

VIRGINIA:

At a regular meeting of the Washington County Board of Supervisors held Tuesday, July 8, 2008, at 7:00 p.m., at the County Administration Building in Abingdon, Virginia the following were present:

PRESENT:

Kenneth O. Reynolds, Chairman
Jack R. McCrady, Jr., Vice Chairman
Phillip B. McCall
Dulcie M. Mumpower
Odell Owens
Paul O. Price
Thomas G. Taylor

Mark K. Reeter, County Administrator
Lucy E. Phillips, County Attorney
Mark W. Seamon, Accounting Manager
Naoma A. Norris, Recording Clerk

1. Call to Order

The meeting was called to order by Mr. Kenneth O. Reynolds, Chairman of the Board, who welcomed everyone in attendance.

2. Invocation and Pledge of Allegiance

Supervisor Phillip McCall gave the Invocation and led the Pledge of Allegiance.

3. Approval of Agenda

On motion of Mr. Price, second by Mr. McCrady, it was resolved to approve the agenda with the following amendments:

Addition of Item 4.a.

Request for Contribution to Abingdon Little League Team

Addition of Item 5.d

Consideration of Dog Damage Claims

Addition of Item 6.a.

Resolution of Support for Virginia Tobacco Commission Grant

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

Discussions ensued among the Board concerning the request for a contribution to Abingdon Little League teams. Mr. Taylor explained that the Board of Supervisors appropriate money to little league teams in the County's Operating Budget. Subsequently, the following substitute motion was made:

On motion of Mr. Taylor, second by Mr. Owens, it was resolved remove the request from Abingdon Little League from the Agenda.

The vote on this motion was as follows: (2-5)

<i>Mr. McCall</i>	<i>Nay</i>
<i>Mr. McCrady</i>	<i>Nay</i>
<i>Mrs. Mumpower</i>	<i>Nay</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Nay</i>
<i>Mr. Reynolds</i>	<i>Nay</i>
<i>Mr. Mr. Taylor</i>	<i>Aye</i>

4. Approval of Minutes

On motion of Mr. McCrady, second by Mr. Owens, it was resolved to approve the minutes of the following meetings as presented:

*June 11, 2008, Joint Recessed Meeting
June 24, 2008 Regular Meeting*

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

4.a. Abingdon Little League

Mr. Reeter reviewed a request received from Abingdon Little League for a financial contribution to defray travel expenses for four little league teams that will travel to various localities in Virginia to participate in State tournament play. He explained that the projected travel budgets are between \$5,000 and \$6,000 per team.

Chairman Reynolds recognized the Abingdon Little League Teams that were in attendance and wished them luck in tournament play.

Mr. Keith Perrigan representing Abingdon Little League addressed the Board explaining that Abingdon Little League has four teams that won their district tournaments and will advance to State tournament play. He explained that the boys and girls teams will be traveling to Loudon County, Richmond and Virginia Beach. The project budget per team is between \$5,000 and \$6,000. Mr. Perrigan further explained that that the Abingdon Little League Treasury will pay for some of the expenses incurred (i.e. hotel bills). The remaining money needed to make the trips will be raised through fundraising events. Mr. Perrigan stated that the Abingdon Little League has been doing some fundraising, but with four teams it is difficult to raise all of the money needed to make the trips. He explained that Abingdon Little League is requesting financial support from the Board of Supervisors and the Town of Abingdon.

Mr. Perrigan stated that a girl's team from Damascus will be competing in a State tournament in Pound, Virginia and a team from Washington County Little League will be playing in a State tournament to be held in Bristol, VA.

At this time, substantial discussions ensued among the Board. Responding to an inquiry from the Board, Mr. Randy Dickenson, Treasurer for Abingdon Little League, explained the three accounts that Abingdon Little League has and what each account is used for.

After further discussion, a motion was made by Mrs. Mumpower to appropriate from \$5,000 from reserves for contingencies to the Abingdon Little League to assist with travel expenses associated with State tournament play. The motion was seconded by Mr. Price. Discussions ensued among the Board concerning the proposed action with the following substitute motion being offered:

On motion of Mr. McCall, second by Mr. McCrady, the Board acted to appropriate \$5,000 to Abingdon Little League to assist with travel expenses associated with State tournament play and further to set aside \$650 for Damascus Little League to be used if needed to assist with travel expenses associated with State tournament play.

The vote on this motion was as follows: (5-2)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Nay</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Nay</i>

5. Public Hearings:

a. Request(s) for Rezoning of Property:

- (1). Farmlands Inc., Property Tax Map #143A4-A-49, 50: Request to rezone approximately 24.75 acres of property located on the south side of State Route 11 near the intersection of State Route 11/State Route 807 from B-2 (Business, General) and A-2 (Agricultural, General) to B-2 (Business, General), Wilson Magisterial District

County Zoning and Subdivision Official Cathie Freeman provided the Board with a summary of the Planning Commission Hearing on this request. Mrs. Freeman explained that in Mr. Mike Anderson's presentation to the Planning Commission he explained that his request is to rezone the property in question in order to relocate his current business, Dominion Auto Auction to the property. Mr. Anderson explained to the Planning Commission that he anticipates that the Virginia Department of Transportation would take a majority of the property that his business is currently located on for their US Highway 11 widening project. Mrs. Freeman further explained that the Mr. Anderson proposes to place his business on the middle portion of the tract of property which is the area being requested for rezoning from A-2 (Agricultural, General) to B-2 (Business, General).

Mrs. Freeman explained that the following individuals addressed the Planning Commission in opposition to the request:

- Mr. Gerald Cole representing property owners in the area of the property in question addressed concerns with traffic, parking, safety and property devaluations.
- Eleven individuals stood at the hearing in opposition to the rezoning request.
- Mr. Joe McReynolds stated there were four existing auto auction facilities in the area, and asserted that Dominion Auto Auction had always presented a problem. Mr. McReynolds further stated that auto auction buildings should be located on four lane highways.
- Ms. Linda Fritsch representing a spay and neutering clinic that is adjacent to the property in question addressed concerns with the traffic and parking, as well as for the safety of the animals that are housed in the spay and neutering clinic.
- Mr. J. R. White, an adjoining property owner explained to the Commission that the auto auction would be within site of his home, and he did not want to see the business in his front door.

Mrs. Freeman explained that discussions have occurred since the Planning Commission hearing on June 30 of which the Planning Commission members are not aware. She further explained that at the request of Supervisor Dulcie Mumpower, Mr. John Bolling with the Virginia Department of Transportation (VDOT) has looked at the site and indicated that the business would meet VDOT's site visibility requirements. However, Mr. Anderson would be required to apply for a commercial entrance permit. Regarding another issue discussed since the June 30 Planning Commission; Mrs. Freeman explained that she received an inquiry about parking in an A-2 zoning designation. She further explained that she met with the County Attorney pertaining to this issue and the County Code allows for off street parking as an accessory use in an A-2 zoning district. Mrs. Freeman distributed to the Board a map of the property and surrounding areas prepared by the County Information Systems Department. She explained that the

property currently contains a 250 foot setback of B-2 (Business, General) zoning and the existing motel as depicted on the zoning map is in the B-2 zoning district. Mrs. Freeman further explained that the zoning map shows a 600 foot setback for parking should the property not be approved for rezoning.

Mrs. Freeman explained that if the property is not approved for rezoning, Mr. Anderson could place the business on the portion of the property currently in the B-2 zoning district which is located closet to Lee Highway.

At this time, Mr. Reynolds opened the public hearing to receive comments in regards to the rezoning request.

Mr. Mike Anderson presented the Board with his request to rezone the property in question. Mr. Anderson distributed a survey map to the Board that identifies the location (labeled tract 2) on the property where the auto auction facility would be constructed. He explained that the location that he plans to construct the facility is approximately 1,300 foot to 1,500 foot from Lee Highway (U. S. Highway 11) and borders Interstate 81 and the spay and neutering clinic. Mr. Anderson stated that he understands that the auto auction could be constructed on the portion of the property that is currently zoned B-2; however, this particular area is not an appropriate place for the business.

At this time, a question and answer period ensued between the Board and Mr. Anderson.

Mr. McCrady inquired about how many auctions were held within a week. Mr. Anderson explained there is one sale a week which has been customary for the last 35 years. Mr. McCrady further inquired if the business is constructed at the proposed location would trees be planted to serve as privacy and noise barriers. Mr. Anderson replied that trees would be planted. Mr. McCrady stated his concerns with safety issues on U.S. Highway 11.

Mrs. Mumpower stated that her primary concern is for the citizens living in area of the property in question. Some of these citizens have lived in this area for 50+ years. She discussed concerns with noise and traffic congestion and commented that these type problems exist at the current location of Dominion Auto Auction. Responding to inquiries from Mrs. Mumpower, Mr. Anderson explained that most cars are brought to the auction site by 2:00 PM or 3:00 PM on the day of the auction. A car brought in at the time of an auction is usually from a dealer. He further explained that lighting for the facility would be located behind the facility and would shine into the building. Mr. Anderson next explained that auctions are generally concluded by 9:00 PM and the business is closed by 10:00 PM. He then explained that there is a different clientele for a day sale as opposed to a night sale and that often dealers, which makes up the majority of the business, can only attend the night sales. Mr. Anderson concluded by explaining that the road proposed to the new site would be about 40-50 foot and paved.

Mr. Taylor asked Mr. Anderson about his time frame is for having the new facility constructed. Mr. Anderson explained that he plans to have the project completed within the next three years. Mr. Taylor explained that commercial development along U. S. Route 11 is consistent with the County Comprehensive Plan. However, it seems that the appropriate time to request a rezoning is when the project is ready to begin.

