffic Studies/Special Requests

- State Rt. 614 (Sturgeon Point Rd) – currently conducting a study to re-evaluate the posted speed limit between Rt. 155 and Rt. 615 (The Glebe Lane). Completion anticipated within 45 days

Project Status

- Project 8499 – Rt. 607 – *Reconstruct Existing Roadway*
Preliminary field work done with Sponsor and Project Manager in April;
Working towards a June Pre-Scoping
- Project 59167 – Rt. 618 – *Widen & Improve Drainage*
From Chickahominy Bridge to .5 mile south of bridge. Project has been added to list for aerial topography and bridge survey

VA Capital Bike Trail

- Project 81562 – Rt. 5 – *Sherwood Forest West Phase*
From: 2.26 miles east of Charles City Courthouse to Rt. 614
RW and utility relocation is on-going. Project will be combined with Project 91931 and advertised as design-build in spring 2011.
- Project 91931 – Rt. 5 – *Charles City Courthouse East Phase*
From .10 mile south Rt. 5 & Rt. 644 to 2.26 miles east of Charles City Courthouse. Project will be combined with Project 81562 and advertised as design-build in spring 2011.
- Project 86279 – Rt. 5 – *New Market Heights Phase*
From Long Bridge Road to Rt. 658. Under design; survey complete; public hearing tentatively set for summer 2011
- Project 93199 – Rt. 5 – *Charles City/Henrico*
From 0.2 miles east Rt. 295 to Rt. 658.

RE: VDOT MONTHLY REPORT (CONTD)

This is being designed as Project 86279. Under design; survey complete; public hearing tentatively set for summer 2011

- Project 81561 – Rt. 5 – Construct trail head @ Herring Creek
Right-of-Way acquisition ongoing, Project to be advertised in late 2011 and constructed in early 2012

Recent Board Requests:

1. **Ms. Timothy W. Cotman, Sr.** requested VDOT continue to concentrate on the removal of dead trees along the road on Rt. 5 as the recent weather is causing more trees to fall at inopportune times.

Citizens' Comments

1. Jacqueline Stewart, 19000 The Glebe Lane, Charles City – Ms. Stewart asked the Board to consider having VDOT include the Holdcroft community of Rt. 614 (The Glebe Lane) in the traffic study for speed and visibility. The issue is that drivers speed through the Holdcroft area with little concern for people out walking or tending to yard maintenance close to the road. Ms. Stewart explained that she had experienced near misses by speeding drivers on more than one occasion while mowing. Also during the summer with crops growing, tall corn causes visibility issues.

RE: PUBLIC HEARING – REDISTRICTING OF ELECTORAL DISTRICTS

The Board of Supervisors held a public hearing to receive citizen comments on the two redistricting options selected for consideration.

Mr. John F. Miniclier, Jr., County Administrator, read the advertisement for the public hearing.

The Director of Planning, Allyson Finchum, reviewed for all in attendance the goals of the redistricting, the results of the open public meeting that was held May 5, 2011, the steps taken to narrow the options to two and why, and the details of the two options the Board of Supervisors had selected to consider.

The Board opened the floor to receive citizen comments on the issue. There were no respondents, the public hearing was closed.

RE: Ordinance Amending, Restating and Readopting Chapter 14, Article III. Electoral Districts Sec. 14-45. Districts described

Motion was made by Sherri M. Bowman to approve redistricting Option B, as presented, and adopt the Ordinance amending, restating and readopting *Chapter 14, Article III. Electoral Districts Section 14-45. Districts described* of The Code of the County of Charles City as follows:

AN ORDINANCE AMENDING, RESTATING AND READOPTING
CHAPTER 14, ARTICLE III. ELECTORAL DISTRICTS
SEC. 14-45. DISTRICTS DESCRIBED

WHEREAS, by the 2010 Census there exists in Charles City County a disparity of 175 residents between the current largest and smallest election districts out of a population of 7,256; and

