

At a regular meeting of the Cumberland County Board of Supervisors held at 7:00 p.m. on the 13th day of October, 2009, at the Cumberland County Circuit Court Room:

Present: William F. Osl, Jr., Chairman, District 1
Timothy Kennell, District 2
Van Petty, Vice Chairman, District 3
Elbert Womack, District 4
Robert Oertel, District 5
Howard Estes, County Attorney
Judy Ownby, County Administrator
Jill Matthews, Assistant County Administrator
Mike Cooper, Assistant County Administrator
Andrew Sorrell, Zoning Administrator
Stephany Johnson, Deputy Clerk

Absent: None

The Chairman called the meeting to order and the County Administrator called the roll.

The invocation and the Pledge of Allegiance were led by the Chairman.

1) Approval of Agenda-

On a motion by the Chairman and carried, the Board amended the agenda as follows:

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| ADD | 3. | Public Hearings |
| | d) | Patriot Enterprises, LLC- Statement of Proffers |
| DELETE | 4. | Departments/Agencies |
| | b) | Cliff White, Wireless Authority update on project |
| DELETE | 8. | Asst. County Administrator/Community Development |
| | b) | Proposed signage policy for Community Center (this will be addressed by the IDA) |

Vote: Mr. Osl – aye Mr. Kennell – aye
Mr. Petty – aye Mr. Womack – aye
Mr. Oertel – aye

2) VDoT - Alan Leatherwood, Resident Engineer-

VDoT Resident Engineer, Alan Leatherwood, informed the Board that a community meeting will be held on Thursday, October 15, 2009 from 5 p.m. to 7 p.m. at the Cartersville Rescue Squad to address the bridge replacement on Rt. 612, Trices Lake Road. The Chairman thanked Mr. Leatherwood for scheduling this meeting and allowing the citizens to comment on the proposed construction.

3) Public Hearings -

a) CA 09-10 Revenue Recovery

County Attorney, Howard Estes, informed the Board that this code amendment would allow the County to impose personal financial liability on persons convicted of certain motor vehicle offenses and also of incidences of terrorism hoaxes for the costs of an emergency response to an accident or incident related to such violation.

After a brief discussion, the Chairman opened the public hearing. With no citizens signed up to speak, the Chairman then closed the public hearing.

On a motion by Supervisor Womack and carried, the Board adopted the Resolution:

BOARD OF SUPERVISORS
OF THE
COUNTY OF CUMBERLAND, VIRGINIA
RESOLUTION
ADOPTION OF

COUNTY CODE AMENDMENT 09-10

**AN ORDINANCE IMPOSING PERSONAL LIABILITY ON
PERSONS CONVICTED OF CERTAIN MOTOR VEHICLE
OFFENSES AND INCIDENCES OF TERRORISM HOAXES FOR
THE COSTS OF AN EMERGENCY RESPONSE TO AN
ASSOCIATED ACCIDENT OR INCIDENT**

October 13, 2009

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Circuit Court Courtroom of the Cumberland County Courthouse at Cumberland, Virginia commencing at 7:00 p.m., October 13, 2009, the following action was taken following a duly held public hearing during which staff provided a review of the proposed County Code amendment and members of the public offered comment:

Following a reading of the recitals and the resolutions for adoption of the proposed ordinance amendment and on duly recognized motion, the Board of Supervisors adopted and approved the Resolution according to the votes stated below:

Present: Vote:
William F. Osl, Jr., Chairman Aye
Timothy M. Kennell Aye
Robert J. Oertel Aye
Van H. Petty Aye
Elbert R. Womack Aye
Absent: None

WHEREAS, the taxpayers of Cumberland County have to

bear the financial burdens incurred in providing a emergency response to a motor vehicle accident and terrorism events; and

WHEREAS, the costs of providing emergency response to accidents and incidents is steadily increasing; and

WHEREAS, Sections 15.2-1716 and 15.2-1716.1 of the Code of Virginia permit Cumberland County to impose personal liability on persons convicted of certain motor vehicle offenses and also of incidences of terrorism hoaxes for the costs of an emergency response to an accident or incident related to such violations;

NOW THEREFORE BE IT RESOLVED AND ORDAINED by the Cumberland County Board of Supervisors that:

1. Article I of Chapter 46 of the Code of the County Cumberland, Virginia is amended by adding a new section, Section 46-4, providing for the reimbursement of certain expenses in providing an emergency response to a motor vehicle accident or incident.

2. The text of the new Code Section shall read as follows:

Sec. 46-4. Reimbursement for expenses incurred for emergency response.

(a) Any person convicted of violating any of the following provisions of the Code of Virginia, or any similar ordinance in the County Code, shall be liable at the time of sentencing for reasonable expenses incurred by the County, including those incurred by the sheriff's office or by any volunteer fire or rescue squad, or by any combination of the foregoing, when providing a appropriate emergency response to any accident or incident related to such violation.

(1) The provisions of Code of Virginia sections 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1, 29.1-738, 29.1-738.02, 46.2-341.24 or similar ordinance, as amended, when such operation of motor vehicle, engine, train, or watercraft while so impaired is the proximate cause of the accident or incident;

(2) The provisions of Article 7 (section 46.2-852 et seq.) of Chapter 8 of Title 46.2, as amended, relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident;

(3) The provisions of Article 1 (section 46.2-300 et seq.) of Chapter 3 of Title 46.2, as amended, relating to driving without a license or driving with a suspended or revoked license; and

(4) The provisions of Code of Virginia section 46.2-894, as amended, relating to improperly leaving the scene of an accident.

(b) Any person convicted of a violation of Code of Virginia § 18.2-46.6(B) or (C) when his violation of such section is the proximate cause of any incident resulting in an appropriate emergency response, shall be liable at the time of sentencing to the County or to any volunteer rescue squad, or both, which may provide such emergency response for the reasonable expense thereof

(c) Personal liability under this section for reasonable expenses of an appropriate emergency response shall not exceed one thousand dollars (\$1,000.00) taken together for a particular accident or incident. In determining the "reasonable expenses," a flat fee of two hundred and fifty dollars (\$250.00) shall be billed for each unit responding. The court may order as restitution the reasonable expenses incurred by the County for an appropriate emergency response.

(d) As used in this section, "appropriate emergency response" includes all cost of providing law enforcement, fire fighting, rescue, and emergency medical services.

(e) The provisions of this section shall not preempt or limit any remedy available to the Commonwealth, the County, or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving operation of a vehicle or other conduct as set forth herein.

BE IT FURTHER RESOLVED by the Board of Supervisors that the amendment reflected above is hereby effective immediately.

- b) Ordinance establishing deadline for County's Board of Equalization to dispose of applications for equalization of real estate assessments

County Attorney, Howard Estes, stated that the State Code does allow the Board to set a deadline to ensure that the Board of Equalization disposes of all appeals in a timely manner. The Chairman opened the public hearing, and with no citizens signed up to speak, the Chairman then closed the public hearing.