Mr. Gerald Cole addressed the Board on behalf of the community residents between Cole Lane and Industrial Park Boulevard on both sides of U. S. Highway 11 to speak in opposition to the request to rezone property. Mr. Cole explained that there are concerns with traffic and parking, noise, safety and security issues, property devaluation and litter in the yards of residents. He asserted that at the former site

of Dominion Auto Sales that parking signs are not installed, and that residents can hear noise from the business at 11:00 and 12:00 at night. Mr. Cole further explained that regardless of where Dominion Auto Sales is located that noise will be a nuisance.

Mr. Cole advised the Board that he and his neighbors wish to state for the public record that should there be issues with the safety and security of the community they will hold the County and Mr. Anderson responsible and will look to prosecute the responsible parties.

Mr. McCall inquired about the size of water line along U. S. Highway 11. Mr. Cole explained the line was 24". Mr. McCall further inquired if Mr. Cole would be opposed to the rezoning request had he not known the intended use of the property. Mr. Cole explained that he would.

Mr. Cole stated that he understands the County has an 11:00 PM noise ordinance in place and asked that if the rezoning request is approved that the Board request the Sheriff's Department to enforce the noise ordinance and also enforce parking restrictions.

Further discussions ensued.

Ms. Karen Stanley addressed the Board explaining that she is an adjacent property owner to the property in question and stated that regardless of the number of trees planted they will not hide the sight of the business or keep the noise from being heard. Ms. Stanley requested that the County enforce the 11:00 PM noise ordinance.

There being no further comments, Mr. Reynolds declared the public hearing closed.

Substantial discussions ensued among the Board.

Mrs. Mumpower explained that the property in question is located in her district. She further explained that she has a responsibility to look out for the safety and welfare of the citizens in the area to the best of her ability. Mrs. Mumpower explained that this is a tough situation, and she has researched the request and pertaining issues to the best of her ability in order to make a decision that would be in the best interest of the citizens. She further explained that she checked with VDOT about an entrance permit to the property and VDOT does not have a problem with the entrance. Mrs. Mumpower added that the front part of Mr. Anderson's property is zoned B-2 and that he could place the business on that site. She stated that she has known Mr. Anderson for a long time and hopes he would strive to be a good neighbor.

Mr. McCrady explained that this is a tough issue and that he has never gone against the recommendation of the Washington County Planning Commission. However, he believes it would be best to allow Mr. Anderson to build on his property closer to Interstate 81 and not on the property near the old motel where he can do so out right at this time.

A motion was made by Mr. Taylor to follow the recommendation of the Washington County Planning Commission and deny the request of Farmlands, Inc. to rezone approximately 24.75 acres of property located on the south side of State Route 11 near the intersection of State Route 11/State Route 807 from B-2 (Business, General) and A-2 (Agricultural, General) to B-2 (Business, General), Wilson Magisterial District, the motion was seconded by Mrs. Mumpower.

Discussions ensued among the Board concerning the proposed action. Subsequently, the following substitute motion was offered:

On motion of Mr. Price, second by Mr. Owens, the Board acted to approve the application of Farmlands, Inc. to rezone approximately 24.75 acres of property located on the south side of State Route 11 near the intersection of State Route 11/State Route 807 from B-2 (Business, General) and A-2 (Agricultural, General) to B-2 (Business, General), Wilson Magisterial District.

The vote on this motion was as follows: (5-2)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Nay</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Nay</i>

(2.) Jack K. Hagy, Jr. on behalf of Highlands Commercial Properties, Inc., Property Tax Map #143-A-6: Request to rezone approximately 23.7 acres of property located on the south side of State Route 11 at the intersection of State Route 11/State Route 1717 from B-2 (Business, General) and A-2 (Agricultural, General) to B-2 (Business, General), Wilson Magisterial District

County Zoning and Subdivision Official Cathie Freeman provided the Board with a summary of the Planning Commission Hearing on this request. Mrs. Freeman explained in Mr. Hagy’s presentation to the Planning Commission he explained that VDOT has told him that his property could be affected by the U. S. Highway 11 Widening Project. VDOT has said they could take as much as 40 feet of his property. She further explained that Mr. Hagy is requesting a rezoning of his property from the current split zoning of B-2 (Business, General) and A-2 (Agricultural, General) to B-2 (Business, General). Mrs. Freeman explained that there was no opposition present at the Planning Commission, and that the Planning Commission recommended approval of the request by unanimous vote.

Mr. Reynolds opened the public hearing to receive comments in regards to the rezoning request.

Mr. Jack Hagy addressed the Board presenting his request to rezone property. He explained that he is making the request so that the property will have uniform zoning from front to back. Mr. Hagy further explained that he has been approached by several developers who have interest in the property and is always questioned about the zoning. He stated that it would be an asset to have the property uniformly zoned.

Discussions ensued among the Board.

Mr. Owens asked Mr. Hagy if he has plans to develop the property. Mr. Hagy explained that VDOT has indicated they may take 40 feet of his property. He further explained that VDOT has also said they would buy his property, but not his business. Mr. Hagy stated that he could not guarantee that he would not sale his property. He further stated that the property is a good place for business and an asset to Lee Highway.

Mr. Taylor requested clarification regarding Mr. Hagy’s plans to develop the property. Mr. Hagy explained that he did not have definite plans to develop the property; however, he has been approached by several developers. Mr. Taylor explained that if there are no definite plans to develop the site that he could not support the request, primarily because the taxpayers of Washington County have made a significant investment in upgrading water lines.

There being no further comments, Mr. Reynolds declared the public hearing closed.

On motion of Mrs. Mumpower, second by Mr. Price, the Board acted to follow the recommendation of the Washington County Planning Commission and approve the application of Jack K. Hagy, Jr. on behalf of Highlands Commercial Properties, Inc., to rezone approximately 23.7 acres of property located on the south side of State Route 11 at the intersection of State Route 11/State Route 1717 from B-2 (Business, General) and A-2 (Agricultural, General) to B-2 (Business, General), Wilson Magisterial District.

The vote on this motion was as follows: (6-1)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Nay</i>

- (3). Joseph A. Martino, Property Tax Map #123-A-73A1: Request to rezone approximately 7 acres of property located off of State Route 764 onto Shannon Hill’s Drive from M-1 (Industrial, Limited) to A-2(Agricultural, General), Harrison Magisterial District, G-01 Election District

County Zoning and Subdivision Official Cathie Freeman provided the Board with a summary of the Planning Commission Hearing on this request. Mrs. Freeman explained that Mr. Martino explained to the Planning Commission that would like to breed horses, and his property needs to be rezoned from M-1 (Industrial, Limited) to A-2 (Agricultural, General). She further explained that there was no opposition present, and the Planning Commission recommended approval of the request by unanimous vote.

Mrs. Freeman provided the Board with some history on the property in question. She explained that she and Mr. Reeter worked with the previous owner, Brenda Thatcher (who is now deceased) to have this property rezoned to A-2.

Mr. Reynolds opened the public hearing to receive comments in regards to the rezoning request.

Mr. Joseph Martino addressed the Board explaining that he would like the property be rezoned to agricultural so that he could breed horses and raise angora goats.

Discussions ensued among the Board. Responding to an inquiry, Mr. Martino explained that there are three horses currently on the property, and that he plans to have about angora goats.

There being no further comments, Mr. Reynolds declared the public hearing closed.

Mrs. Mumpower asked Mr. Martino if he has talked with the other residents of Shannon Hill Drive about his plans. Mr. Martino explained that he has and that the neighbors do not have problems with his plans.

On motion of Mrs., Mumpower second by Mr., Owens the Board acted to follow the recommendation of the Washington County Planning Commission and approve the application of Joseph A. Martino to rezone approximately 7 acres of property located off of State Route 764 onto Shannon Hill’s Drive

from M-1 (Industrial, Limited) to A-2(Agricultural, General), Harrison Magisterial District, G-01 Election District.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

At this time, the Board took a ten minute recess.

The Board reconvened and decided to combine the public hearings for Items 4 and 5.

(4). Vernon E. McCray & Wanda M. Taylor on behalf of Johnson & Associates, Property Tax Map #106-7-13: Request to rezone approximately 2.63 acres of property located on the south side of State Route 58 near the intersection of State Route 58/State Route 11 from A-2 (Agricultural, General) to B-2 (Business, General), Madison Magisterial District

(5). James Potter & Ersel Ramey on behalf of Johnson & Associates, Property Tax Map #106-7-12, 12B: Request to rezone approximately 2.71 acres of property located on the south side of State Route 58 near the intersection of State Route 58/F-029 from A-2 (Agricultural, General) to B-2 (Business, General), Madison Magisterial District

County Zoning and Subdivision Official Cathie Freeman provided the Board with a summary of the Planning Commission Hearing on this request. Mrs. Freeman explained that Jonathan Shipley spoke to the Planning Commission on behalf of Johnson & Associates explaining that Johnson and Associates is requesting to rezone property from A-2 (Agricultural, General) to B-2 (Business, General) in order to develop a Lowe’s Home Improvements store, office space and restaurants. Mr. Shipley explained to the Planning Commission that a commercial boulevard would be developed and the existing truck stop facility would be removed.

Mrs. Freeman explained that the rezoning request is for a small portion of property that is located between industrial and business zoned properties and that the majority of the surrounding properties are zoned B-2. She further explained that a site plan and subdivision plan for the proposed development has been submitted to her office and is scheduled to be reviewed on July 16 by the Technical Review Committee.

Mrs. Freeman explained that Planning Commission Member John Lentz expressed concerns that this rezoning request was being considered prior to the update of the Comprehensive Plan.

Mrs. Freeman explained that there was no opposition present, and the Planning Commission recommended approval of both requests by unanimous vote.

