BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA

O-33-05R

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 19th day of December, 2005:

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

Motion was made by Mr. Trout, which carried 3:2, to adopt the following ordinance:

AN ORDINANCE TO APPROVE
AN AMENDMENT TO SECTION 98-745 ET SEQ.
OF CHAPTER 98, ZONING, NEW KENT COUNTY CODE
RELATING TO SETBACK REQUIREMENTS
FOR COMMUNICATION TOWERS

WHEREAS, there are internal inconsistencies among the various sections that set forth the requirements for a conditional permit for a communications tower, specifically with regards to set back requirements as they relate to residential property; and

WHEREAS, the inconsistencies appear to have arisen as a result of the various amendments to Sections 98-745 (16) and 98-745 (17) of the Code of New Kent County as well as from the re-codification of the Code; and

WHEREAS, these inconsistencies were recently discovered during the consideration of a conditional use permit application for a communication tower; and

WHEREAS, in light of the changing development patterns in the County, the Board of Supervisors has determined that a set back requirement of 750 feet is a reasonable distance from any residential structure; and

WHEREAS, amendments to Sections 98-745 (16) and 98-745 (17) other than those relating to set back requirements will result in greater clarity to the requirements imposed on a conditional use permit application for a communication tower; and

WHEREAS, the amendments were formally referred to the New Kent County Planning Commission (the "Planning Commission") by the New Kent County Board of Supervisors in accordance with applicable procedures; and

WHEREAS, within the timeframes established by the Code of Virginia and New Kent County Code, the Planning Commission and the Board of Supervisors advertised a joint public hearing to be held on December 19, 2005 on the proposed ordinance, in full accord with applicable provisions of the Code of Virginia; and

WHEREAS, these amendments further public necessity, convenience, general welfare and good zoning practices in the County of New Kent.

NOW THEREFORE BE IT ORDAINED this, the 19th day of December 2005, by the New Kent County Board of Supervisors that section 98-745 (16) and 98-745 (17) are hereby repealed and enacted as follows:

(16) ***Radio, television or communication stations and/or towers which exceed 50 feet in height in the conservation and agricultural zoning districts.***

a. A buffer of evergreen screening (trees or hedging) shall be provided around the entire facility with the exception of any associated office building. A section of fence at least six feet in height shall be provided completely around the base of the tower and any associated equipment.

b. A site plan of the proposed facility must be submitted to and approved by the zoning administrator. As part of the site plan submittal, the applicant must provide the county with detailed information regarding the proposed facility's location, latitude and longitude, and service area.

c. The facility shall not interfere with the radio, television or communications reception of nearby property owners in residence at the time of construction. The applicant shall take steps to successfully eliminate any such interference.

d. All communication towers and other structures shall meet all safety requirements of all applicable building codes.

e. A communication tower structure shall be set back from any property line a distance equal to 120 percent of the tower height. This set back shall not be required when such tower location is abutting or within the VDOT right-of-way of an Interstate Highway.

f. A tower structure shall not be located within 750 feet of an existing residential structure unless the Board finds that (1) topographical or similar physical conditions existing on the property make such a set back an undue hardship and (2) the reduction in the set back will not adversely impact the peaceful enjoyment and use of the residential structure by its occupants. Any such reduction in the distance permitted by the Board shall not result in a tower structure being erected at a distance nearer than 125% of the tower height to any dwelling unit and shall be buffered from view from that dwelling unit.

g. Verifiable evidence of the lack of antenna space on existing communication towers, buildings or other structures within the County or within two miles of the County boundary (the co-locations), and/or evidence of that the available co-locations as a whole will not provide adequate telecommunications service to the proposed service area. Such evidence shall include propagation studies and an affidavit executed by a radio frequency engineer stating that in its professional opinion the available co-locations are inadequate or otherwise unsuitable for the provision of telecommunications service to the proposed service area.

h. An engineering report, certifying that the proposed communication tower is compatible for a minimum of four users, must be submitted by the applicant. The applicant shall also permit collocation by additional users without requiring any form of reciprocal location agreement from subsequent users.

i. Written documentation of compliance with all Federal Aviation Administration and Federal Communications Commission requirements shall be submitted by the applicant.

j. Unless otherwise allowed under the specific use conditions of a conditional use permit, or as a requirement of the Federal Aviation Administration, all structures shall have a galvanized steel finish. If painting is required by the FAA, written documentation from the FAA requiring such painting must be provided to the county by the applicant. Should the applicant request to construct the tower

from materials other than galvanized steel, the applicant shall state the reasons for the request in the application, and the applicant shall also furnish the county with photographs, videos, or some other visual sample of the proposed finish.

k. All applicants must provide written documentation that the facility at full capacity will not exceed applicable health standards established by the federal government and/or American National Standards Institute.

l. No advertising of any type may be placed on the communication tower or accompanying facility.

m. All communication tower structures must be dismantled by the owner of the structure if it ceases to be used as communication tower or if it is not properly maintained for a period exceeding 24 consecutive months. The board of supervisors shall require the posting of surety by the applicant in an amount sufficient to cover the cost of dismantling and the surety shall be submitted to the county in a form approved by the County Attorney prior to the issuance of the building permit.