On a motion by Supervisor Kennell and carried, the Board adopted an Ordinance establishing June 30, 2010 as the deadline date by which the Board of Equalization shall finally dispose of all timely applications for equalization of real estate assessments:

**BOARD OF SUPERVISORS
OF THE
COUNTY OF CUMBERLAND, VIRGINIA
RESOLUTION
ADOPTION OF
COUNTY ORDINANCE
AN ORDINANCE ESTABLISHING A DEADLINE FOR
THE BOARD OF EQUALIZATION TO COMPLETE
ITS DELIBERATIONS ON APPLICATIONS FOR
EQUALIZATION
OF REAL ESTATE ASSESSMENTS**

October 13, 2009

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Circuit Court Courtroom of the Cumberland County Courthouse at Cumberland, Virginia commencing at 7:00 p.m., October 13, 2009, the following action was taken following a duly held public hearing during which staff provided a review of the proposed County ordinance and members of the public offered comment:

Following a reading of the recitals and the resolutions for adoption of the proposed ordinance and on duly recognized motion, the Board of Supervisors adopted and approved the Resolution according to the votes stated below:

<u>Present:</u>	<u>Vote:</u>
William F. Osl, Jr., Chairman	Aye
Timothy M. Kennell	Aye
Robert J. Oertel	Aye
Van H. Petty	Aye
Elbert R. Womack	Aye
<u>Absent:</u>	None

WHEREAS, the County of Cumberland, Virginia is currently undergoing a general reassessment of real property within the County to be effective January 1, 2010; and

WHEREAS, Section 58.1-3370 of the Code of Virginia requires the establishment of a Board of Equalization to receive applications from landowners seeking equalization of their real estate assessments; and

WHEREAS, Section 58.1-3378 of the Code of Virginia also provides that the Board of Supervisors may establish a deadline for the Board of Equalization to finally dispose of all applications for equalization of real estate assessments.

NOW THEREFORE BE IT RESOLVED AND ORDAINED by the Cumberland County Board of Supervisors that:

June 30, 2010 be and the same hereby is established as the deadline date by which the Board of Equalization shall finally dispose of all timely applications for equalization of real estate assessments.

BE IT FURTHER RESOLVED by the Board of Supervisors that the ordinance reflected above is hereby effective immediately.

c) Public Facilities Note

County Attorney, Howard Estes, reviewed the Resolution and noted a few minor changes. After a brief discussion, the Chairman opened the public hearing. With no citizens signed up to speak, the Chairman then closed the public hearing.

On a motion by the Chairman and carried, the Board adopted the resolution authorizing and approving the issuance of the Public Facility Note:

**BOARD OF SUPERVISORS
OF
COUNTY OF CUMBERLAND, VIRGINIA
RESOLUTION
AUTHORIZING AND APPROVING THE ISSUANCE AND
SALE OF ITS PUBLIC FACILITIES NOTE IN A MAXIMUM
PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000, PLUS
COSTS OF ISSUANCE, AND THE EXECUTION AND DELIVERY OF
CERTAIN DOCUMENTS PREPARED IN CONNECTION
THEREWITH**

October 13, 2009

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Circuit Courtroom at Cumberland Courthouse, Virginia commencing at 7:00 p.m., October 13, 2009, the following action was taken following a duly held public hearing during which time County staff

provided a review of the resolution and members of the public provided comment:

On a motion made by the Chairman, it was moved that the Board of Supervisors of Cumberland County approve and adopt the resolution according to the votes stated below:

<u>Present:</u>	<u>Vote:</u>
William F. Osl, Jr., Chairman	Aye
Timothy M. Kennell	Aye
Van H. Petty	Aye
Elbert R. Womack	Aye
Robert J. Oertel	Aye
<u>Absent:</u>	None

WHEREAS, Cumberland County, Virginia (the "County"), has previously submitted an application to the Industrial Development Authority of the County of Stafford and the City of Staunton, Virginia (the "Authority"), to refinance the County's Public Facilities Lease Revenue Note, Series 2007 (the "Refunded Obligation"), and finance the cost of acquisition of land, renovation of county administration building, utility facilities and school facilities, together with related costs and expenses (collectively, the "Financing"), through the Virginia Municipal League/Virginia Association of Counties Commonwealth Loan Program, and the Authority has indicated its willingness to currently refund and to redeem the Refunded Obligation and pay other costs of the Financing from the proceeds of its revenue bonds (the "Authority's Bonds"), in accordance with the terms of a Loan and Refinancing Agreement between the Authority and the County (the "Loan and Refinancing Agreement"), the form of which has been presented to this meeting;

NOW, THEREFORE, BE IT RESOLVED by the Cumberland County Board of Supervisors:

1. Issuance of Note and Use of Proceeds. Pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991 (the "Act"), and without regard to the requirements, restrictions or other provisions contained in any charter or local or special act applicable to the County, the Board hereby authorizes the issuance and sale of a promissory note of the County in a maximum principal amount not to exceed \$5,000,000, plus costs of issuance, to provide funds to currently refund and to redeem the Refunded Obligation and to pay other costs of the Financing, including costs incurred in issuing the Note (as hereinafter defined).

2. Authorization of Loan and Refinancing Agreement. The forms of the Loan and Refinancing Agreement and the Note submitted to this meeting (collectively, the "Financing Documents") are hereby approved. The County Administrator and the Chairman of the Board are each authorized to execute the Financing Documents in substantially such form, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the County Administrator or the Chairman of the Board, whose approval shall be evidenced conclusively by the execution and delivery thereof. The issuance and sale of the Note to the Authority shall be upon the terms and conditions of the Loan and Refinancing Agreement. The proceeds of the Note shall be applied in the manner set forth in the Loan and Refinancing Agreement and related documents. All capitalized terms used but not defined herein shall have the same meaning as set forth in the Loan and Refinancing Agreement.

3. Note Details. The promissory note issued pursuant to the Loan and Refinancing Agreement (the "Note") shall be issued as a single, registered note, shall be designated the Public Facilities Note, with an appropriate series designation, and shall be numbered R-1. The Board authorizes the issuance and sale of the Note on such terms as shall be satisfactory to the County

Administrator or the Chairman of the Board; provided, however, that the Note (a) shall be in a principal amount not to exceed \$5,000,000, plus costs of issuance, (b) shall mature no later than December 31, 2029 and (c) shall bear interest on the outstanding principal balance thereof at a rate of interest approved by the County Administrator or the Chairman of the Board, which initial rate of interest shall not exceed five and one-half percent (5.5%) per annum (excluding any default payments and Extraordinary Program Expenses that might arise), and shall accrue certain other ongoing costs and expenses upon the terms and conditions described in the Loan and Refinancing Agreement. Subject to the preceding terms, the Board further authorizes the County Administrator or the Chairman of the Board to (a) determine the final principal amount of the Note and (b) to establish the maturity date and principal amortization schedule (including the principal installment dates and amounts) for the Note in such manner as the County Administrator or the Chairman of the Board shall determine to be in the best interest of the County. The County Administrator or the Chairman of the Board's approval of the final terms, purchase price, interest rate, maturity date and amortization schedule of the Note shall be evidenced by the execution and delivery of the Note, and no further action shall be necessary on the part of the County so long as such provisions are within the limits prescribed in this Resolution. As set forth in the Loan and Refinancing Agreement, the County agrees to pay the Program Expenses associated with the Note and the Loan and Refinancing Agreement, together with any applicable late payment or similar costs and expenses described therein. The principal of and premium, if any, and interest on the Note shall be payable in lawful money of the United States of America.

4. Additional Payments. The County acknowledges that the Financing Documents will further require the County to pay, on a subject to appropriation basis, certain Commonwealth Loan Finance Program expenses associated with the Note and the Loan and Refinancing Agreement, together with any applicable default payment, late payment or similar costs and expenses described therein, including, without limitation, certain Extraordinary Program Expenses (as defined in the Loan and

Refinancing Agreement to include, among other things, amounts payable in connection with arbitrage or rebate calculations, amounts payable in connection with reimbursements under, or requirements to replace, the Letter of Credit maintained by the Authority under the Commonwealth Loan Finance Program, and any early termination or other payments owed by the Authority under the Interest Rate Hedge Agreement entered into by U.S. Bank National Association, as trustee (the "Trustee"), in connection with the Commonwealth Loan Finance Program) and allocable to payments under the Note. The County further (i) authorizes the Trustee to enter into a Confirmation under the Interest Rate Hedge Agreement on behalf of the County, (ii) acknowledges the disclosure set forth in Appendix A to the Loan and Refinancing Agreement concerning the Interest Rate Hedge Agreement, its termination provisions and the basis risk and counterparty risk inherent therein, all of which has been disclosed to officials of the County, and (iii) expressly authorizes the County's acknowledgement set forth therein; provided that a termination of the Interest Rate Hedge Agreement will not occur absent an event of default or termination event respecting the Interest Rate Hedge Counterparty, the Authority, or the County, as more fully described in Appendix A to the Loan and Refinancing Agreement.