Mr. Taylor addressed the Board disclosing that an owner, Ms. Wanda Taylor, of one of the properties in question is his aunt. He explained that he would not benefit from this property and has not conversed with Ms. Taylor about the property.

Mr. Reynolds opened the public hearing to receive comments in regards to the rezoning request.

Mr. Steve Johnson of Johnson Associates addressed the Board. Mr. Johnson explained that the rezoning of the property in question would allow for the best utilization of the property. He further explained that the location presents a great opportunity for development of a vital retail area, which will include the removal of the truck stop and the space being converted to retail. Mr. Johnson stated that he is working with VDOT on ingress and egress for the property, and he plans a late summer of 2009 opening date for the businesses. Mr. Johnson further stated that the aesthetics of the property will exceed requirements.

Discussions ensued among the Board.

Mr. Taylor inquired about the plans for the existing Lowe’s at Exit 7. Mr. Johnson explained that it is his understanding that the Exit 7 store will remain open. He further explained that this store does a tremendous business, and that Lowe’s corporate offices would like to relieve some pressure from the store.

There being no further comments, Mr. Reynolds declared the public hearing closed.

On motion of Mr., McCall second by Mrs. Mumpower, the Board acted to follow the recommendation of the Washington County Planning Commission and approve the application of Vernon E. McCray & Wanda M. Taylor on behalf of Johnson & Associates to rezone approximately 2.63 acres of property located on the south side of State Route 58 near the intersection of State Route 58/State Route 11 from A-2 (Agricultural, General) to B-2 (Business, General), Madison Magisterial District. It was further resolved to follow the recommendation of the Washington County Planning Commission and approve the application of James Potter & Ersel Ramey on behalf of Johnson & Associates to rezone approximately 2.71 acres of property located on the south side of State Route 58 near the intersection of State Route 58/F-029 from A-2 (Agricultural, General) to B-2 (Business, General), Madison Magisterial District.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

b. Request(s) for Special Exception Permit:

(6). Donna R. Leonard on behalf of the City of Bristol, Virginia, Property Tax Map #142A-24B, 24B1: Request for a Special Exception Permit to operate governmental offices, more specifically, a City Parks and Recreation Department in an existing residential structure located on the west side of Battle Hill Drive, more specifically 21308 Battle Hill Drive, near the intersection of Battle Hill Drive and Route 11 in an A-2 (Agricultural, General) zone, Wilson Magisterial District

County Zoning and Subdivision Official Cathie Freeman provided the Board with a summary of the Planning Commission Hearing on this request. Mrs. Freeman explained that the property in question was previously selected by Highlands Community Services for use as a mental health facility for children and adolescents. The Planning Commission and Board of Supervisors both denied the Special Exception Permit filed by Highlands Community Services because of the use of Battle Hill Drive to access the property. The City of Bristol, Virginia denied access to the property through Sugar Hollow Park.

Mrs. Freeman explained that the City of Bristol now requests use of the property in question as office space for their Parks and Recreation Department. Mr. Bill Dennison, Bristol City Manager, has indicated in a letter to the Planning Commission that the City of Bristol will not need to use Battle Hill Drive to access the property, but will use Sugar Hollow Park. Mrs. Freeman explained that the City of Bristol would like to keep a portion of the property and sell 2.8 acres to the Washington County School Board. The City of Bristol will relinquish the right of way to the property via Battle Hill Drive except for utility rights for water, sewer and power.

Mrs. Freeman explained that Dr. Tom Graves, Assistant Superintendent for Washington County Schools, addressed the Planning Commission speaking in favor of the request. She further explained that there was no opposition present, and the Planning Commission recommended approval by unanimous vote.

Discussions ensued among the Board.

Mrs. Mumpower inquired about what the County could do should the Special Exception Permit uses not be followed. Mrs. Freeman explained that the Board could place stipulations on the Special Exception Permit.

Mr. Owens inquired if all of the property in question were located in Washington County. Mrs. Freeman explained that all of the property was located in the County and further explained that the plans of the City of Bristol to subdivide the property would have to be approved by the County Zoning Department.

Further discussions ensued.

Mr. Reynolds opened the public hearing to receive comments in regards to the request for a Special Exception Permit.

Ms. Cheryl Carter, Planning Director for the City of Bristol addressed the Board on behalf of the Bristol City Council and the City Manager to answer questions the Board may have concerning the City's request.

There being no further comments, Mr. Reynolds declared the public hearing closed.

On motion of Mrs. Mumpower second by Mr., Price the Board acted to follow the recommendation of the Washington County Planning Commission and approve the application of Donna R. Leonard on behalf of the City of Bristol, Virginia for a Special Exception Permit to operate governmental offices, more specifically, a City Parks and Recreation Department in an existing residential structure located on the west side of Battle Hill Drive, more specifically 21308 Battle Hill Drive, near the intersection of Battle Hill Drive and Route 11 in an A-2 (Agricultural, General) zone, Wilson Magisterial District. It was further resolved to place a stipulation on the Special Exception Permit that the property be accessed through Sugar Hollow Park.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

c. Public Hearing and Consideration of Adoption of an Ordinance to Amend the Code of the County of Washington, Virginia to Add Chapter 19 to Create a Uniform Ordinance for Cable Television Franchises

Ms. Phillips provided the Board with introductory remarks. She explained that under new State law effective January 2007 localities are given the opportunity to adopt a uniform franchise ordinance for operators of cable television systems within the County. Ms. Phillips further explained that the language of the proposed ordinance closely follows the State law.

Ms. Phillips explained that at Board stations is correspondence from Rapid Communications wherein they are requesting to operate according to the proposed franchise ordinance. They further recommend that three revisions be made to the proposed ordinance including the deletion of Section 19-21 B; revisions to language in Section 19-27 B-2; and revisions to Section 19-42- Liquidated Damages. Ms. Phillips requested the Board authorize Rapid Communications be allowed to operate according to the franchise ordinance. She advised the Board that she does not recommend incorporation of Rapid Communication’s recommended revisions to the proposed ordinance.

Discussions ensued among the Board. Responding to an inquiry from the Board, Ms. Phillips explained that each cable television franchise agreement will state the providers service area; however, the franchise agreements are non-exclusive.

Mr. Reynolds opened the public hearing to receive comments in regards to the proposed ordinance.

There being no comments, Mr. Reynolds declared the public hearing closed.

Mr. Taylor proposed that the Board table action on the proposed ordinance and allow the Joint Land Use Steering Committee an opportunity to review the ordinance with the County Attorney and then make a recommendation to the Board.

Discussions ensued among the Board concerning Mr. Taylor’s proposal. Ms. Phillips explained to the Board that the majority of the proposed ordinance is written according to State law. She further explained that discretionary language permitted by State law that is contained in the proposed ordinance addresses issues such as liquidated damages. After further discussions, the following action was taken:

On motion of Mrs. Mumpower, second by Mr. Owens, it was resolved to adopt the following ordinance with corrections as specified by County Attorney as follows:

**AN ORDINANCE TO AMEND THE CODE OF THE COUNTY OF WASHINGTON, VIRGINIA, TO
ADD CHAPTER 19 TO CREATE A UNIFORM ORDINANCE
CABLE TELEVISION FRANCHISE**

Whereas, the Code of Virginia was amended in 2006 to provide in sections 15.2-2108.19, et seq. for licensing and regulation of cable television systems by ordinance adopted by local governments;

Whereas, the statutory system for a local ordinance cable television system franchise provides for uniform regulation of cable television systems within the county, more efficient establishment of franchises for multiple cable television system operations, and customer service standards consistent with federal requirements;

Whereas, the Board of Supervisors of the County of Washington, Virginia, finds it in the best interest of the public health, safety, and welfare, to adopt the provisions established by state law for cable television system franchise;

NOW THEREFORE, BE IT ORDAINED by the Board of Supervisors for the County of Washington, Virginia:

1. That the Code of the County of Washington, Virginia, (2002) is hereby amended, by addition of Chapter 19, as follows:

CHAPTER 19 -- CABLE TELEVISION SYSTEM FRANCHISE

Article I. General Provisions

19-1. Applicability, Scope of Franchise, and Applicable Law

A. This chapter establishes the criteria, procedures and standards by which the county will grant and enforce an ordinance cable franchise to a provider of cable services pursuant to § 15.2-2108.19 et seq. of the Code of Virginia as an alternative to a negotiated cable franchise pursuant to § 15.2-2108.20 of the Code of Virginia. The county, on request by an applicant, will continue to grant a negotiated cable franchise in accordance with Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq., and as provided by § 15.2-2108.20 of the Code of Virginia. The ability to seek an ordinance cable franchise under this chapter shall be available to:

1. A cable operator with previous consent to use the public rights-of-way to provide cable services whose negotiated franchise with the county is up for renewal;

2. A certificated provider of telecommunications services with previous consent to use the public rights-of-way in the county through a franchise;

3. A certificated provider of telecommunications services that lacked previous consent to provide cable service in the county but provided telecommunications services over facilities leased from an entity having previous consent to use of the public rights-of-way in the county through a franchise; and

4. A cable operator with previous consent to use the public rights-of-way to provide cable service in the county through a negotiated franchise agreement that chooses to opt into the terms of a franchise pursuant to this chapter.

B. Ordinance cable franchises shall be nonexclusive franchises that authorize the franchisee to construct and operate a cable system in the public rights-of-way, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any public right-of-way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system and to provide such cable services over the cable system as may be lawfully allowed. The ordinance cable franchise shall neither authorize the franchisee to use the public right-of-way for purposes of providing any service other than cable service nor prohibit the franchisee from doing so.

C. Incorporation of Amendments to State Code, Federal Law and Regulations. Sections 15.2-2108.19 through 15.2-2108.31 of the Code of the Virginia, 1950, as amended, and all of the provisions and standards referenced therein, are hereby adopted and incorporated as fully as if set out at length herein. All future amendments to such sections and provisions are hereby automatically incorporated into this Chapter.