WHEREAS, it is desirable to make such districts more equal in population and the following revision will create a disparity of no more than 77 residents:

RE: ORDINANCE AMENDING, RESTATING AND READOPTING CHAPTER 14, ARTICLE III. ELECTORAL DISTRICTS SEC. 14-45. DISTRICTS DESCRIBED (CONTD)

NOW, THEREFORE, Article III, Electoral Districts, Section 14-45, Districts described is hereby amended as follows:

1. The current Article III, Section 14-45 of the Charles City County Code is hereby repealed in full; and
2. The following is enacted as Article III, Section 14-45 of said Code:

Section 14-45. Districts described

The boundaries of the electoral districts shall be as follows:

Electoral District Number One: This district is bounded on the north by the Chickahominy River, on the west by the Charles City–Henrico County line, on the south by the James River, and on the east by a point beginning at the intersection of the Chickahominy River and Roxbury Road, *State Route 106*, at the Charles City–New Kent County line; thence southerly along the center line of Roxbury Road, *State Route 106*, to a point where it intersects with Barnetts Road, *State Route 609*; thence easterly and southerly along the center line of Barnetts Road, *State Route 609*, to a point where it intersects with Old Union Road, *State Route 603*; thence westerly along the center line of Old Union Road, *State Route 603*, to a point where it intersects with Waymacks Road, *State Route 666*; thence southerly along the center line of Waymacks Road, *State Route 666*, to its end point and the beginning point of Salem Run Road, *State Route 655*; thence southerly along the center line of Salem Run Road, *State Route 655*, to a point where it intersects with Cattail Road, *State Route 650*; thence in an easterly direction to a point where it intersects with the western boundary of census block 1093; thence southerly along the western boundary of census block 1093 to its intersection with Barnetts Road, *State Route 609*; thence southerly along the center line of Barnetts Road, *State Route 609*, to a point where it intersects with John Tyler Memorial Highway, *State Route 5*; thence westerly along the centerline of John Tyler Memorial Highway, *State Route 5*, to a point where it intersects with the western most intersection of Herring Creek Road, *State Route 640*; thence in an easterly and northerly direction along the center line of Herring Creek Road, *State Route 640*, to a point where it intersects with Herring Creek; thence easterly and southerly along the center line of Herring Creek to the James River.

Electoral District Number Two: Bounded on the north by the Chickahominy River, on the west by Electoral District Number One, on the south by the James River and Herring Creek on the east by Electoral District Number Three.

Electoral District Number Three. Bounded on the west by a line beginning at a point on the Charles City –New Kent County line where it intersects with the centerline of State Route 155; thence in a southerly direction along the center line of State Route 155 to the point where it intersects with the center line of State Route 5; thence easterly along the center line of State Route 5 past State Route 615 to the point where it intersects with Parish Hill/Queens Creek; thence along the center line or Parish Hill/Queens Creek as it meanders to the James River. This district is bounded on the north and east by the Chickahominy River, on the west by Electoral District Number Two and on the south by the James River.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF CHARLES CITY, VIRGINIA, that the County does hereby elect to amend Article III, Electoral Districts, Section 14-45, Districts described, as set out above.

RE: ORDINANCE AMENDING, RESTATING AND READOPTING CHAPTER 14, ARTICLE III. ELECTORAL DISTRICTS SEC. 14-45. DISTRICTS DESCRIBED (CONTD)

The motion carried as follows:

Sherri M. Bowman	Aye
Timothy W. Cotman, Sr.	Aye
Gilbert A. Smith	Aye

RE: JOINT PUBLIC HEARING – REZONING APPLICATION - HOFMEYER

The Board of Supervisors and the Planning Commission held a joint public hearing to receive citizen comments on the Rezoning Application REZ #1-2011 (Parts 1 & 2) to allow Tomahund Marine to 1) Rezone five acres (portion of Tax Map 78-6) from Agriculture (A1) to Business General Conditional (B1C); and 2) Rezone ten acres (portions of Tax Map 78-5 and TM 78-6) from Agriculture to Light Manufacturing Conditional (M1C) submitted by John E. Hofmeyer, Jr.