5. Payment and Redemption Provisions. The principal of and premium, if any, and interest on the Note shall be payable as set forth in the Note and the Loan and Refinancing Agreement. The County may, at its option, redeem, prepay or refund the Note upon the terms set forth in the Loan and Refinancing Agreement.

6. Execution and Form of Note. The Note shall be signed by the County Administrator or the Chairman of the Board, and the County's seal shall be affixed thereon and attested by the Clerk of the Board. The Note shall be issued as a typewritten note in a form sufficient to evidence the County's obligations under the Loan and Refinancing Agreement, consistent with the terms of this Resolution, and approved by the County Administrator or the

Chairman of the Board, whose approval shall be evidenced conclusively by the execution and delivery of the Note.

7. **Security for the Note.** Any other provision of the Loan and Refinancing Agreement, the Note or any security instruments to the contrary notwithstanding, the County's obligation to make payments under the Financing Documents is hereby specifically stated to be subject to annual appropriation therefor by the Board, and nothing in the Financing Documents shall constitute a pledge of the full faith and credit nor taxing power of the County nor compel the Board to make any such appropriation. The obligation of the County to make payments under the Loan and Refinancing Agreement does not constitute a debt of the County within the meaning of any constitutional or statutory limitation nor a liability of or a charge upon funds or property of the County beyond any moneys appropriated to make such payments as current expenses of the County. The County is entering into the Financing Documents in order to obtain financing on a subject to appropriation basis as current expenses of the County and not pursuant to the County's long-term borrowing powers.

8. **Preparation of Printed Note.** Upon the reasonable request of the registered owner and upon presentation of the Note at the office of the Registrar (as hereinafter defined), the County shall arrange to have prepared, executed and delivered in exchange as soon as practicable the Note in typewritten form in an aggregate principal amount equal to the unpaid principal of the Note, in denominations of \$100,000 and integral multiples of \$5,000 in excess thereof, of the same form and maturity and registered in such names as requested by the registered owners or their duly authorized attorneys or legal representatives. The printed Note may be executed by manual or facsimile signature of the County Administrator or the Chairman of the Board, with the County's seal affixed thereto and attested by the Clerk of the Board; provided, however, that, if both such signatures are facsimiles, no Note shall be valid until it has been authenticated by the manual signature of the Registrar and the date of

authentication noted thereon. The typewritten Note surrendered in any such exchange shall be canceled.

9. Registration and Transfer of the Note. The County appoints its Treasurer as paying agent and registrar (the "Registrar") for the Note. If deemed to be in the County's best interest, the County Administrator or the Chairman of the Board may at any time appoint a qualified bank or trust company, or another official of the County, as successor Registrar. The Note may be transferred only by an assignment duly executed by the registered owner thereof in form satisfactory to the Registrar in exchange for a single, new Note having an equal maximum principal amount, of the same form and maturity, and bearing interest at the same rates. Such transfer shall be made in the registration books kept by the Registrar, upon presentation and surrender hereof. The Registrar shall treat the registered owner as the person or entity exclusively entitled to payment of principal, premium, if any, and interest, and the exercise of all other rights and powers of the owner.

10. Mutilated, Lost or Destroyed Note. If the Note has been mutilated, lost or destroyed, the County shall execute and deliver a new Note of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Note or in lieu of and in substitution for such lost or destroyed Note; provided, however, that the County shall so execute and deliver only if the registered owner has paid the reasonable expenses and charges of the County in connection therewith and, in the case of a lost or destroyed Note, (a) has filed with the County evidence satisfactory to the County that such Note was lost or destroyed and (b) has furnished to the County satisfactory indemnity.

11. Preparation and Delivery of Note. The County Administrator and the Chairman of the Board are authorized and directed to take all proper steps to have the Note prepared and executed in accordance with its terms and to deliver it to the Authority as the purchaser thereof upon receipt of the purchase price from the Authority as set forth in the Loan and Refinancing Agreement.

12. Arbitrage and Other Tax Covenants. The County covenants that it shall not take or omit to take any action the taking or omission of which will cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations issued pursuant thereto (the "Code"), or otherwise cause interest on the Note to be includable in the gross income of the registered owner thereof under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require the County at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Note, unless the County receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Note from being included in the gross income for federal income tax purposes of the registered owners thereof under existing law. The County shall pay any such required rebate from legally available funds.

13. Tax and Other Documents. The County Administrator and the Chairman of the Board are each authorized and directed to execute and deliver a Tax Certificate as to Arbitrage, an IRS Form 8038-G and a Program Administration Agreement, each in a form approved by such officers and the County's bond counsel.

14. Other Actions. All other actions of County officials in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Note are ratified, approved and confirmed. The County officials are authorized and directed to execute and deliver all certificates and other instruments considered necessary or desirable in connection with the issuance, sale and delivery of the Note pursuant to this Resolution and the Loan and Refinancing Agreement.

15. Filing of Resolution. The County Attorney and the County Administrator are authorized and directed to coordinate the prompt filing of a certified copy of this resolution in the Circuit

Court of Cumberland County, Virginia, in accordance with Section 15.2-2607 of the Act.

16. Effective Date. This Resolution shall take effect immediately.

d) REZ 08-03 Patriots Enterprises, LLC

Planner and Zoning Administrator, Andrew Sorrell, reviewed the rezoning application with the Board. After much discussion, the Chairman opened the public hearing. One citizen voiced concerns with the location of the business. With no additional citizens signed up to speak, the Chairman then closed the public hearing.

On a motion by Supervisor Kennell and carried, the Board adopted and approved Rezoning request REZ 08-03 for Patriots Enterprises, LLC:

**BOARD OF SUPERVISORS
OF THE
COUNTY OF CUMBERLAND, VIRGINIA
RESOLUTION
APPROVING AND ADOPTING
REZONING APPLICATION #08-03
FOR PORTION OF TAX MAP PARCEL 57-A-24A
REQUESTED BY PATRIOTS ENTERPRISES, LLC
October 13, 2009**

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Cumberland County Circuit Courtroom, Cumberland, Virginia commencing at 7:00 p.m., October 13, 2009, the following action was taken following a duly held public hearing during which time County staff provided a review of the rezoning request, the applicant's representative and agents

provided a review of the proposal and members of the public offered comment:

On a motion made by Supervisor Kennell, it was moved that the Board of Supervisors of Cumberland County approve and adopt, in accordance with the following Resolution, the request to rezone from A-2, Agricultural and R-2, Rural Residential to B-1, Business, the property described in said Resolution;

Following a reading of the Recitals and Resolutions, the Board of Supervisors adopted and approved the Recitals and Resolutions according to the votes stated below:

<u>Present:</u>	<u>Vote:</u>
William F. Osl, Jr., Chairman	Aye
Timothy Kennell	Aye
Van H. Petty	Aye
Elbert R. Womack	Aye
Robert J. Oertel	Aye
<u>Absent:</u>	None

WHEREAS, Patriots Enterprises, LLC (the “Applicant”) filed a rezoning application and supporting materials (the “Rezoning Application”) seeking to rezone the property described below from R-2, Rural Residential and A-2, Agricultural to B-1, Business in accordance with Chapter 74 of the Cumberland County Code of Ordinances (the “Zoning Ordinance”); specifically, the Applicant has requested the rezoning in order to allow for a commercial use of the Property as a shopping center; and