Va. Code §§ 15.2-2108.19, et seq.

19-2. Definitions

All terms used in this Chapter, unless otherwise defined herein, shall have the same meaning as set forth in Sections 15.2-2108.19 et seq. of the Code of Virginia, and if not defined therein, then as set forth in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 et seq., and if not defined therein, their common and ordinary meaning. In addition, references in this Chapter to any federal or state law shall include amendments thereto as are enacted from time-to-time.

"Act" means the Communications Act of 1934.

"Affiliate", in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

"Basic service tier" means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental channels required to be carried in the basic tier.

"Board" means the Board of Supervisors of the County of Washington, Virginia.

"Cable administrator" means the County Administrator for the County of Washington, Virginia, who is hereby designated as the person responsible for administration of the ordinance cable franchise for the County.

"Cable operator" means any person or group of persons that (i) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (ii) otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system. Cable operator does not include a provider of wireless or direct-to-home satellite transmission service.

"Cable service" means the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

"Cable system" or "cable television system" means any facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only subscribers without using any public rights-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) any portion of a system that serves fewer than 50 subscribers in the County, where such portion is a part of a larger system franchised in an adjacent County; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

"Certificated provider of telecommunications services" means a person holding a certificate issued by the State Corporation Commission to provide local exchange telephone service.

"County" means the County of Washington, Virginia, a political subdivision of the Commonwealth of Virginia.

"Franchise" means an initial authorization, or renewal thereof, issued by the County, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system, a telecommunications system, or other facility in the public rights-of-way. A negotiated cable franchise is granted by a County after negotiation with an applicant pursuant to Va. Code § 15.2-2108.20.

"Franchisee" means a person that has been granted a cable television franchise by the County pursuant to this Chapter or any predecessor ordinance or franchise agreement.

"Force majeure" means an event or events reasonably beyond the ability of cable operator to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which cable operator's facilities are attached or to be attached or conduits in which cable operator's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

"Gross revenue" means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the cable operator and derived from the operation of the cable system to provide cable services in the franchise area; however, in an ordinance cable franchise "gross revenue" shall not include: (i) refunds or rebates made to subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the cable system, but not including revenue received from home shopping channels for the use of the cable service to sell merchandise; (iii) any tax, fee, or charge collected by the cable operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group; (iv) program launch fees; (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) a sale of cable service for resale

or for use as a component part of or for the integration into cable services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the cable service; (vii) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the cable operator to provide cable service; and (viii) revenue derived from services classified as noncable services under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the cable operator to noncable services in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

"Interactive on-demand services" means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

"Person" means an individual, partnership, association, joint stock company, organization, corporation, or any other legal entity, but such term does not include the County.

"Public rights-of-way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the County or the Commonwealth of Virginia now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining cable facilities. No reference herein, or in any franchise, to a "public rights-of-way" shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the County and as the County may have the undisputed right and power to give.

"Transfer" means any transaction in which (i) an ownership or other interest in the cable operator is transferred, directly or indirectly, from one person or group of persons to another person or group of persons, so that majority control of the cable operator is transferred; or (ii) the rights and obligations held by the cable operator under the cable franchise granted under this article are transferred or assigned to another person or group of persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise shall not include (a) transfer of an ownership or other interest in the cable operator to the parent of the cable operator or to another affiliate of the cable operator; (b) transfer of an interest in the cable franchise granted under this article or the rights held by the cable operator under the cable franchise granted under this article to the parent of the cable operator or to another affiliate of the cable operator; (c) any action that is the result of a merger of the parent of the cable operator; (d) any action that is the result of a merger of another affiliate of the cable operator; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the cable operator in the cable franchise or the system used to provide cable in order to secure indebtedness.

"VDOT" means the Virginia Department of Transportation.

"Video programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

Va. Code § 15.2-2108.19

19-3. Procedures to Renew or Obtain a Cable Franchise

A. Renewal. A franchisee electing to renew its negotiated cable franchise shall do so (i) pursuant to the renewal procedures in 47 U.S.C. § 546, or (ii) by providing notice to the cable administrator that

it will opt into an ordinance cable franchise pursuant to this Chapter along with the application materials listed in this section. A franchisee may file notification that its cable franchise will be renewed by an ordinance cable franchise one year in advance of the expiration date of its existing franchise.

B. Initial franchise application. *In order to obtain a cable franchise, an applicant shall file with the cable administrator a written request for a franchise along with the application materials required by this section.*

C. Application materials. *Any request to obtain an ordinance cable franchise or to renew a negotiated cable franchise shall include the following materials:*

- 1. Applicant's complete business name, as registered with the Virginia State Corporation Commission, when applicable;*
- 2. Business address of the applicant;*
- 3. Name and contact information of a designated contact for the applicant;*
- 4. Name and contact information of the registered agent for the applicant, when applicable;*
- 5. The local, toll-free, or collect telephone access line that will be available to provide customer service to its subscribers;*
- 6. A map that shows the service area in which the applicant intends to provide cable service in the County;*
- 7. A map that shows the area in the County in which the applicant has its telephone facilities, if any;*
- 8. A list of services and channels offered and subscription rates within the County; and*
- 9. Current certificate of insurance in the amounts required by this chapter.*

D. *Upon receipt of all necessary application materials, the Board may, by resolution, grant to the applicant an ordinance cable franchise after notice and public hearing.*

Va. Code §§ 15.2-2108.30, -2108.21.

19-4. Term of Franchise

All ordinance cable franchises granted pursuant to this Chapter shall have a term of fifteen (15) years.

Va. Code § 15.2-2108.21.

19-5. Town Ordinances

If the governing body of any town within the County adopts an ordinance pursuant to the provisions of §§ 15.2-2108.19 et seq. of the Code of Virginia, such town shall not be subject to the terms of this chapter.

Va. Code § 15.2-2108.21(G).

Sections 19-6 – 19-20 reserved.

Article II. Substantive Provisions

19-21. PEG Channels and Fees

A. PEG Channels

1. Upon written request made by the County Administrator on behalf of the County and in accordance with applicable rules and regulations, the franchisee shall provide up to three public, educational, and governmental access (“PEG”) channels dedicated solely to the County or its designee and not shared with any other jurisdiction unless the County, in writing, agrees otherwise.

2. The County may, after a public hearing and upon a finding that the existing PEG channel is substantially utilized within the meaning of Section 15.2-2108.22(1) of the Code of Virginia, require by ordinance that all County franchisees provide additional PEG channels, up to a maximum of three additional PEG channels, provided that the total number of PEG channels in the County, including the additional PEG channels, shall not exceed seven.

3. Any additional PEG channel provided pursuant to subdivision (2) of this subsection (A) that is not utilized for at least eight (8) hours a day by the County need no longer be made available to the County by a franchisee, but may be programmed at the franchisee’s discretion. At such time as the County can certify to the franchisee a schedule for at least eight hours of daily programming for a period of three months, the franchisee shall restore any reallocated additional PEG channel.

4. All PEG channels shall be carried on a franchisee’s basic tier.

5. The County or its designee shall be responsible for management, operation, and programming of the PEG access channels.

6. A franchisee shall, as necessary and reasonably possible, interconnect with one or more other franchisees in the County or directly connect to PEG insertion points to ensure the carriage of all required PEG access channels.

7. Franchisee shall ensure that all PEG access channel signals carried on its system, regardless of the method used to acquire the PEG channels, comply with all applicable FCC signal quality and technical standards for all classes of signals. The technical and signal quality of all PEG access channel signals shall be preserved.

B. PEG Fees

1. As of July 1, 2012, for an effective date no earlier than January 1, 2013, if the County is operating a PEG facility in accordance with this Chapter, the County may negotiate with all

franchisees to set a recurring fee to support the reasonable and necessary capital costs of PEG facilities, including institutional networks, that shall be imposed on all franchisees such that the fee applies equally, on a gross revenue percentage or per-subscriber basis, to all franchisees in the County.

2. If the County and the franchisees cannot agree on a recurring PEG capital cost fee through negotiation under subdivision (1) of this subsection (B), the County, by ordinance adopted after a public hearing, may impose a recurring fee, calculated on a per subscriber or percentage of gross revenue basis, to support the reasonable and necessary capital costs of PEG access facilities, including institutional networks, to be effective after January 1, 2013.

3. The PEG capital cost fee, if imposed, shall not constitute nor be a part of any franchise fee, and all such costs fall within one or more of the exceptions listed in 47 U.S.C. § 542.

Va. Code § 15.2-2108.22.

19-22. Customer Service Standards

A. The franchisee shall comply in all respects with the customer service requirements established by the Federal Communications Commission and set forth in Title 47, Part 76 of the Code of Federal Regulations. Accordingly, the franchisee shall be subject to the following customer service standards consistent with 47 C.F.R. §§ 76.309, 76.1602, 76.1603, 76.1618 and 76.1619:

1. Customer Service Telephone Access Line. A franchisee shall maintain a local, toll-free, or collect telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

a. Trained representatives will be available to respond to customer telephone inquiries during normal business hours.

b. After normal business hours, the access line may be answered by a service or automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative on the next business day.

2. Installations, Outages, and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five percent (95%) of the time as measured on a quarterly basis.

a. Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are within 125 feet of the existing distribution system.

b. Excluding conditions beyond the control of the franchisee, the franchisee will begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The franchisee must begin actions to correct other service problems the next business day after notification of the service problem.

c. The "appointment window" alternatives for installations, service calls and other installation activities will either be at a specific time or, at maximum, a four-hour time block during normal business hours. A franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

d. A franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a franchisee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled as necessary, at a time that is convenient for the customer.