Mr. John F. Miniclier, Jr., County Administrator, read the advertisement for the public hearings regarding the Hofmeyer requests for rezoning and subsequent special use permits. Chairman Edward Baber called the Commission meeting to order and reviewed the rules and procedures governing hearing tonight.

Mr. John Bragg presented the staff report. He indicated that John E. Hofmeyer, Jr. has operated a marine repair facility as a “Home Occupation” on Tomahund Creek for the past several years. Due to the growth of the business, Mr. Hofmeyer wishes to relocate the business on his property to a more accessible location for customers and add employees. He would like to expand his business to include boat sales, storage and rental. The existing facility (boat ramp/junkyard) area will be used for testing motors, receiving customer boats as needed, and to store used boat trailers and older boats for parts.

Mr. Bragg indicated supporting this type of cottage industry to a full time business is consistent with the goals of the Comprehensive Plan and is in accordance with the Zoning Ordinance.

Mr. John E. Hofmeyer, Jr. addressed the Planning Commission and indicated that he has operated Tomahund Marine as a home occupation for six years. He explained that the rezoning would allow for the repair shop and storage yard to be located 170 feet from Route 5. The facility would be accessed through the existing entrance used by Branscome Concrete/mining operation. The area to the rear of the farm would access the water for testing repairs, and for the storage of old boats used for parts.

Chairman Baber opened the floor to any questions citizens may have regarding the applicant’s request as presented. There being none, Chairman Baber opened the hearing to public comment.

1. Jackie Stewart, 19000 The Glebe Lane – Ms. Stewart stressed that the proposed area is not appropriate for growth at this time. In 2009 she assisted the Commission to prepare and present to the public the 2009 Comprehensive Plan at community meetings throughout the county. Previous drafts showed twenty-one areas as development centers and the Commission felt this was too many. The Comprehensive Plan prior to 2009 designated this area as Mt. Zion Development Center, and removed it from the 2009 Plan.
2. Charles Brown, 91000 Willcox Neck Road and part owner of River’s Rest Marina – Mr. Brown gave his endorsement of the rezoning for Tomahund Marine and indicated Mr. Hofmeyer’s business is an asset to River’s Rest Marina and the county. He pointed out that the proposed facility will be located next to an existing industrial zone and stressed it would be screened from Route 5, having no visual impact on the scenic highway.

RE: JOINT PUBLIC HEARING – REZONING APPLICATION – HOFMEYER (CONTD)

3. Herbert A. Claiborne, III, Manager of Daring Point LLC – Via email Mr. Claiborne submitted a letter dated May 24, 2011, on behalf of Daring Point LLC residents, to the Planning Commission and Board of Supervisors. John Bragg read into the record Mr. Claiborne’s letter which expressed concerns regarding the rezoning request and its possible negative effects on the Tomahund Creek. He requested that if the rezoning of the five acres were approved that the Board consider imposing restrictions that will protect the serenity and tranquility of Tomahund Creek, as well as the property of Daring Point owners along the creek.
4. John E. Hofmeyer, Jr., 17000 Holly Point Road – Mr. Hofmeyer stated the Hofmeyer family has owned the subject property since 1943. He indicated that the business would not impact the scenic view of Route 5, or cause additional traffic on Tomahund Creek. The creek will only be used for testing repaired boats, he expressed.
5. Bill Clark, Riverwood Subdivision – Mr. Clark declared that he and approximately 1/3 of the residents of Riverwood Subdivision were present and in support of Mr. Hofmeyer’s requests.

There being no further public comment, the hearing was closed.

Motion was made by Emmett Crocker to recommend the Board of Supervisors approve application #REZ-1-2011, Hofmeyer as proffered (signed/dated May 18, 2011). The motion carried by a vote of 8:0.

The Commission’s recommendation was forwarded to the Board of Supervisors for their action.