WHEREAS, the subject property is located on the north side of Rt. 60 (Anderson Highway) and east side of Rt. 669 (Criss Road) adjacent to the Rt. 60 and Rt. 669 intersection and more particularly described as Tax Map Parcel 57-A-24A (the "Property"), with respect to approximately 30.0 acres less and except an approximately 9.40 acre portion (as shown on the plan accompanying the Rezoning Application) which is not party to the application for a total residual acreage of 20.60 acres requested to be rezoned; and

WHEREAS, the Board of Supervisors duly referred the Rezoning Application to the County Planning Commission for its recommendation on August 11, 2009; and

WHEREAS, the Planning Commission directed staff to make the Rezoning Application available for public review on August 31, 2009; and

WHEREAS, the Planning Commission duly advertised and held a public hearing on September 28, 2009; and

WHEREAS, after the Planning Commission duly considered the testimony and evidence presented at the public hearings and workshops in support or opposition to the proposed Rezoning Application and gave reasonable consideration to numerous factors, including but not limited to the County's Comprehensive Plan and the suitability of the Property for various uses, the Planning Commission recommended approval of Rezoning Application; and

WHEREAS, the Board of Supervisors duly advertised and held a public hearing on October 13, 2009; and

WHEREAS, the Board of Supervisors carefully considered the testimony and evidence presented at the public hearing in support or opposition to the proposed Rezoning Application, including the information and recommendation from the Planning Commission;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors as follows:

a. The foregoing recitals are hereby incorporated by this reference;

b. Upon consideration of the foregoing and the conditions and standards set forth in the Zoning Ordinance, the Board of Supervisors considers it appropriate to rezone the Property in accordance with the Rezoning Application;

c. The Board of Supervisors further finds that the request made in the Rezoning Application is in substantial accordance with the County's Comprehensive Plan;

d. The Board of Supervisors has also determined that the request made in the Rezoning Application furthers the general purpose and objectives of the Zoning Ordinance and would

e. be beneficial and appropriate taking into consideration public necessity, convenience, general welfare and good zoning practice;

f. Upon consideration of the foregoing, the Board of Supervisors approves and adopts Rezoning Application #08-03, and amends the Zoning Map to rezone the Property from R-2, Rural Residential and A-2, Agricultural to B-1, Business for commercial development.

g. This Resolution is effective immediately.

BE IT FURTHER RESOLVED that said recommendation shall be subject to the voluntarily proffered conditions set forth in the Applicant's proffer statement titled "Statement of Proffer for Tax Map Parcel 57-A-24A" and provided to the Planning Commission and presented at this meeting; and provided, further, that a copy of said proffer statement shall be recorded in the Office of the Clerk of the Circuit Court for Cumberland County; that the covenants and restrictions in such proffers shall be placed

on the deed or deeds of the Property; that the right-of-way easements shall be duly recorded on the deed or deeds of the Property; and that such filings shall take place prior to ninety (90) days after rezoning is granted or such rezoning shall be deemed null and void and the Property will revert to its prior status.

e) CUP 09-05 National Communication Towers, LLC

Planner and Zoning Administrator, Andrew Sorrell, reviewed the Conditional Use Permit application with the Board members, and stated that the top 80' would be for use by the County's broadband services for emergency services, and wireless broadband service. After conducting a public hearing on September 21, 2009, the Planning Commission recommended the Board grant CUP 09-05 with six conditions.

After much discussion, the Chairman opened the public hearing. Cliff White, Chairman of the Cumberland Wireless Authority stated that the erection of this tower will be beneficial to all Cumberland Residents. With no additional citizens signed up to speak, the Chairman closed the public hearing.

On a motion by Supervisor Oertel and carried, the Board approved the Resolution granting CUP 09-05 for TM # 49-A-70A requested by National Communication Towers, LLC:

**BOARD OF SUPERVISORS
OF THE
COUNTY OF CUMBERLAND, VIRGINIA
RESOLUTION
GRANTING
CONDITIONAL USE PERMIT
APPLICATION #09-05
FOR TAX MAP PARCEL 49-A-70A
REQUESTED BY
NATIONAL TELECOMMUNICATION TOWERS, LLC**

October 13, 2009

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Cumberland County Courthouse, Cumberland, Virginia 23040 commencing at 7:00 p.m., October 13, 2009, the following action was taken following a duly held public hearing during which time the Planning and Zoning Administrator provided a review of the conditional use permit request, the applicant provided a review of the proposal and members of the public offered comment:

On a motion made by Supervisor Oertel, it was moved that the Board of Supervisors of Cumberland County grant the Conditional Use Permit in accordance with the following Recitals and Resolutions;

Following a reading of the Recitals and Resolutions, the Board of Supervisors adopted and approved the Recitals and Resolutions according to the votes stated below:

Present: Vote:
William F. Osl, Jr., Chairman Aye
Timothy Kennell Aye
Van H. Petty Aye
Elbert R. Womack Aye
Robert J. Oertel Aye
Absent: None

WHEREAS, National Communication Towers, LLC (the “Applicant”) filed a conditional use permit application and supporting materials (the “CUP Application, CUP #09-05”) seeking a conditional use permit for the property described below in accordance with Section 74-143 of Chapter 74 of the Cumberland

County Code of Ordinances (the “Zoning Ordinance”); specifically, the Applicant has requested a conditional use permit to allow for the construction and operation of a 300 foot tall telecommunications tower and related facilities; and

WHEREAS, the subject property is located on and accessed from Range Road (a private road) which is accessed from the west side of Route 728 (Poorhouse Road). Range Road is approximately 0.60 of a mile north from the intersection of Route 60 (Anderson Hwy.) and Rt. 728. The affected property is owned by Cumberland County and is adjacent to the Madison Solid Waste Transfer Station, County Animal Shelter and County Maintenance Shop. The affected property is currently zoned A-2, Agricultural and RA-1, Recreational Access. The proposed tower would be on an approximately 125 feet by 125 foot leased area on the portion of the property with A-2 zoning. The parcel lies within the Courthouse Growth Area as designated by the Comprehensive Plan. The affected property is located in Election District 3 and more particularly described as Tax Map Parcel 49-A-70A (the “Property”), with respect to approximately 10.0 acres, as shown on the Site Plan attached to the CUP Application; and

WHEREAS, the Board of Supervisors duly referred the CUP Application to the County Planning Commission for its recommendation on August 11, 2009; and

WHEREAS, the Planning Commission directed staff to make the CUP Application available for public review on August 17, 2009; and

WHEREAS, the Planning Commission duly advertised and held a public hearing on September 21, 2009; and

WHEREAS, after the Planning Commission duly considered the testimony and evidence presented at the public hearings and workshops in support or opposition to the proposed CUP Application and gave reasonable consideration to numerous factors, including but not limited to the County’s Comprehensive Plan and the suitability of the Property for various uses, the

Planning Commission recommended approval of the conditional use permit; and

WHEREAS, the Board of Supervisors duly advertised and held a public hearing on October 13, 2009; and

WHEREAS, the Board of Supervisors carefully considered the Planning Commission's recommendation and the testimony and evidence presented at the public hearing on September 21, 2009, in support or opposition to the proposed CUP Application and gave reasonable consideration to numerous factors, including but not limited to the following: the existing use and character of the Property, the County's Comprehensive Plan, the suitability of the Property for the proposed use, the trends of growth or change, and the current and future requirements of the County as to land for various purposes as determined by population and economic studies, the conditional use permit standards more fully described in Section 74-702 of the Zoning Ordinance and the supplemental standards for communications antennas and towers more fully described in Section 74-731 through 747 of the Zoning Ordinance; and