3. A franchisee shall accurately collect and maintain data to measure its compliance with subparagraph (2) and shall provide to the County, within thirty days of receipt of written request, such data reports for County review. Data reports shall be maintained for a minimum of three years prior to destruction.

B. A franchisee shall meet the following communications standards for its subscribers.

1. A franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- i. Products and services offered;*
- ii. Notice of availability of basic tier service along with monthly cost of such service and a list of all services included in the basic service tier;*
- iii. Prices and options for programming services and conditions of subscription to programming and other services;*
- iv. Installation and service maintenance policies;*
- v. Instructions on how to use the cable service;*
- vi. Channel positions of programming carried on the system;*
- vii. Refund policy; and*
- viii. Billing and complaint procedures, including the franchisee's office hours, address and telephone number of the local cable office.*

2. A franchisee shall notify subscribers in writing of any changes in rates, programming services or channel positions as soon as reasonably possible. Notice should be given to subscribers a minimum of thirty (30) days in advance of such change if the change is within the control of the franchisee.

C. Billing

1. A franchisee's bills to its subscribers shall be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

2. Bills shall show clearly and predominately a local or toll-free telephone number for customers to use to contact the franchisee's customer service department.

3. In case of a billing dispute, a franchisee must respond to a written complaint from a subscriber within thirty (30) days.

4. *Refund checks will be issued promptly, but not later than either:*
 - a. *The customer's next billing cycle following resolution of the request, or thirty (30) days, whichever is earlier, or*
 - b. *The return of the equipment supplied by a franchisee if service is terminated.*

5. *Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.*

6. *A franchisee shall maintain and provide to the County, within thirty days of receipt of written request, a log of all subscriber complaints indicating the action taken by the franchisee. Such logs shall be maintained for a minimum period of three (3) years prior to destruction.*

Va. Code §§ 15.2-2108.22(4), 15.2-2108.25.

19-23. Service Buildout Requirements

A. *Within no less than three (3) years of the date of the grant of the franchise, a franchisee shall make cable service available to all of the occupied residential dwelling units in the initial service area selected by the franchisee pursuant to Section 19-3(C) hereof.*

B. *Within seven (7) years of the date of the grant of the franchise, a franchisee shall make cable service available to no less than sixty five (65%) of the residential dwelling units throughout the area in the County in which the franchisee has telephone facilities to the extent permitted by state law.*

C. *Notwithstanding subparagraphs (A) and (B) above, a franchisee shall not be required to make cable service available:*

1. *for periods of force majeure;*
2. *for periods of delay caused by the County;*
3. *for periods of delay resulting from the franchisee's inability to obtain authority to access rights-of-way in the service area;*
4. *in areas where developments or buildings are subject to claimed exclusive arrangements;*
5. *in developments or buildings that the franchisee cannot access under industry standard terms and conditions after good faith negotiation;*
6. *in developments or buildings to which the franchisee is unable to provide cable service for technical reasons or that require facilities that are not available or cannot be deployed on a commercially reasonable basis;*
7. *in areas where it is not technically feasible to provide cable service due to the technology used by the franchisee to provide cable service;*

8. *in areas where the average occupied residential household density is less than thirty (30) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the franchisee's active cable; or*

9. *when the franchisee's prior service, payment, or theft of service history with a subscriber or potential subscriber has been unfavorable.*

D. Should, through new construction, an area within a franchisee's service area meet the density requirement set forth in subparagraph (C)(8), the franchisee shall, subject to the exclusions set forth in subparagraphs (C)(1)-(7) and (9), provide cable service to such area within six (6) months of receiving notice from the County that the density requirements have been met.

E. During the twelve (12) month period commencing after the seventh-year anniversary date of the grant of a franchise, the County may, by ordinance adopted after a public hearing in which the County specifically finds that such a requirement is necessary to promote competition in cable services within the County, require a franchisee to make service available to eighty percent (80%) of the residential dwelling units in the area in the County in which the franchisee has telephone facilities within no less than ten (10) years of the date of the grant of the franchisee's franchise, subject to the exclusions set forth in subparagraphs (C)(1)-(9) above. If the franchisee notifies the County that it is unwilling to accept this additional service availability requirement, the County may, after notice and public hearing, terminate the franchisee's ordinance cable franchise.

F. A franchisee shall file with the County a certificate at its third and seventh, and if applicable, tenth, anniversary dates certifying its compliance with the foregoing service requirements.

G. A franchisee may elect to provide cable service to areas not meeting the density and distance standards set forth herein. The franchisee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the standards stated herein. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth herein. Such additional charge shall be paid by the developer or landowner or customer requesting cable service in an area that does not meet the density and distance standards.

Va. Code § 15.2-2108.22.

19-24. Rights-of-Way Management

A. All excavation and reconstruction work by a franchisee in the public rights-of-way must be in compliance with the requirements of applicable VDOT standards. It shall be the responsibility of a franchisee to obtain any required permits, to review all applicable excavation, reconstruction, restoration, repair and permitting requirements, and to become familiar with such requirements before beginning any excavation, reconstruction, restoration or repair work in the public rights-of-way or private property.

B. Any equipment or facilities installed by a franchisee in the public rights-of-way shall be installed, located, erected, constructed, reconstructed, replaced, restored, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not (1) to endanger or interfere in any manner with improvements the County or VDOT may deem appropriate to make; or (2) to interfere with the rights of any private property owner; or (3) to hinder or obstruct pedestrian or vehicular traffic.

C. Whenever the County or VDOT shall determine that it is necessary in connection with the repair, relocation, or improvement of the public rights-of-way, the County or VDOT may require by written notification that any properties or facilities of the franchisee be removed or relocated. Within sixty (60) days after receipt of notification, unless the County or VDOT extends such period for good cause shown, the franchisee shall remove or relocate its facilities to such place and under such terms and conditions as specified by the County or VDOT. The franchisee shall bear all expenses associated with the removal and relocation except that the County or VDOT will issue, without charge to the franchisee, whatever local permits are required for the relocation of franchisee's facilities. If the franchisee does not complete its removal or relocation within sixty (60) days or such other period as authorized by the County or VDOT, the County or VDOT may take such actions as necessary to effect such removal or relocation at the franchisee's expense.

Va. Code § 15.2-2108.23.

Section 19-25. Reserved.

19-26. Service to Public Locations

A franchisee shall provide, without charge, within the area in the County actually served by its cable system, one cable service outlet activated for basic cable service to each fire station, public school, police station, public library, and any other governmental building.

Va. Code § 15.2-2108.22.

19-27. Emergency Powers and Authority

A. Emergency Powers

In the event of an emergency, or where a franchisee's cable system creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the franchisee shall remove or relocate any or all parts of franchisee's cable system at the request of the County. If the franchisee fails to comply with the County's request, the County may remove or relocate any or all parts of the franchisee's cable system upon reasonable notice to the franchisee and franchisee shall be responsible to reimburse the County the expense of such removal or relocation.

B. Emergency Alert System

1. The franchisee shall comply with the Emergency Alert System (EAS) requirements of the FCC in order that emergency messages may be distributed over the System. A franchisee shall install and thereafter maintain an EAS for use by the County.

2. The EAS shall at all times be operated in accordance with federal requirements and other applicable law. In the event of an emergency, as determined by the designated County official or other official designated by any approved state or local EAS plan, and subject to applicable federal and Virginia law requirements, the EAS shall be remotely activated by telephone and shall allow a representative from the County or other official designated by any approved state or local EAS plan, in the event of an emergency or for reasonable testing, to override the audio and video on all channels on the franchisee's cable system without the assistance of the franchisee.

3. The County or other designated body responsible under any approved state or local EAS plan shall provide reasonable notice to the franchisee prior to any test of the EAS. The franchisee

shall cooperate with the County or other designated body responsible under any approved state or local EAS plan in any such test.

4. A franchisee shall maintain the EAS and shall periodically upgrade the EAS at the franchisee's sole expense to ensure that the EAS technology remains consistent and compatible with prevailing technology and applicable law.

19-28. Redlining, Reporting and Inspection

A franchisee shall assure that access to cable services is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides. The County shall have the right to monitor and inspect the deployment of cable services.

Va. Code § 15.2-2108.21.

Sections 19-29 – 19-30 reserved.

Article III. Communications tax and franchise fees

19-31. Communications Act Tax. Franchisee shall comply with the provisions of Section 58.1-645 et seq. of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended from time to time, and, with the exception of required compliance with the Virginia Communications Sales and Use Tax, the provisions of this Article shall not have any effect, for so long as the Communications Sales and Use Tax or a successor state or local tax that constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, is imposed on the sale of cable services by the Franchisee to subscribers in the County.

19-32. Payment of Franchise Fee to County. In the event that the Communications Sales and Use Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, franchisee shall pay to the County a franchise fee of five percent (5%) of annual gross revenue, beginning on the effective date of the repeal of such tax (the "repeal date"). Beginning on the repeal date, the terms of Sections 19.32 through 19.35 of this chapter shall take effect. In accordance with Title VI of the Communications Act, the twelve-month period applicable under the franchise for the computation of the franchise fee shall be a calendar year. Such payments shall be made no later than thirty days following the end of each calendar quarter. Should franchisee submit an incorrect amount, franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under subsection 19-33.

19-33. Supporting Information. Each franchise fee payment shall be accompanied by a brief report prepared by a representative of franchisee showing the basis for the computation, and a breakdown by major revenue categories (such as basic service, premium service, etc.). The County shall have the right to reasonably request further supporting information for each franchise fee payment, subject to the proprietary information provision of subsection 19.43.

19-34. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which payment by franchisee is due.