RE: REZONING - REZ #1-2011 - HOFMEYER

Motion was made by Timothy W. Cotman, Sr. to approve the Rezoning Application REZ #1-2011 (Parts 1 & 2) submitted by John E. Hofmeyer, Jr., allowing Tomahund Marine to rezone five acres (portion of Tax Map 78-6) from Agriculture (A1) to Business General Conditional (B1C) to establish a marine sales and service business; and rezone ten acres (portions of Tax Map 78-5 and TM 78-6) from Agriculture to Light Manufacturing Conditional (M1C). The motion carried as follows:

Timothy W. Cotman, Sr.	Aye
Sherri M. Bowman	Aye
Gilbert A. Smith	Aye

RE: JOINT PUBLIC HEARING–SPECIAL USE PERMIT APPLICATION - HOFMEYER

The Board of Supervisors and the Planning Commission held a joint public hearing to receive citizen comments on the Special Use Permit Application SUP #2-2011, Hofmeyer, submitted by John E. Hofmeyer, Jr., Tomahund Marine, to operate a storage yard on 5 acres (part of TM #78-6) zoned Light Industrial-Conditional (M-1-C); a boat yard on 4 acres (part of TM #78-6) zoned Light Industrial-Conditional (M-1-C); and a junkyard on 1 acre (part of TM #78-5) zoned Light Industrial-Conditional (M-1-C).

Mr. John Bragg presented the staff report and reviewed the conditions recommended by staff for the Special Use Permit.

Chairman Baber opened the floor to questions citizens may have regarding the application request presented tonight. There being none, Chairman Baber opened the hearing to public comment. There being no public comment the hearing was closed.

RE: JOINT PUBLIC HEARING–SPECIAL USE PERMIT APPLICATION – HOFMEYER (CONTD)

Motion was made by William Bailey to recommend the Board of Supervisors approve Application #SUP-2-2011, Hofmeyer, with the inclusion of the corrected operation plan, and conditions recommended by staff. The motion carried by a vote of 8:0.

The Commission’s recommendation was forwarded to the Board of Supervisors for their action.

RE: SPECIAL USE PERMIT - SUP #2-2011 - HOFMEYER

Motion was made by Timothy W. Cotman, Sr. to approve the Special Use Permit Application SUP #2-2011, submitted by John E. Hofmeyer, Jr., allowing Tomahund Marine to operate a storage yard on 5 acres (part of TM #78-6) zoned Light Industrial-Conditional (M-1-C); a boat yard on 4 acres (part of TM #78-6) zoned Light Industrial-Conditional (M-1-C); and a junkyard on 1 acre (part of TM #78-5) zoned Light Industrial-Conditional (M-1-C). The motion carried as follows:

Timothy W. Cotman, Sr.	Aye
Sherri M. Bowman	Aye
Gilbert A. Smith	Aye

RE: APPOINTMENTS – CHARLES CITY HEALTH COUNCIL

Motion was made by Sherri M. Bowman to appoint Dia Nichols, CEO of John Randolph Medical Center, to serve as the John Randolph Medical Center representative member on the Charles City Health Council, said term to expire May 31, 2013. The motion carried as follows:

Sherri M. Bowman	Aye
Timothy W. Cotman, Sr.	Aye
Gilbert A. Smith	Aye

RE: APPOINTMENT – 2011 COUNTY FAIR COMMITTEE

Motion was made by Gilbert A. Smith to appoint: Robert Adams, Mildred Adkins, Valerie Adkins, Sandra Bradby, Mary Cotman, Alfred Crump, Janet Moore, Cynthia Rowles, Avis Walker, Norma Adkins, Katrina Bradby, Marian Christian, Lora Crewe, Barbara Hayes, Ruby Paige, and Louise Tabb, to serve on the 2011 County Fair Committee. The motion carried as follows:

Timothy W. Cotman, Sr.	Aye
Sherri M. Bowman	Aye
Gilbert A. Smith	Aye

RE: NO WAKE ZONE – CHICKAHOMINY LAKE

By consensus, the Board authorized a public hearing to be held on June 28, 2011 to receive citizen comments on the proposed ordinance amendment adding a section pertaining to establishing No Wake Zone areas within Charles City County waterways.