WHEREAS, in its review of the CUP Application, the Board of Supervisors gave reasonable consideration to numerous factors, including but not limited to the following: the existing use and character of the Property, the County's Comprehensive Plan, the suitability of the Property for various uses, the trends of growth or change, and the current and future requirements of the County as to land for various purposes as determined by population and economic studies; and

WHEREAS, after discussion, staff presentation and due deliberation with respect to such documentation, information and data, including information and materials presented at this public hearing, the Board of Supervisors desires to affirm its findings and take action with respect to the CUP Application;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, as follows:

- a. The foregoing recitals are hereby incorporated by this reference.
- b. Upon consideration of the foregoing and the conditions set forth on the Zoning Ordinance, including Section 74-702 and the supplemental standards for communications antennas and towers more fully described in Section 74-731 through 747 of the Zoning Ordinance, the Board of Supervisors finds it appropriate to grant Conditional Use Permit #09-05 in accordance with the CUP Application.
- c. The Board of Supervisors further finds that the request made in the CUP Application is in substantial accordance with the County's Comprehensive Plan.
- d. The Board of Supervisors has also determined that the request made in the CUP Application furthers the general purpose and objectives of the Zoning Ordinance and such use would be beneficial and appropriate taking into consideration public health, safety, necessity, convenience, general welfare and good zoning practice; and

The Board of Supervisors hereby grants the CUP Application to the Applicant to allow the use of a 300 foot tall telecommunications tower and related facilities on the Property subject to the following terms and conditions:

1. This conditional use permit shall allow for construction work commenced on or before March 31, 2010 and any such expansion activities commenced thereafter shall require a new conditional use permit.
2. All operations on the Property shall comply with all applicable health and environmental laws, rules and regulations, and with all County, State and Federal Laws which govern construction and operation of the tower.

3. All representations of National Communication Tower, LLC's conditional use permit application #09-05 for a 300 foot Telecommunication Tower and associated equipment, including all attached documentation, filed on the week of August 3, 2009, are included herein as conditions.

4. This permit shall not become effective until a removal bond in the amount of \$25,000 pursuant to Section 74-745 of the Zoning Ordinance has been approved by the County Attorney executed, and filed with the County Administrator.

5. The Applicant will make available, at no cost to the County and solely for County purposes, the space located at 220 feet and above on the tower.

6. The radius width shall be limited to three (3) feet for any antennae or dish placed on the tower.

e. This Resolution is effective immediately.

f) CA 09-07 Concrete Plant

The Chairman next called upon Planning and Zoning Administrator, Andrew Sorrell, who reviewed a proposed code amendment to add a concrete mixing facility as an additional conditional use by permit in the M-1 zoning district. Mr. Sorrell advised that the proposed code amendment was at the request of a business seeking approval of a conditional use permit for a property currently zoned M-1 and that approval of the permit required amendment to the Code. Mr. Sorrell then presented a staff report and also the draft of a resolution in favor of adoption of the ordinance amendment for consideration by the Board members. Mr. Sorrell noted, in setting forth the status of the amendment, that the Planning Commission recommended that the Board not amend the Code.

After the staff report, the Chairman addressed the public and advised that all Board members and the Planning Commission

are in favor of this type of business locating in the County but that some view the M-1 zoning district as not appropriate for this type of business.

After much discussion among the individual Board members, the Chairman opened the public hearing. Eight citizens spoke in favor of the business and location. Three citizens spoke in opposition of the location of this business with their main concern being that this business may adversely affect private water supplies in the area. With no additional citizens signed up to speak, the Chairman then closed the public hearing.

Supervisor Oertel made a motion to approve and adopt CA 09-07. The resolution presented in the meeting to amend the County Code and as set forth below was adopted by the vote of the Supervisors as set forth therein:

**BOARD OF SUPERVISORS
OF THE
COUNTY OF CUMBERLAND, VIRGINIA
RESOLUTION
APPROVING AND ADOPTING
PROPOSED AMENDMENTS TO THE
CODE OF CUMBERLAND COUNTY:
CODE AMENDMENT 09-07:
“AN ORDINANCE AMENDING CHAPTER 74 OF THE
CUMBERLAND COUNTY CODE AMENDING SECTION 74-543.
CONDITIONAL USES REGARDING USES
PERMITTED BY CONDITIONAL USE PERMIT IN AN M-1,
INDUSTRIAL ZONING DISTRICT.**

October 13, 2009

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Cumberland County Courthouse, Cumberland, Virginia 23040 commencing at 7:00 p.m., October 13, 2009, the following action was taken following a duly held public hearing during which time the Planning and Zoning

Administrator provided a review of the conditional use permit request, the applicant provided a review of the proposal and members of the public offered comment:

On a motion made by Supervisor Womack, it was moved that the Board of Supervisors of Cumberland County approve and adopt, in accordance with the following Resolution, an ordinance amending the uses permitted by conditional use permit in the M-1, Industrial zoning district. The amendment adds as a use permitted by a conditional use permit as follows: “concrete mixing (dry-batch or central) facility (a.k.a. ready-mix);

Following a reading of the Recitals and Resolutions, the Board of Supervisors adopted and approved the Recitals and Resolutions according to the votes stated below:

<u>Present:</u>	<u>Vote:</u>
William F. Osl, Jr., Chairman	Nay
Timothy Kennell	Aye
Van H. Petty	Nay
Elbert R. Womack	Aye
Robert J. Oertel	Aye
<u>Absent:</u>	None

WHEREAS, at a regular monthly meeting held on October 13, 2009, staff provided the Board of Supervisors with an overview of the proposed amendments to the Code of Cumberland County, which said amendment (collectively the “Code Amendment”) address “AN ORDINANCE AMENDING CHAPTER 74 OF THE CUMBERLAND COUNTY CODE AMENDING SECTION 74-543. CONDITIONAL USES REGARDING USES PERMITTED BY

CONDITIONAL USE PERMIT IN AN M-1, INDUSTRIAL ZONING DISTRICT” (as shown in the attached ordinance); and

WHEREAS, the Board of Supervisors referred the Code Amendment to the Planning Commission for its consideration and the Planning Commission directed staff to prepare the Code Amendment for public review on August 24, 2009; and

WHEREAS, the Planning Commission duly advertised and held a public hearing on September 21, 2009; and

WHEREAS, after such public hearing the Planning Commission adopted a resolution recommending to the Board of Supervisors that it deny the Code Amendment; and

WHEREAS, the Board of Supervisors duly advertised and held a public hearing on October 13, 2009; and

WHEREAS, the Board of Supervisors carefully considered the testimony and evidence presented at the public hearing in support or opposition to the proposed Code Amendment including the information and recommendation from the Planning Commission; and

WHEREAS, in its review of the Code Amendment, the Board of Supervisors gave reasonable consideration to furthering the goals of the County’s Comprehensive Plan, as expressed in the zoning ordinance by addressing ordinance provisions regarding the use and its appropriateness for inclusion in the M-1, Industrial zoning district; and

WHEREAS, after conducting a public hearing and considering the comments of County staff, landowners, residents, and the general public, the Board of Supervisors found that the Code Amendment furthers the goals of the Comprehensive Plan; and

WHEREAS, after discussion, staff presentation and due deliberation with respect to such information, including

information and materials presented at this public hearing, and the comments in support or opposition to the proposed Code Amendment, the Board of Supervisors desires to affirm its findings and to take action with respect to the Code Amendment;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, as follows:

- h. The foregoing recitals are hereby incorporated by this reference.
 - i. The Board of Supervisors further finds that the Code Amendment is in substantial accordance with the County's Comprehensive Plan and zoning ordinance.
 - j. Upon consideration of the foregoing, the Board of Supervisors considers it appropriate to amend the Code of Cumberland County in accordance with the specific text and provisions of the Code Amendment 09-07 as attached hereto and incorporated herein by this reference.
 - k. Upon consideration of the foregoing, the Board of Supervisors approves and adopts Code Amendment #09-07.
 - l. This Resolution is effective immediately.
- g) CUP 09-04 Concrete Plant

The Chairman then recognized Planning and Zoning Administrator, Andrew Sorrell, who reviewed the staff report regarding Conditional Use Permit #09-04. Mr. Sorrell noted that, while the Planning Commission did not recommend the proposed use be permitted by condition in an M-1 zoning district, the Commission did provide a resolution with possible conditions necessary to limit possible adverse impact of the proposed use if the Board sought to approve the CUP #09-04 application. Lastly, Mr. Sorrell presented a draft resolution approving the CUP #09-04 with certain conditions enumerated in the draft.