19.35. Bundled Services. *This subsection 19.35 shall apply only if state or federal law does not otherwise address the computation of franchise fees or gross revenues in connection with the provision of cable service as part of a bundle or package with any non-cable service. If the franchisee bundles cable service with non-cable service, the franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the franchise fee payments under this Chapter. In the event that the franchisee or any affiliate shall bundle, tie, or combine cable service (which are subject to the franchise fee) with non-cable services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on cable services, a pro rata share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and it is reasonable, the pro rata share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, the parties agree that tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this section.*

Va. Code § 15.2-2108.22.

Article IV. Procedures and Enforcement

19-41. Notice and Hearing Procedures

A. *In the event that the cable administrator believes that a franchisee has not complied with the requirements of this Chapter, Article 1.2 (§ 15.2-2108 et. seq.) of Chapter 121 of Title 15.2 of the Virginia Code, or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 or any regulations promulgated thereunder, the following procedures shall apply:*

1. *The cable administrator shall informally discuss the alleged noncompliance with the franchisee.*

2. *In the event that the informal discussion does not resolve the matter, the cable administrator shall notify the franchisee in writing of the exact nature of the alleged noncompliance.*

3. *Within fifteen (15) days from receipt of the cable administrator's written notice, the franchisee shall:*

a. *file a written statement with the cable administrator contesting, in whole or in part, the alleged noncompliance; or*

b. *cure the alleged noncompliance and file written notification to the cable administrator of the cure; or*

c. *in the event the nature of the noncompliance prevents the franchisee from curing the noncompliance within fifteen days, the franchisee shall initiate reasonable steps to remedy the noncompliance and file with the cable administrator a written statement setting forth the steps being taken and the projected date that they will be completed. The franchisee's cure shall be completed within thirty days of the projected date.*

B. *In the event the franchisee fails to cure the default within fifteen days, fails to file a timely written response, or fails to timely complete the remediation, the cable administrator, if it wishes to*

continue its investigation into the default, shall schedule a public hearing before the Board. The franchisee shall be notified in writing at least thirty business days prior to the public hearing and shall be provided an opportunity to be heard at the public hearing. The notice shall specify the time, place, and purpose of the public hearing. The County shall: (1) provide public notice of the hearing in compliance with Virginia law; (2) hear any person interested in the violation under review; and (3) provide the franchisee with an opportunity to be heard.

C. The Board shall, within a reasonable time after the closure of the public hearing, issue findings and conclusions in writing, setting forth the basis for the findings, the proposed cure plan and time line for curing the violation, if the violation can be cured, and the penalties, damages and applicable interest, if any, owed.

D. Subject to applicable federal and Virginia law and the provisions of this Chapter, if the Board determines pursuant to a public hearing that a franchisee is in violation of any provision of this Chapter, Article 1.2 (§§ 15.2-2108 et seq.) of Chapter 121 of Title 15.2 of the Code of Virginia, or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 or any regulation promulgated thereunder, the County may apply one or a combination of the following remedies: (i) seek specific performance or other equitable relief; (ii) commence an action at law; and/or (iii) apply liquidated damages in accordance with Section 19-42.

E. The cable administrator shall conduct the hearings and issue findings and conclusions under this subsection. The franchisee may appeal the determination of the cable administrator to the Board. Such an appeal shall be heard at a lawfully noticed public hearing.

F. In addition to all other rights and powers reserved or pertaining to the County, the County reserves, as an additional and as a separate and distinct remedy, the right to revoke this Franchise and all rights and privileges of Franchisee hereunder in any of the following enumerated events or for any of the following reasons:

(1) Franchisee shall, by act or omission, violate any material or substantial term or condition of this Franchise Agreement and shall within thirty (30) days following written notice by the County fail to effect such compliance or has failed to begin to take such reasonable steps as necessary to bring the Franchisee into such compliance; or

(2) Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt, or all or part of Franchisee's facilities should be sold under an instrument to secure a debt and are not redeemed by Franchisee within thirty (30) days from said sale; or

(3) Franchisee fails to restore service following ninety-six (96) consecutive hours of interrupted service, except when an act of God, disaster, or other action beyond the control of the Franchisee caused such service interruption; or

(4) Franchisee attempts to or does practice any fraud or deceit or pattern of material misrepresentation in its conduct or relations with the County under this Franchise.

G. No such revocation shall be effective unless or until the Board shall have adopted a Resolution setting forth the cause and reason for the revocation and the effective date thereof, which Resolution shall not be adopted without thirty (30) days' prior written notice thereof to Franchisee and an opportunity for the Franchisee to be heard upon the proposed adoption of said Resolution. Franchisee

shall furnish to the County a written statement at least ten (10) days prior to the date on which the Board will convene to consider such proposed Resolution setting out its position relative to the cause(s) of such revocation. In the event the revocation as proposed in said Resolution depends upon findings of fact, such findings of fact as made by the Board shall be in writing, after the hearing provided for, if requested by Franchisee.

H. In the event a franchisee submits notification of unwillingness to comply with any additional service availability requirements as contained in Section 2-4 of this Chapter, or fails to comply with these additional service requirements, the franchisee's franchise may be terminated after written notice and a public hearing.

Va. Code § 15.2-2108.22.

19-42. Liquidated damages.

A. If, pursuant to the public hearing required by Section 3-1, the County determines that a franchisee has failed materially to comply with this Chapter, Article 1.2 (§§ 15.2108 et seq.) of Chapter 121 of Title 15.2 of the Code of Virginia, or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 or any regulation promulgated thereunder, the County may impose liquidated damages as provided in this subsection. Because a Franchisee's failure to comply will result in injury to the County and subscribers and because it will be difficult to estimate the extent of such injury, the County and, by its acceptance of an ordinance franchise pursuant to this Chapter, a Franchisee agrees to the following liquidated damages for the following material violations, which represent both parties' best estimate of the damages resulting from the specified non-compliance. The franchisee shall not be charged with multiple violations for a single act or event affecting a single subscriber or for a single act or event affecting multiple subscribers on the same day.

1. For failure to comply with PEG channels: \$50/day for each violation for each day the violation continues after written notice has been provided to the franchisee by the County of such violation.

2. For failure to supply complete and accurate information, reports and filings required by the County as required by this Chapter: \$100/day for each unrelated material violation for each day the violation continues after written notice and an applicable cure period has been provided to the franchisee by the County of such violation.

3. For failure to comply with any the customer service standard set forth in Section 2-3 of this Chapter: \$50/day for each violation for each day the violation continues.

4. For failure to pay in full or in timely fashion any fee to support PEG access pursuant to Section 2-1(B) of this Chapter: \$50/day for each violation for each day the violation continues, in addition to the balance of such fees owed and interest.

B. The County may reduce or waive any of the above liquidated damages if it determines, in its discretion, that such waiver is in the public interest.

C. If a court of competent and binding jurisdiction determines that liquidated damages cannot be imposed by this Chapter rather than by contract, the foregoing liquidated damages shall be

construed to be penalties to the full extent allowed and contemplated by Section 15.2-2108.22(6) of the Code of Virginia.

D. Interest on unpaid amounts. Interest on any and all unpaid amounts owed by a franchisee to the County shall accrue at the legal rates set forth in Virginia Code § 6.1-330.53.

E. Cure. Any violation or noncompliance with this Chapter, Article 1.2 (§§ 15.2-2108 et seq.) of Chapter 121 of Title 15.2 of the Code of Virginia, or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 or any regulations promulgated thereunder, shall not be deemed cured until all penalties, damages and interest, if any, that are owed, are paid.

Va. Code § 15.2-2108.22.

19-43. Auditing

A. Once every twenty-four (24) months and upon thirty (30) days' written notice to the franchisee, the County or its agent shall have the right to: (1) inspect and copy at any time during normal business hours at such location as the County may designate, all books and records of a franchisee and any other person who is a "cable operator" of the franchisee's cable system reasonably necessary to audit and confirm the franchisee's accurate payment of any fees required by this Chapter; and (2) audit and recompute any amounts determined to be payable under this Chapter or a franchise agreement. Such records shall include, but are not limited to: receipts, financial and accounting records, contracts, computer records, codes, programs and disks or other storage media or other material that the County reasonably deems necessary in order to monitor compliance under this Section. The franchisee may request that proprietary and confidential information be kept from public disclosure, but only as permitted by the Virginia Freedom of Information Act.

B. The County's audit expenses shall be borne by the County unless the audit discloses an underpayment of more than three percent (3%) of any quarterly payment, but not less than \$5,000, in which case the County's out-of-pocket costs of the audit shall be borne by the franchisee as a cost incidental to the enforcement of its franchise. Any additional undisputed amounts due to the County as a result of the audit shall be paid by the franchisee within thirty (30) days following written notice to a franchisee by the County of the underpayment.

Va. Code § 15.2-2108.22.

19-44. Itemization

A franchisee providing cable service may identify as a separate line item on each regular bill of each subscriber (i) the amount of the total bill assessed as a franchise fee, or any equivalent fee, that the franchisee has paid to the County; (ii) the amount of the total bill assessed to satisfy any requirements imposed on the franchisee, including those to support PEG access facilities, including institutional networks; and (iii) the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental entity on the transaction between the franchisee and the subscriber.

Va. Code § 15.2-2018.25.

Section 19-45. Reserved.

19-46. Transfer

No transfer of any franchise granted under this Chapter shall occur without the prior consent of the County, provided that the Board shall not unreasonably withhold, delay, or condition such consent. No transfer shall be made to a person, group of persons or affiliate that is not legally, technically, and financially qualified to operate the cable system and satisfy the franchise obligations.

Va. Code § 15.2-2108.28.