RE: FY2011 AUDIT ENGAGEMENT OF RFC

Motion was made by Timothy W. Cotman, Sr. to authorize the engagement of Robinson, Farmer, Cox Associates' to perform the 2011 County audit. The motion carried as follows:

Timothy W. Cotman, Sr.	Aye
Sherri M. Bowman	Aye
Gilbert A. Smith	Aye

RE: WILLIAMSBURG/JAMES CITY COUNT LIBRARY UPDATE

County Administrator, John F. Miniclier, Jr., shared the details of his meeting on April 11, 2011 with Director John A. Moorman, Williamsburg Regional Library regarding revocation of Charles City County resident library cards at the end of January 2011, directly effecting 222 county residents. Mr. Moorman informed Mr. Miniclier that library patrons who were not a resident of the City of Williamsburg, James City or York Counties had their cards revoked. Newport News, New Kent and Charles City County were affected.

One of the primary reasons given was pressure from York County who felt it unfair they provided county revenues to the library to support their citizens' access per an agreement with the Library and other counties did not. The Library decided they could not charge per individual cardholder based on the revenue that would be lost if York County citizens did the same and no longer provided county funding. (The Library's total budget for the fiscal year is James City \$8.1 m, Williamsburg, \$881,000 and York \$450,000.)

The Library is willing to consider an agreement with Charles City for their citizens to become patrons, based on their Agreement with York County, dated April 22, 2009, stating York County pays an amount based on the number of citizens in Bruton Electoral District, (District 1 of 5). The cost is approximately \$40 per citizen in District 1. (Williamsburg pays \$63 and James City pays \$55). Even though payment from York County is based on the number of citizens in only one district, all York County citizens are eligible for library privileges per their Agreement.

Mr. Miniclier explained that having Charles City provide a contribution that would be 1/5 the number of citizens times cost for York County per citizen. (i.e., $7,256/5 = 1,451 \times \$40 = \$58,048$) The County's intent is not to add an additional expense to the general expenditure for the County that benefits only a few of the citizens and therefore the cost would be approximately \$261 ($\$58,048/222 = \261) per year for each of the 222 citizens.

Mr. Miniclier will continue to seek a solution for this issue.

RE: COUNTY ZIP CODE ISSUE UPDATE

County Administrator, John F. Miniclier, Jr. updated the Board of Supervisors on his continuing research regarding all county residents having zip codes that reflect Charles City. He explained that he has found that even if a new name is used the zip code number will stay the same, which does not satisfy the tax issue. The US Postal Service (USPS) representative impressed upon Mr. Miniclier that the tax issue is a state issue not a USPS issue.

He proposed that citizens should be able to choose the 23030 zip code and be served by the Charles City Post Office but the USPS representative said that was not a solution they would discuss.

Mr. Gilbert Smith stated that he would like to get this issue resolved to the citizens' satisfaction, whatever that may take.

Mr. Miniclier advised that it took Chesterfield ten years to solve this same problem for them and that he would continue to pursue a satisfactory solution.

RE: EMPLOYEE 2% YEAREND STIPEND BONUS

By consensus the Board authorized a public hearing to be held on June 28, 2011 to receive citizen comments on the proposed amendment §2-20 of the Code of the County of Charles City by adding a section on monetary bonuses for county employees.

RE: LIBRARY CAMPAIGN UPDATE

The County Administrator updated the Board of Supervisors on the Library Campaign stating it is progressing well. The Campaign has received the Mary Morton Parsons Foundation Grant which is a 2 to 1, \$250,000 challenge grant. Campaign members believe resources are available to proceed with the next phase of design.