The Chairman then opened the public hearing. One citizen suggested that the Board and the Planning Commission work on expediting the conditional use permitting process. Four citizens spoke in favor of the conditional use permit. No one spoke in opposition. With no additional citizens signed up to speak, the Chairman then closed the public hearing.

After discussion among the Board members of the relative merits of the application and proposed conditions, Supervisor Oertel made a motion to approve CUP #09-04 by the draft of the resolution as presented with the exception of changes to conditions 1 and 2 of the presented text which such changes increased the hours of operation and eliminated a hydrological impact study of well water impact. The resolution approving CUP #09-04 as set forth below was adopted by the vote of the Supervisors as set forth therein:

**BOARD OF SUPERVISORS
OF THE
COUNTY OF CUMBERLAND, VIRGINIA
RESOLUTION
GRANTING
CONDITIONAL USE PERMIT
APPLICATION #09-04
REQUESTED BY
MICHAEL AND KAREN BARTON**

October 13, 2009

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Cumberland County Courthouse, Cumberland, Virginia 23040 commencing at 7:00 p.m., October 13, 2009, the following action was taken following a duly held public hearing during which time the Planning and Zoning Administrator provided a review of the conditional use permit request, the applicant provided a review of the proposal and members of the public offered comment:

On a motion made by Supervisor Oertel, it was moved that the Board of Supervisors of Cumberland County grant the Conditional Use Permit in accordance with the following Recitals and Resolutions;

Following a reading of the Recitals and Resolutions, the Board of Supervisors adopted and approved the Recitals and Resolutions according to the votes stated below:

<u>Present:</u>	<u>Vote:</u>
William F. Osl, Jr., Chairman	Nay
Timothy Kennell	Aye
Van H. Petty	Nay
Elbert R. Womack	Aye
Robert J. Oertel	Aye
<u>Absent:</u>	None

WHEREAS, Michael and Karen Barton (the “Applicant”) filed a conditional use permit application and supporting materials (the “CUP Application” or “CUP #09-04”) seeking to obtain a conditional use permit in accordance with Chapter 74 of the Cumberland County Code of Ordinances (the “Zoning Ordinance”); specifically, the Applicant has requested a conditional use permit to initiate a “concrete mixing (dry-batch or central) facility (a.k.a. ready-mix)” industrial use; and

WHEREAS, the subject property is located on the north side of Route 670 (Wilson Russell Road), approximately 950 feet southeast from the intersection of Routes 60 and 670 and approximately 1,000 feet northwest from the intersection of Routes 670 and 45 (Cumberland Road) and more particularly described as Tax Map Parcel 65-A-41, with respect to

approximately 5.00 acres as shown in the CUP Application and more particularly described on Exhibit A attached hereto entitled “Legal Description” (hereinafter the “Property”); and

WHEREAS, the Board of Supervisors duly referred the CUP Application to the County Planning Commission for its recommendation on July 14, 2009; and

WHEREAS, the Planning Commission directed staff to make the CUP Application available for public review on August 24, 2009; and

WHEREAS, the Planning Commission duly advertised and held public workshops on July 20, 2009 and August 24, 2009 and a public hearing on September 21, 2009; and

WHEREAS, the Planning Commission duly considered the testimony and evidence presented at the public hearings and workshops in support or opposition to the proposed CUP Application and gave reasonable consideration to numerous factors, including but not limited to the County’s Code of Ordinances, Comprehensive Plan and the suitability of the Property for various uses; and

WHEREAS, the Planning Commission adopted a resolution on September 28, 2009, recommending denial of the conditional use permit for, among numerous factors, lack of legal authority in the County Code, but further provided recommendations on specific conditions suitable for the CUP Application should the Board of Supervisors amend the County’s Code of Ordinances to permit the use; and

WHEREAS, the Board of Supervisors duly advertised and held a public hearing on October 13, 2009; and

WHEREAS, the Board of Supervisors carefully considered the Planning Commission’s recommendation and the testimony and evidence presented at the public hearing on September 21, 2009, in support or opposition to the proposed CUP Application,

including among other things documentation, information and data related to environmental monitoring and protection, traffic, noise, outdoor lighting, water usage, particulate emissions, property valuations, and other pertinent and relevant issues, the input of the applicant and input from the general public; and

WHEREAS, in its review of the CUP Application, the Board of Supervisors gave reasonable consideration to numerous factors, including but not limited to the following: the existing use and character of the Property, the County's Comprehensive Plan, the suitability of the Property for various uses, the trends of growth or change, and the current and future requirements of the County as to land for various purposes as determined by population and economic studies; and

WHEREAS, after discussion, staff presentation and due deliberation with respect to such documentation, information and data, including information and materials presented at this public hearing, the Board of Supervisors desires to affirm its findings and take action with respect to the CUP Application;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, as follows:

- a. The foregoing recitals are hereby incorporated by this reference.
- b. Upon consideration of the foregoing and the conditions and standards set forth in the Zoning Ordinance, including Sections 74-543, 74-544 through 74-549 and 74-702, the Board of Supervisors grants the conditional use permit.
- c. The Board of Supervisors has determined that the request made in the CUP Application furthers the general purposes and objectives of the Zoning Ordinance, is consistent with the County's Comprehensive Plan, and would be beneficial and appropriate taking into consideration public necessity, convenience, general welfare and good zoning practice.

d. Upon consideration of the foregoing, the Board of Supervisors grants the request in Conditional Use Permit Application #09-04 to conduct industrial activity on the Property as may be permitted for a “concrete mixing (dry-batch or central) facility (a.k.a. ready-mix)” under Section 74-543 (new number to be added) of the Zoning Ordinance in accordance with the provisions thereof and applicable state law and regulation, subject to the Applicant’s compliance with the following conditions (collectively, the CUP Conditions”):

1) Hours of operation: Hours of operation, during the months of March through October, will be limited to 3:00 a.m. to 10:00 p.m., Monday through Saturday and the hours of operation, during the months of November through February, will be limited to 4:00 a.m. to 9:00 p.m. Monday through Saturday, subject to the provisions of this paragraph.

“Operation”, for purposes of this condition, will include, without limitation, outdoor unloading and loading of materials and products, delivery of raw materials and outdoor vehicle maintenance; “operation” does not include activity occurring within a “fully-enclosed structure.” “Fully-enclosed structure” shall mean a structure with doors that remain closed when activity is occurring within the structure.

2) Water usage: If the Owner initially uses a private water supply and the county’s public water serves the Property in the future, the Owner shall be required to connect to such public water system.