n. The applicant shall provide evidence that adjoining property owners and other residents of the community have been contacted to discuss specific proposals prior to public hearings before the planning commission and board of supervisors.

o. The applicant shall conduct a balloon test or similar demonstration of visibility as a part of any application. Prior to the test, the applicant shall mail notice to all adjacent property owners and to the owners of any property located within 750 feet of the proposed tower whether adjacent or not and shall publish notice of intent to conduct the test in a newspaper of general circulation at least once a week for a period of 2 consecutive weeks.

p. The communication tower owner shall notify the *New Kent County Commissioner of the Revenue* no later than March 1 of each year of the name, address, and telephone number(s) for the tower owner and each lessee on the tower and the registered agent for each.

q. Each telecommunications service provider who locates or otherwise places wireless communications equipment on a communications tower shall obtain a building permit from the county prior to attaching the equipment to the tower or erecting a structure on the tower or on its land and shall provide the building permit office with the costs of the communications equipment to be installed as well as the other related construction costs.

r. The applicant shall provide the County with space(s) on the communications tower for the location of its public safety transmitting and receiving antennae at no cost. Other than the providers who have submitted evidence of a need for a location on the communications tower at time of the application for a conditional use permit, the applicant shall notify the Director of Public Safety before any additional location is under contract. The Director of Public Safety shall have twenty work days to determine whether such location is necessary for the public safety needs of the County at the present or within a one year period from date of notification. If such space(s) is determined to be needed for public safety purposes, the applicant shall not lease the space(s) for one year from the date notice was received by the Director of Public Safety.

s. The applicant shall reimburse the County for the costs of evaluating the technical evidence submitted by the applicant in support of its application.

t. Documentation must be submitted to the County establishing clear legal rights to access to tower site from deeded easements and right of ways including rights to ingress and egress over private roads.

u. As used in this section a "Communication Tower" shall mean any structure greater than 50' in height that is designed and constructed primarily for the purpose of supporting one or more antennae, including self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like. When all or portion of the tower is supported by guy wires, such wires and their anchors shall be considered a part of the tower for purposes of measuring setbacks and separations from adjacent uses.

(17) ***Radio, television or communication stations and/or towers which exceed 50 feet in height on property zoned B-1, B-2, B-3, M-1, and M-2.***

a. A buffer of evergreen screening (trees or hedging) shall be provided around the entire facility with the exception of any associated office building. A section of fence at least six feet in height shall be provided completely around the base of the tower and any associated equipment.

b. A site plan of the proposed facility must be submitted to and approved by the zoning administrator. As part of the site plan submittal, the applicant must provide the county with detailed information regarding the proposed facility's location, latitude and longitude, and service area.

c. The facility shall not interfere with the radio, television or communications reception of nearby property owners in residence at the time of construction. The applicant shall take steps to successfully eliminate any such interference.

d. All communication towers and other structures shall meet all safety requirements of all applicable building codes.

e. All communication tower structures shall not be erected within 750 feet of an existing residential structure unless the Board finds that (1) topographical or similar physical conditions existing on the property make such a distance an undue hardship and (2) the reduction in distance will not adversely impact the peaceful enjoyment and use of the residential structure by the occupants. Any such reduction in the distance permitted by the Board shall not result in a tower structure being erected nearer than 125% of the tower height to any dwelling unit.

f. If the property line abuts an agricultural or residential zoning district, all towers shall be set back from said property line a distance equal to 120 percent of the tower height.

g. Verifiable evidence of the lack of antenna space on existing communication towers, buildings or other structures within the County or within two miles of the County boundary (the co-locations), and/or evidence of that the available co-locations as a whole will not provide adequate telecommunications service to the proposed service area. Such evidence shall include propagation studies and an affidavit executed by a radio frequency engineer stating that in its professional opinion the available co-locations are inadequate or otherwise unsuitable for the provision of telecommunications service to the proposed service area.

h. An engineering report, certifying that the proposed tower is compatible for a minimum of four users, must be submitted by the applicant. This requirement shall not apply to facilities that are constructed to be camouflaged and which in fact harmonize with the existing landscape, structures, and views. The applicant shall also permit collocation by additional users without requiring any form of reciprocal location agreement from subsequent users.

i. Documentary evidence of compliance with all Federal Aviation Administration and Federal Communications Commission requirements shall be submitted by the applicant.

j. Unless otherwise allowed under the specific use conditions of a conditional use permit, or as a requirement of the Federal Aviation Administration, all structures shall have a galvanized steel finish. If painting is required by the FAA,

documentary evidence from the FAA requiring such painting must be provided to the county by the applicant.

k. Should the applicant request to construct the communication tower from materials other than galvanized steel, the applicant shall state the reasons for the request in the application, and the applicant shall also furnish the county with photographs, videos, or some other visual sample of the proposed finish.

l. All applicants must provide documentary evidence that the facility will not exceed applicable health standards established by the federal government and/or American National Standards Institute.

m. No advertising of any type may be placed on the communication tower or accompanying facility.

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permit office with the costs of the communications equipment to be installed as well as the other related construction costs.

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John A. Budesky
County Administrator

W. R. Davis, Jr.
Chairman