The contract remains open for Enteros Design to complete the next phase consisting of:

- a. Construction documents, to include a full set of drawings and specifications ready for bidding and permitting. Time to complete is 90 days. The County will complete the final review of the plans and specifications during this process within an estimated 30 days. The fee is approximately \$180,000 for this phase
- b. Re-design of the front plaza space, per request of committee, estimated cost is \$5000

A summary of present cash and gifts due is as follows:

1. Cash on Hand (\$77,000)/Available for Contract:	\$65,000
2. New Gifts In or Cash by June 30:	\$25,000
D/M Thomas Tyler	\$25,000
3. Pledge payments due now through November	\$120,000
Flagler Foundation	\$50,000
EDA	\$50,000
Other	\$20,000

The Campaign Committee is confident that funds are available to complete the project within 120 days and requested Enteros Design be authorized to proceed with the next project phase at a cost of no more than \$185,000.

The Board having no objections and having previously given the County Administrator authority to authorize the commencement of each phase in turn, Mr. Miniclier will give Enteros Design notice to proceed.

RE: MEMORANDUM OF AGREEMENT AMONG FCC, VSHPO & CCC

Motion was made by Sherri M. Bowman to authorize endorsing the following Memorandum of Agreement.

MEMORANDUM OF AGREEMENT AMONG
THE FEDERAL COMMUNICATIONS COMMISSION,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE
AND THE COUNTY OF CHARLES CITY
REGARDING THE PROPOSED PUBLIC SAFETY
COMMUNICATIONS TOWER IN CHARLES CITY COUNTY

WHEREAS, Charles City County, Virginia (the "County") is in the process of improving and expanding its public safety communications system (the "Undertaking");

WHEREAS, as part of the Undertaking the County proposes to construct a 135 foot monopole communications tower on County property near the Charles City County Judicial Center (the "Site") to provide microwave interconnectivity with the state

RE: MEMORANDUM OF AGREEMENT AMONG FCC, VSHPO & CCC (CONTD)

emergency operations center and all Richmond area communities' emergency operations centers;

WHEREAS, the County is a licensee of the Federal Communications Commission ("FCC") and intends to use the tower in connection with the provision of its licensed service;

WHEREAS, the FCC has determined the construction of the proposed tower is a federal undertaking as defined in 36 C.F.R. Part 800.16(y);

WHEREAS, the County, pursuant to delegation from the FCC, has initiated consultation with the Virginia State Historic Preservation Office ("SHPO") pursuant to Section 106 of the National Historic Preservation Act (NHPA) for the Site as required by the FCC rules, 47CFR §1.1307(a)(4);

WHEREAS, the FCC in consultation with the SHPO has determined that the Area of Potential Effects ("APE") as defined in 36 C.F.R. Part 800.16(d) and the APE for Visual Effects as defined in the Nationwide Programmatic Agreement ("NPA") encompass listed or potentially eligible National Register of Historic Places historic structures, and that pursuant to 36 C.F.R. Part 800.4(c) and the NPA, the Site is located within the Charles City County Rural Historic District which is listed as eligible for inclusion in the National Register of Historic Places ("NRHP") and in close proximity to the Charles City County Courthouse and Nance-Major House and Store which are individually listed in the NRHP under criterion A and C;

WHEREAS, the FCC and the SHPO have determined that the tower construction will have an adverse visual impact on the Charles City County Courthouse, Nance-Major House and Store, and the Charles City County Rural Historic District;

WHEREAS, the FCC in consultation with the SHPO has determined that the above-referenced historic properties are the only ones listed or eligible for the NRHP within the APE for the Site that will be adversely affected by the proposed tower construction;

WHEREAS The County has many cultural, architectural, archeological, and historical resources that need to be identified before development occurs;

WHEREAS The Virginia Department of Historic Resources conducted an architectural survey of properties and structures in Charles City County in the 1980's and recorded 271 historically significant properties or structures and maintains detailed records of each;

WHEREAS From this information collected by the Virginia Department of Historic Resources in the 1980s, the department prepared a report on the historic resources in the county;