3) Screening: Cumberland County’s M-1, Industrial zoning district standards require complete screening of industrial uses conducted outdoors. To meet this requirement, the Owner shall provide a 50 foot buffer from the property lines identified as “B” and “C” on

the attached plan. A 25 foot buffer shall be provided from the property line identified as "A" and "D." No activity, including storage of material and parking, shall occur in the buffer areas. No existing vegetation within the above buffers may be removed without prior written permission from the Zoning Administrator. Within the buffer areas, screening shall be provided to supplement any existing vegetation. Such screening shall consist of the following:

- (a) Along the entire length of property lines "B" and "C", within the buffer area, an earthen berm shall be installed at the Owner's expense. The height of the earthen berm shall be no less than six (6) feet tall along property line "B" and no less than eight (8) feet along property line "C". A double staggered row of evergreen trees, spaced no less than five (5) feet apart and a minimum height of 18 inches, shall be planted and maintained by the Owner, within in the buffer between the yard and berm.
- (b) So that the Facility will have a limited impact on residential dwellings on the south side of Route 670, starting at the intersection of property lines "C" and "D" an earthen berm shall be installed at the Owner's expense, terminating at a point on property line "D" west of the dwelling addressed at 54 Wilson Russell Drive (Tax Map Parcel 65-A-35). The height of the earthen berm shall be no less than six (6) feet tall. A double staggered row of evergreen trees, spaced no less than five (5) feet apart and a minimum height of 18 inches, shall be planted and maintained by the Owner, within the buffer between the yard and berm. The remainder of property line "D" (with the exception of any approved entrance points) shall be buffered with a double staggered row of evergreen trees,

spaced no less than five (5) feet apart and a minimum height of 18 inches, shall be planted and maintained by the Owner, within in the buffer area.

- (c) Property line "A" shall be buffered with a double staggered row of evergreen trees, spaced no less than five (5) feet apart and a minimum height of 18 inches, shall be planted and maintained by the Owner, within in the buffer area.
- (d) It shall be the responsibility of the Owner to maintain all such screening. Should any landscaping materials die or become diseased, such screening shall be replaced promptly and at Owner's expense.

- 4) Particulate emissions: The purpose of this condition is to limit the effect particulates may have on adjacent properties. As required by the Virginia Department of Environmental Quality, the Facility shall be equipped with dust collection equipment for the loading of silos with cement as well as dust collection equipment to collect dust from the mixing of materials to produce cement. The pile height for small aggregates capable of becoming wind-born, such as sand, but to not include gravels, shall be below the height of the walls of the individual stalls where such aggregate is stored within six (6) months of initiating the use. In addition, to limit dust produced from site traffic, the primary circulation routes for traffic shall be paved with a hard-surface material within one (1) year of initiating the use. Until such areas are paved, the yard shall be monitored on a daily basis and a dust reduction method (as approved by the Zoning Administrator) shall be employed to control fugitive dust issues should they arise as viewed by the Owner and/or the Zoning Administrator.

- 5) Site and facility security: In order to prevent unauthorized vehicular access to the property, sturdy metal entrance gate(s) or cable(s) may be provided at points of ingress and egress onto the property. If employed, entrance gate(s) and any other point of entry shall be locked when no facility employee or authorized contractor is on site. Prominently displayed at the primary entrance location shall be signage that identifies the facility's name, hours of operation, and an emergency contact phone number.
- 6) Noise: Noise resulting from facility operations, except those not under direct control of the Owner, which include all industrial uses of the Property, shall not exceed the standards listed in the industrial performance standards of the M-1, industrial zoning district [Sec. 74-549]. Once the Owner has certified that the noise levels are within acceptable limits at the property lines, the Owner shall re-monitor noise levels for the Property every year thereafter or anytime there is a significant change in machinery or production processes that may result in increased noise levels at the property lines, are within the aforementioned limits. A decibel meter, "A-contour filter" (dBA), shall be used to monitor the decibel levels on the Property.

If Cumberland County receives any complaints from adjacent property owners regarding noise levels or upon its own investigation discovers upon inspection that the noise levels exceed what is allowed, the Owner shall be given a warning for the first offense and shall not have another noncompliant event in a 90-day period. If the Owner violates the noise standards within the 90-day warning period, then the County reserves the right to: A) restrict operating hours until the Property is brought back into compliance with the noise standards, B) fine the Owner \$500.00 and/or

C) require noise reducing measures to be installed immediately at the cost of the Owner. For any offense after the first offense, the Owner shall A) pay a fine of \$1,000.00, B) have operation hours restricted until the Owner can bring the Property into compliance with the noise standards and C) must install any necessary noise reducing measures to come into compliance with the noise standards.

- 7) Operations plan: Prior to initiating the use of the Property, the Owner shall provide the Zoning Administrator with an operation's plan, certified by a professional engineer, licensed in the state of Virginia. Such operation's plan shall certify the facility's operation meets the requirements for permitted uses and industrial performance standards for the M-1, industrial zoning district as described in Sections 74-544 through 548 (requirements for permitted uses) and Section 74-549 (industrial performance standards) of the Cumberland County Code of Ordinances.
- 8) Compliance with laws, rules and regulations: All operations shall be conducted in compliance with all current applicable state, federal and county laws, rules and regulations and the Owner shall perform all testing and monitoring required by applicable regulation, including, without limitation, storm water management and erosion and sediment control regulations of the Virginia Department of Environmental Quality pertaining to air and water quality.
- 9) Truck traffic: The property owner agrees to operate the Facility in such a manner as to avoid unreasonable traffic congestion involving truck travel on public roads. The Owner will make every effort to limit the

release of company-controlled trucks during normal school drop-off and pick-up hours.

- 10) Structure maintenance and height: Unmanned structures on the Property shall not be greater than 80 feet as measured from ground level. Structures over 35 feet must be painted in one muted and unobtrusive color as well as treated with a rust inhibitor. Except small manufacturer logos as initially applied when a piece of equipment was constructed, painted lettering or signage on structures over 35 feet tall shall not be permitted.
- 11) Traffic control and flow: Following the recommendation by the Virginia Department of Transportation (VDOT), there shall be one 60 foot wide commercial entrance point onto Route 670 for use by all site traffic. The Owner shall follow all requirements and standards as required by VDOT. The Owner shall not locate an access point along Property line "D" on Route 670 that would produce glare from vehicle headlights into any dwellings located on the south side of Route 670.
- 12) Accessory uses: The location of any use that may be accessory or ancillary to the primary use of the Property shall be shown on the final site plan. Such accessory uses may include the construction of concrete blocks, approximately 3 feet wide by 4 feet long, and the small-scale sale of aggregates to the general public. No accessory or ancillary use of the Property shall be permitted unless its location is shown on the final site plan. Any such use that is located outdoors shall be completely screened and meet all requirements set forth in the conditions contained herein.
- 13) Additional uses and changes: Any substantial changes (as determined by the Zoning Administrator) in the

use of the Property by the Owner over what has been permitted by this Conditional Use Permit shall require an amendment to this conditional use permit.

Substantial changes can include, but are not limited to, changes or additions to the use of the property that would increase the amount of traffic, parking, outdoor lighting, noise, particulate emission, water usage or have other similar impacts.

14) Site planning: A final site plan meeting the requirements of Sec. 74-1101 through 1104 of the County code shall be submitted and approved by the Zoning Administrator prior to initiating the use. Such site plan shall state all adopted conditions clearly on the plan. The Property owner shall provide the certified engineer's statement as required by the M-1, Industrial zoning district performance standards prior to final site plan approval by the Zoning Administrator. In addition, the following shall supplement the county's site planning standards:

- (a) Outdoor light control: Lighting shall not constitute a nuisance and shall not produce glare or otherwise spillover onto adjacent properties. All outdoor lighting shall be fully-shielded fixtures that direct light towards the ground and not upwards.
- i. Any spillover light shall not exceed one-half (1/2) a foot-candle at any property line adjacent to property zoned agricultural or residential;
 - ii. The maximum mounting height for any lighting fixture not adhered to a building (such as pole-mounted lighting) shall be twenty (20) feet;
 - iii. No lighting fixture may be mounted on a structure higher than twenty (20) feet; and
 - iv. All outdoor lighting fixtures shall be turned off after the permitted hours of operation,

unless needed for safety or security, in which case the lighting shall be reduced to the minimum level necessary.