19-47. Surrender

A franchisee that receives an ordinance cable franchise under this Chapter that considers, within three (3) years after the grant of a cable franchise under this Chapter, that its provision of cable services within the County is no longer economically feasible, may notify the County in writing and surrender its cable franchise for the entire County without liability to the County (other than for any fees, taxes, or payments owed for the period before the franchisee surrendered the franchise and ceased providing cable service in the County). If a franchisee so surrenders its cable service franchise, it shall not be eligible to obtain a new cable service franchise within the County until after the normal expiration date of the franchise that such franchisee surrendered.

Va. Code § 15.2-2108.29.

19-48. Bonding

A. Within thirty (30) days after the award of a franchise, the franchisee shall deposit with the County a performance bond or an irrevocable letter of credit from a financial institution running to the County in the amount of fifty thousand dollars (\$50,000.00.) or fifteen thousand dollars (\$15,000) pursuant to the following. Franchisees serving a customer base of four hundred (400) or more shall post bond or irrevocable letter of credit in the amount of fifty thousand dollars (\$50,000). Franchisees serving a customer base of three hundred ninety nine (399) or fewer shall post bond or irrevocable letter of credit in the amount of fifteen thousand dollars (\$15,000). The bond or letter of credit shall be used to insure the faithful performance by the franchisee of all of the provisions of its franchise and this Ordinance, Sections 15.2-2108.19 et seq. of the Code of Virginia, and the mandatory requirements of 47 U.S.C. §§ 521-573 and any rules promulgated thereunder, and compliance with all lawful orders, permits, and directions of any agency, commission, board, department, division, or office of the County or VDOT having jurisdiction over the acts of the franchisee, or defaults under a franchise or the payment by a franchisee of any penalties, liquidated damages, claims, liens, and taxes due the County which arise by reason of the construction, operation, or maintenance of franchisee's cable system in the County, including , including restoration of the public rights-of-way and the cost of removal or abandonment of any property of a cable operator.

B. Any bond obtained by a franchisee must be placed with a company which is qualified to write bonds in the Commonwealth of Virginia, such bond shall be subject to the approval of the County attorney and shall contain the following endorsement (or the substantive equivalent of such language as agreed upon by the County):

“It is hereby understood and agreed that this bond may not be cancelled without the consent of the County until sixty (60) days after receipt by the County by registered mail, return receipt requested, of a written notice of intent to cancel or not renew.”

C. Any letter of credit must be issued by a federally insured commercial lending institution and shall be subject to the approval of the County attorney.

1. The letter of credit may be drawn upon by the County by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the chief executive officer of the County certifying that the franchisee has failed to comply with this Ordinance after having been given due notice and opportunity to cure the failure to comply. Such certificate shall also state the specific reasons for the failure of compliance, and stating the basis of the amount being drawn.

a. The County may withdraw money from the letter of credit or cash security fund in accordance with the procedures set forth in this section.

b. The County shall provide the franchisee with written notice informing the franchisee that such amounts are due to the County. The written notice shall describe, in reasonable detail, the reasons for the assessment. The franchisee shall have thirty (30) days subsequent to receipt of the notice within which to cure every failure cited by the County or to notify the County that there is a dispute as to whether franchisee believes such amounts are due the County. Such notice by the franchisee to the County shall specify with particularity the basis of franchisee's belief that such monies are not due the County.

c. Upon the delivery of the necessary documents to the lending institution, the County has the right to immediate payment from the issuer bank of the amount from the letter of credit necessary to cure the default.

d. Any letter of credit shall contain the following endorsement (or the substantive equivalent of such language as agreed upon by the County): "It is hereby understood and agreed that this letter of credit may not be canceled by the issuer bank nor the intention not to renew be stated by the issuer bank until sixty (60) days after receipt by the County, by registered mail, return receipt requested, of a written notice of such intention to cancel or not to renew."

D. Any bond or letter of credit shall be recoverable by the County for all damages and costs, whether direct or indirect, resulting from the failure of a franchisee to well and faithfully observe and perform any provision of this Ordinance.

E. The bond or letter of credit shall be maintained at the amount established herein for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this Ordinance. The franchisee shall promptly replace any amounts withdrawn from the bond or letter of credit.

19-49. Indemnification and Insurance

A. The franchisee shall indemnify, hold harmless and defend the County, its officers employees, and agents (hereinafter referred to as "indemnities"), from and against:

1. Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any act or omission of the franchisee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the franchisee's cable system caused

by franchisee, its contractors, subcontractors or agents or the franchisee's failure to comply with any federal, state or local statute, ordinance or regulation.

2. Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the indemnitees by reason of any claim or, lien arising out of work, labor, materials or supplies provided or supplied to the franchisee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the franchisee's cable system in the County.

3. Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any financing or securities offering by franchisee or its affiliates for violations of the common law or any laws, statutes or regulations of the Commonwealth of Virginia or of the United States, including those of the Federal Securities and Exchange Commission, whether by the franchisee or otherwise.

B. Damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the franchisee to secure consents from the owners, authorized distributors or licensees, or programs to be delivered by the franchisee's cable system.

C. The franchisee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any County-owned or controlled property, including streets and public rights-of-ways, and the franchisee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the franchisee's cable system or the franchisee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the indemnitees that arises or is related to wanton or willful negligence by the indemnitees.

D. In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, the franchisee shall, upon notice from any of the indemnitees, and at the franchisee's sole cost and expense, resist and defend the same, provided further, however, that the franchisee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the County attorney or his or her designee.

E. The County shall give the franchisee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this section.

F. Nothing in this Chapter or in a franchise is intended to, or shall be construed or applied to, express or imply a waiver by the County of statutory provisions, privileges or immunities of any kind or nature as set forth in the Code of Virginia, including the limits of liability of the County as exists presently or as may be increased from time to time by the legislature. Nothing in a franchise or this Chapter shall constitute a waiver of the County's statutory provisions, privileges or immunities, including the County's sovereign immunity, of any kind or nature.

G. The franchisee shall maintain, and by its acceptance of a franchise hereunder specifically agrees that it will maintain throughout the term of the franchise, general comprehensive liability insurance insuring the franchisee. All liability insurance shall include an endorsement in a specific form which names as joint and several insured's the County and the County's officials, employees and agents, with respect to all claims arising out of the operation and maintenance of the franchisee's cable system in the County. Liability insurance mentioned herein below shall be in the minimum amounts of:

1. \$5,000,000.00 for bodily injury or death to anyone person, within the limit of \$10,000,000 for bodily injury or death resulting from any one accident;

2. \$5,000,000.00 for property damage, including damage to the County's property, from any one accident;

3. \$5,000,000.00 for all other types of liability resulting from any one occurrence;

4. Workers Compensation Insurance as required by the Commonwealth of Virginia;

5. A franchisee shall carry and maintain in its own name automobile liability insurance with a limit of \$5,000,000 for each person and \$5,000,000 for each accident for property damage with respect to owned and non-owned automobiles for the operation of which the franchisee is responsible; and

6. Coverage for copyright infringement.

H. The inclusion of more than one (1) insured shall not operate to increase the limit of the franchisee's liability, and that insurer waives any right on contribution with insurance which may be available to the County.

I. All policies of insurance required by this Section shall be placed with companies that are qualified to write insurance in the Commonwealth of Virginia and that maintain throughout the policy term a General Rating of "A-" and a Financial Size Category of "A:X" as determined by Best Insurance Rating Services.

J. Certificates of insurance obtained by the franchisee in compliance with this section must be approved by the County attorney, and such insurance policy certificate of insurance shall be filed and maintained with the office of the County attorney during the term of the franchise. The franchisee shall immediately advise the County attorney of any litigation that may develop that would affect this insurance.

K. Should the County find an insurance document to be in non-compliance, then it shall notify the franchisee, and the franchisee shall be obligated to cure the defect.

L. Neither the provisions of this section, nor any damages recovered by the County thereunder, shall be construed to nor limit the liability of the franchisee under any franchise issued hereunder or for damages.

M. The insurance policies provided for herein shall name the County, its officers, employees and agents as additional insured's, and shall be primary to any insurance or self-insurance carried by the

County. The insurance policies required by this section shall be carried and maintained by the franchisee throughout the term of the franchise and such other period of time during which the franchisee operates or is engaged in the removal of its cable system. Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the County, by registered mail, of written notice of such intention to cancel or not to renew.

N. Nothing in this section shall require a franchisee to indemnify, hold harmless or defend the County, its officials, employees or agents, from any claims or lawsuits arising out of the County's award of a franchise to another person.

19-50. Inspection of Facilities

A franchisee shall comply with all applicable federal, state and local construction and engineering codes and regulations, currently in force or hereafter applicable, to the construction, operation or maintenance of its cable system within the County. The County shall have the right to review a franchisee's construction plans and specifications to assure compliance with the required standards. After construction has been completed, the County shall have the right to inspect all construction or installation work performed pursuant to the franchise and to conduct any tests it deems necessary to ensure compliance with the terms of this Chapter and all applicable federal, state and local building and engineering codes. However, the County shall not be required to review or approve construction plans and specifications or to make any inspections. The franchisee shall be solely responsible for taking all steps necessary to assure compliance with applicable standards and to ensure that its cable system is installed in a safe manner and pursuant to the terms of the franchise and applicable law.

2. That should any section or provision of this ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this ordinance or the Code of the County of Washington, Virginia (2002, as amended).

3. That this ordinance shall become effective immediately.

The vote on this motion was as follows: (6-1)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Nay</i>

The Board took the following action on Rapid Communications request to operate according to the Franchise Ordinance:

On motion of Mr. McCrady, second by Mr. Price, it was resolved to authorize Rapid Communications to operate according to the Franchise Ordinance.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

d. Consideration of Dog Damage Claims:

- (1). John Roark - \$1,290

Ms. Phillips explained that the dog damage claims before the Board come with unusual circumstances where the value of the animals killed exceeds the limit of \$400 per claim in the County’s ordinance.