WHEREAS The County has identified additional historic resources subsequent to the VDHR study

WHEREAS, the County has identified the Site as critical for meeting the County's overall system coverage requirements, and consistent with the FCC's requirements for environmental review, the County considered alternatives for locating the proposed tower and concluded that no other sites were satisfactory to the County from a technical radio frequency and path perspective for the coverage needs of the communications systems to be supported by the antennas located on the facility;

WHEREAS, the FCC has invited the County to participate in consultation and sign this Agreement pursuant to 36 C.F.R. Part 800.6(a) (2);

NOW, THEREFORE, the FCC, the SHPO, and the County agree that the undertaking shall be implemented in accordance with the following stipulations in order to account for historic properties and that these measures shall constitute full and adequate

mitigation measures under the National Historic Preservation Act and ACHP's and FCC's implementing regulations.

STIPULATIONS

The FCC, through coordination with the County, shall ensure the following mitigation measures are carried out.

I. MITIGATION

- A. Within two (2) years of the date of the FCC's approval of the Environmental Assessment the County shall: establish a vegetative screen to mitigate the view of the tower from Major House and Store.

The County shall submit a planting plan to the SHPO, for review and comment prior to installation. Following approval by the SHPO, the County Applicant shall proceed with installation

The County shall notify the FCC and the SHPO and the within thirty (30) days of installation of the vegetative screen.

The SHPO agrees to provide comments on all requests for review within thirty (30) days of receipt.

- B. Prior to the next revision of the Comprehensive Land Use Plan complete a digital record containing both 1980's Department of Historic Resources records with current County historic records that will include a Geographic Information System map layer of properties for their historical, cultural, architectural, or archeological presence. Such compilation will incorporate historical, cultural, architectural or archaeological digital data from both SHPO and Charles City.

- C. Within two (2) years of the date of the FCC's approval of the Environmental Assessment the County shall: prepare an updated National Register of Historic Places (NRHP) Nomination document for the Charles City County Courthouse that is currently listed on the NRHP (Item No. 69000335 on the NRIS). The document will include available architectural and historical significant information for the property.

II. POST REVIEW DISCOVERIES

The County shall ensure that construction documents contain the following:

- A. In the event that a previously unidentified archaeological resource is discovered during ground-disturbing activities, all construction work involving subsurface disturbance shall be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The Contractor shall immediately notify the County who shall notify the FCC, the SHPO, the Historical Society, and other consulting parties as appropriate within forty-eight (48) hours of discovery. The County shall arrange for an archaeologist meeting *The Secretary of Interior's Qualifications Standards* (48 FR 44739) to inspect the work site and determine the nature and area of the affected archaeological resource and assess whether further investigations are warranted. Work may then continue in the project area outside of the site area. The FCC, in consultation with the County, the SHPO, the Historical Society and other consulting parties as appropriate shall determine the National Register eligibility of the resource as soon as practically possible from the original date of discovery.

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- B. If the archaeological resource is determined to meet the National Register Criteria (36 CFR Part 60.6), the FCC shall ensure compliance with Section 800.13 of the ACHP's regulations. Work in the affected area shall not proceed until either (a) appropriate data recovery or other recommended mitigation procedures are developed and implemented, or (b) the determination is made that the located resource is not eligible for inclusion in the National Register.

III. HUMAN REMAINS

The County shall ensure that the construction documents contain the following:

- A. The Contractor shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement are treated in a manner consistent with the *Code of Virginia* and the Regulations Governing Permits for the Archaeological Removal of Human Remains (17VAC5-20). In accordance with the regulations stated above, and if appropriate, the County shall obtain a permit from the SHPO for any archaeological removal of human remains.
- B. In the event that human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the County, in cooperation with the FCC, shall immediately notify the Tuscarora Nation, the Cherokee Nation, the Eastern Shawnee Tribe of Oklahoma, the Shawnee Tribe, and the Virginia Council on Indians (VCI). The FCC, in cooperation with the County, shall determine the treatment of Native American human remains and associated funerary objects in consultation with the VCI and the appropriate tribal leaders. The County shall make a good faith effort to avoid disturbing Native American gravesites and to ensure that the general public is excluded from viewing any Native American gravesites and associated funerary objects. The signatories and the concurring parties to this Agreement shall release no photographs of any Native American gravesites or associated funerary objects to the press or to the general public.