Sergeant Jason Alexander with the Washington County Animal Control Department addressed the Board explaining that he investigated the dog damage claim of Mr. John Roark and determined that the animals were killed by unidentified domesticated dogs. He explained that Mr. Roark has purchased traps to catch the dogs and that a neighbor of Mr. Roark’s has killed one of the dogs believed to have caused the attack.

On motion of Mr. Owens, second by Mr. Price, it was resolved to authorize payment to John Roark in the amount of \$1,190 for a dog damage claim.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

- (2). Jeff Sullins - \$950

Sergeant Erik Hinchey with the Washington County Animal Control Department addressed the Board explaining that he investigated the dog damage claim of Mr. Jeff Sullins and determined that a total of nine sheep were killed by domesticated dogs. Sergeant Hinchey explained that the areas around Mr. Sullins property were searched in an attempt to find the dogs that killed the animals. The Board agreed to amend the damage claim to include \$300 for an additional sheep that was killed subsequent to his submittal of the application. With the amendment, the total amount claimed by Mr. Sullins was \$1,250.

On motion of Mr. Taylor, second by Mr. McCrady, it was resolved to authorize payment to Jeff Sullins in the amount of \$1250 for a dog damage claim.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

6. Consideration of Award of Bid for Hayter's Gap Branch Library Renovations Project

Mr. Scott Wilson, Project Manager with Thompson & Litton, addressed the Board explaining that bids were received on June 19, 2008, for the Hayter's Gap Branch Library Renovations Project. There were five bids received with the low bidder determined to be Garland Building Services of Bristol, VA at \$178,837.31. Mr. Wilson explained that this dollar figure is within the budget allocated for the renovation project. He further explained that he requests that the Board award the bid to Garland Building Services.

Discussions ensued among the Board.

On motion of Mr. Price, second by Mr. McCrady, the Board acted to award bid and approve the contract with Garland Construction Services for the Hayter's Gap Branch Library Renovations Project in the amount of \$178,837.31 and further to authorize the County Administrator to execute same and issue notice to proceed with the project.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

6.a. Consideration of Resolution in Support of Grant Application for Walking Track at Hayter's Gap Community Center

Mr. Reeter explained that the Board of Directors of the Hayter's Gap Community Center has filed a grant application with the Virginia Tobacco Commission for funding to construct a walking track on the grounds of the Community Center. The application requires a Resolution of Support from the Board. He further explained that if the application is approved, the community center may request \$3,000.00 from the Board to be used as matching funds for the project.

Discussions ensued among the Board.

On motion of Mr. Price, second by Mrs. Mumpower, it was resolved to adopt the following Resolution:

RESOLUTION 2008-24

WHEREAS, the Hayters Gap Community Center (Center) is located in the rural, community of Hayter's Gap in Washington County, Virginia, and

WHEREAS, the Center is the hub of activity in the community, acting as a meeting location for family reunions, church groups, Christmas parties and the local volunteer fire department hosts their fundraising dinners there as well, and

WHEREAS, the residents do not have the luxury of choosing between multiple centers due to geographic location, and

WHEREAS, the Board of Directors for the Center has taken on a revitalization project that includes constructing a new playground and a walking track. Both the playground and the track have generated a great deal of interest in the rural community. The Board is in the process of raising the money from scratch and enough has been raised to begin construction on the playground, and

WHEREAS, the residents do not have multiple locations through which they can participate in heart-healthy cardio exercise. The Center parking lot is often used in lieu of a proper walking track, which proves dangerous as that area has heavy traffic with the volunteer rescue squad, a branch of the Washington County Public Library and People Incorporated Head Start also being housed there, and

WHEREAS, as heart disease, high cholesterol, diabetes and obesity are becoming all too common, the folks of Hayter's Gap are actively working to create a healthy community, and

WHEREAS, it is an area where the residents are trying to enact positive change by seeking a grant from the Virginia Tobacco Indemnification and Revitalization Commission (Tobacco Commission) to build a walking track;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Washington County, Virginia that the Board fully supports the request to the Tobacco I Commission for a grant in the amount of \$24,000.00.

BE IT FURTHER RESOLVED that the Board strongly urges the Tobacco Commission to strongly consider the application of the Hayters Gap Community Center.

The vote on this motion was as follows: (7-0)

- Mr. McCall* *Aye*
- Mr. McCrady* *Aye*
- Mrs. Mumpower* *Aye*
- Mr. Owens* *Aye*
- Mr. Price* *Aye*
- Mr. Reynolds* *Aye*
- Mr. Taylor* *Aye*

At this time, Mr. Reeter proposed that after the Board considers Item 7 that they defer the remaining items on the Agenda to the July 22 meeting.

Mr. Taylor stated that he would be on vacation the week of the July 22 meeting and would like to discuss the issues pertaining to the Washington County/Town of Abingdon Recreational Facilities Authority during this meeting.

Discussions ensued among the Board with the following action being taken:

On motion of Mr. Owens, second by Mrs. Mumpower the Board acted to defer the following items to the July 22, 2008, regular meeting:

- Item 8 – Consideration of Resolution Concerning ‘Aid to the Commonwealth’*
- Item 11 – County Administrator Reports*

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

7. Consideration of Adoption Agreement Regarding Employee Health Insurance Benefits through The Local Choice Program for FY 2008-09

Mr. Seamon explained that he and the County Administrator recommends renewing employee health insurance benefits through *The Local Choice Program* for a period of October 1, 2008, through June 30, 2009 with the following non-school agencies to be included in the renewal:

- Washington County Government
- Washington County Social Services
- Washington County Public Library
- People, Inc. of Southwest Virginia
- Virginia Highlands Airport Authority.

He further explained that the Board is requested to authorize the County Administrator to sign the adoption agreement.

Mr. Seamon explained that *The Local Choice* has recalculated what its premium rates would be for the smaller Washington County non-school groups for the period beginning October 1, 2008, through June 30, 2009. For the coming contract year, the non-school groups wishing to remain with Local Choice will enjoy reduced premium rates (an average of 15% less) across the various plans (single, dual and family) from those now in place through September 30.

Discussions ensued among the Board with the following action being taken:

On motion of Mr. McCall, second by Mr., McCrady the Board acted to approve the staff recommendation renewing The Local Choice Health Benefits Program for the period of October 1, 2008, through June 30, 2009, and that the following non-school agencies be included in renewal as the "Washington County Government" group: Washington County Government, Washington County Department of Social Services, Washington County Public Library, People, Inc. of Southwest Virginia, and the Virginia Highlands Airport Authority, and further to authorize the County Administrator to sign The Local Choice Adoption Agreement.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

8. Consideration of Resolution Concerning 'Aid to the Commonwealth'

This item was tabled to the July 22, 2008, regular meeting.

9. Consideration of Abingdon Town Council's Action Regarding Composition of Proposed Joint Recreational Facilities Authority

Mr. Reeter explained that the Abingdon Town Council at their July 1, 2008, meeting took action regarding the composition of the proposed Joint Washington County/Town of Abingdon Recreational Facilities Authority (WCARFA). The Abingdon Town Council proposes that a seven member Board of Directors be appointed to manage the proposed WCARFA with three directors being appointed by the Abingdon Town Council and three directors being appointed by the Board of Supervisors with the seventh director being appointed as a member at large by the other six directors. The Town further requests that the Board formally respond to their recommendation by July 31, 2008.

Mr. Reeter explained that the Abingdon Town Council believes that of the 60% financial contributions of the County that a percentage of these funds will come from the Town of Abingdon. They further believe that the representation on the WCARFA of three/County and two/Town under represents the Town's financial contribution to the project.

Substantial discussions ensued among the Board concerning the Abingdon Town Council's proposal. The majority of the Board believes that the representation to the WCARFA should be based upon the percentage of financial contributions.

Mrs. Mumpower stated that based upon the comments of her constituents that she could not support an arrangement other than Washington County having majority representation on the WCARFA.

Mr. Owens commented that the Abingdon Town Council is taking action based upon what they think is best for the Town and that the Board is acting based on what is best for the County.

Mr. Price stated that he believes that the Board has lost focus of the kids.

Mr. Price made a motion to accept the Abingdon Town Councils proposal and that a representative from the Taylor Election District, Monroe Election District and the Tyler/Wilson Election Districts comprise the three County appointments. There was no second offered to this motion.

After further discussions the following action was taken by the Board:

On motion of Mr. McCall, second by Mr. Price, the Board acted to propose a 70%/County and 30%/Town financial arrangement and further have that the WCARFA be comprised of four appointments from the County and three appointments from the Town.

Discussions ensued prior to the vote being taken.

The vote on this motion was as follows: (3-4)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Nay</i>
<i>Mrs. Mumpower</i>	<i>Nay</i>
<i>Mr. Owens</i>	<i>Nay</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Nay</i>

The motion failed.

Mr. McCall proposed that the Board request a joint meeting with Town Council to discuss the issues. Subsequently, the following action was taken:

On motion of Mr. McCall, second by Mr. Price, the Board acted to request a joint meeting be scheduled with the Abingdon Town Council.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

10. Recess

Recess taken earlier in the meeting.

11. County Administrator Reports:

a. Draft Amendments to Board By-Laws Related to Length of Board Meetings

Item tabled to the July 22, 2008, regular Board meeting.

The meeting was adjourned prior to the next three Agenda Items:

12. County Attorney Reports

13. Board Information

14. Board Member Reports

12. Adjourn

On motion of Mr. McCall, second by Mr. Price, it was resolved to adjourn the meeting.

The vote on this motion was as follows: (7-0)

<i>Mr. McCall</i>	<i>Aye</i>
<i>Mr. McCrady</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

Prepared by:

Naoma A. Norris, Recording Clerk

Approved by the Washington County Board of Supervisors:

Kenneth O. Reynolds, Chairman