IV. DISPUTE RESOLUTION

Should any party to this Agreement object in writing to the FCC regarding any action carried out or proposed with respect to this agreement or to implementation of this Agreement, the FCC in coordination with the County shall consult with the objecting party to resolve the objection. If the FCC determines that the objection cannot be resolved, the FCC shall request further comments from the ACHP concerning the dispute pursuant to 36 C.F.R. Part 800.7. Any ACHP comment provided in response to such a request will be taken into account by the FCC with reference only to the subject of the dispute. The FCC's responsibility to carry out all actions under this Agreement that are not subject to the dispute will remain unchanged.

V. ENFORCEMENT

Failure to carry out the terms of this Agreement will require that the FCC again request the comments of the ACHP, in accordance with 36 C.F.R. Part 800. If the terms of this Agreement are not implemented, the FCC shall provide the ACHP with the opportunity to comment on the effects and mitigation alternatives.

VI. AMENDMENTS AND TERMINATION

- A. If any of the signatories of this Agreement believe that the term of the Agreement cannot be adhered to, or that an amendment to the terms of this Agreement must be made, that signatory shall immediately consult with the other signatories to develop amendments to this Agreement. The process of amending this Agreement shall be the same as that exercised in creating the original Agreement. If an amendment cannot be agreed upon, then the dispute resolution process set forth in Stipulation V above will be followed.

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- B. Any signatory to this Agreement may terminate it in accordance with the provisions of 36 C.F.R. Part 800.6(c) (8) of the regulations implementing Section 106 of the National Historic Preservation Act (16 USC 470). Termination shall include the submission of a technical report by the County to the SHPO and the Historical Society on any work executed pursuant to Stipulation I of this Agreement up to and including the date of termination.

VII. EXPIRATION

This Agreement shall continue in full force and effect for as long as the site is used for communications towers unless the FCC, the SHPO, and the County agree in writing to other terms.

VII. OTHER REQUIREMENTS

The County shall not initiate construction of the towers until the FCC has approved the environmental assessment.

Execution of this Agreement and implementation of its terms are evidence that the FCC has afforded the ACHP a reasonable opportunity to comment on the tower and that the FCC has taken into account the effects of this undertaking on historic properties. This Agreement shall be effective upon the date that the last signatory signs the Agreement.

The motion carried as follows:

Sherri M. Bowman	Aye
Timothy W. Cotman, Sr.	Aye
Gilbert A. Smith	Aye

RE: RELAY FOR LIFE

Ms. Sherri Bowman announced that the first Charles City County Relay for Life was held the previous weekend. A total of 397 citizens, making 23 teams, and 55 cancer survivors participated. The event was a huge success with over \$47,000 raised for the American Cancer Society. Plans to participate again next year are already underway.

RE: BOARD COMMENTS & DIRECTIVES

Mr. Timothy W. Cotman, Sr. directed staff to get the government building parking lot signage refreshed. Many of the signs are faded and difficult to read.

RE: PUBLIC COMMENT PERIOD (NON-AGENDA ITEMS)

1. Lloyd Carter, Sr., 3720 Wayside Road, Charles City – Mr. Carter shared that his Verizon DSL service was erroneously cut off by the provider. To get service again Verizon was requiring he reapply as a new customer. He elected to get a Sprint air card and has found that although a bit more expensive it is a lot faster than DSL and allows his laptop to be mobile.

There being no further business before the Board, it hereby recessed to meet again on Tuesday, **June 1, 2011** at 6:00 p.m. for the Board of Supervisors' quarterly work session.