- (b) Parking/loading: All parking and loading areas (except parking areas for the general public), shall be completely screened.
- 15) Closure bond: The property owner shall furnish a surety bond or letter of credit, in the amount of at least \$150,000, drawn on a national or state regulated financial institution, to be used to close the site, including removal of structures and materials from the property in the event of property's abandonment or cessation of industrial activity or use for more than 24 consecutive months. A copy of the bond or letter of credit shall be furnished to the County Administrator. The letter of credit shall be furnished prior to the property owner initiating the use of the property. The letter of credit shall provide that it may not be cancelled during the calendar year unless replaced by a similar certificate of insurance coverage or letter of credit. The issuing financial institution shall be rated AA or better by a national rating agency.
- 16) Renewal of conditional use permit: Regular renewals of the conditional use permit shall be required to demonstrate continued compliance with the CUP. Such renewals shall be subject to the Facility's performance and compliance with permitting criteria as well as a review of any code infraction and violations. Regular renewals shall be based upon the following schedule:
- A) 1 year after approval;
 - B) years after approval;
 - C) 5 years after approval;
 - D) Every 5 years thereafter; and

E) Renewal shall also be required upon any change in the Facility ownership, licensing type and/or management. The Facility owner shall notify the zoning administrator upon any of the above changes and the new Facility owner or management group shall apply for a renewal of the CUP within sixty (60) days of such change.

17) Revocation of permit: Violation of any of these terms and conditions may be grounds for revocation of this conditional use permit.

- e. A copy of the “CUP Application” #09-04 and all supporting documentation shall be kept on permanent file in the office of the Zoning Administrator.
- f. Such final site plans shall be submitted to the County Administrator, or designee, who shall review them for conformance with the terms of this Conditional Use Permit #09-04 and the master site plan approved in connection with this Conditional Use Permit #09-04, with such modifications as may be approved by the Planning Commission at the time of site plan review.
- g. This Resolution is effective immediately.

BE IT FURTHER RESOLVED that said recommendation shall be subject to the conditions set forth above; and provided, further, that a copy of the aforementioned conditions shall be recorded in the Office of the Clerk of the Circuit Court for Cumberland County and that such filing shall take place prior to sixty (60) days after the conditional use permit is granted or such conditional use permit shall be deemed null and void and the Property will revert to its prior status.

4) Departments and Agencies -

- a) Dr. Jim Thornton, Superintendent of Schools

Assistant Superintendent of Instruction, Amy Griffin, and High School Principal, Jeff Dingledein, spoke to the Board about

plans to increase higher-level learning in the instruction throughout the school system.

5) Assistant County Administrator/Finance

- a) Consent Agenda-
 - 1) Approval of minutes for September 2009
 - 2) Approval of Bills- September 2009 and October 2009
Approved bills for October 2009 total \$117,320.10. Ratified bills for September 2009 of warrants total \$ 340,502.29 with check numbers ranging from 57205 to 57428. Direct deposits for September 2009 total \$ 160,367.09.
 - 3) Appropriation to Clerk's Office for \$1,250.60 and \$4,080.00
 - 4) Approval of CIP & Budget Calendars
 - 5) Supplemental appropriation to the Sheriff's Office for \$4,800.00 in receipts

On a motion by Supervisor Womack and carried, the Board approved the consent agenda:

VOTE: Mr. Osl – aye Mr. Kennell – aye
Mr. Petty – aye Mr. Womack – aye
Mr. Oertel – aye

b) Monthly Budget Report

Assistant County Administrator, Jill Matthews, reviewed the budget report; the Board members had no questions.

c) Award contract for roofing at community center

Assistant County Administrator, Jill Matthews, informed the Board that 6 bids were received, however, some contractors did not bid on the appropriate materials which skewed the range in costs.

On a motion by the Chairman, the Board awarded the bid for roof work at the Community Center to Pleasant Valley

Construction, in the amount of \$78,000.00 plus the cost of plywood replacement, which was the lowest bid:

VOTE: Mr. Osl – aye Mr. Kennell – aye
Mr. Petty – aye Mr. Womack – aye
Mr. Oertel – aye

6) Planner/Zoning Administrator-

- a) Monthly report of Planning Commission activity/actions

Zoning Administrator, Andrew Sorrell, reviewed the Planning Commission's activities for the month of September 2009.

- b) Re-appointment of Ms. Carol Miller to the Planning Commission

Planner and Zoning Administrator, Andrew Sorrell, informed the Board that the term for Ms. Carol Miller, who represents the 4th District on the Planning Commission expired on September 1, 2009. Ms. Miller expressed her interest in being re-appointed and serving a full 3 year term.

On a motion by Supervisor Womack and carried, the Board re-appointed Ms. Carol Miller to the Planning Commission for a term expiring September 1, 2012:

VOTE: Mr. Osl – aye Mr. Kennell – aye
Mr. Petty – aye Mr. Womack – aye
Mr. Oertel – aye

- c) Letter from Orange County regarding Urban Development Areas

Planner and Zoning Administrator, Andrew Sorrell, informed the Board that staff received a letter from Orange County opposing the proposed Urban Development Area designation statute (15.2-2223.1) currently under review by the Athey-Vogel Subcommittee who is studying development and land use tools. The proposed statute will require localities to designate

Urban Development Areas and include them in the County's Comprehensive Plan.

By unanimous consent, the Board directed the County Administrator to draft a letter opposing the unfunded mandate proposed by this Urban Development Area designation statute 15.2-2223.1.

7) County Administrator's Report -

- a) Recommendations for appointment to Board of Equalization

County Administrator, Judy Ownby, informed the Board that recommendations for appointment to the Board of Equalization were needed from the Board members. Supervisor Kennell recommended Robert Rigsby for appointment.

No action was taken on this item as it was deferred until the next regular meeting of the Board.

- b) Set pay for the Board of Equalization

County Administrator, Judy Ownby, informed the Board that the rate of pay for the Board of Equalization needs to be set by the Board. The previous Equalization Board's pay was set at \$55 per day.

On a motion by the Chairman and carried, the Board set the rate of pay for the Board of Equalization at \$55 per day:

VOTE: Mr. Osl – aye Mr. Kennell – aye
Mr. Petty – aye Mr. Womack – aye
Mr. Oertel – aye

- c) Consider Prince Edward's request to send letter to Governor Kaine regarding the completion of High Bridge Trail

County Administrator, Judy Ownby, informed the Board that Prince Edward is recommending that the Board send a letter to

Governor Kaine requesting the timely completion of High Bridge Trail.

After some discussion, and by unanimous consent, the Board directed the County Administrator to draft a letter to Governor Kaine regarding the completion of High Bridge Trail.

d) Re-appointment of Laureatta Yates to Social Services Board

County Administrator, Judy Ownby, informed the Board that Ms. Laureatta Yates term on the Social Services Board expired on July 1, 2009, and that she is willing to serve another 4 year term.

On a motion by Supervisor Petty and carried, the Board appointed Ms. Laureatta Yates to the Social Services Board for a term expiring July 1, 2013:

VOTE: Mr. Osl – aye Mr. Kennell – aye
Mr. Petty – aye Mr. Womack – aye
Mr. Oertel – aye

e) Voting credentials for VACo annual meeting

County Administrator, Judy Ownby, stated that each year, VACo asks that a Board member is designated to cast votes at the annual meeting in November. In the past, the Chairman has been designated, with the Vice-Chairman as an alternate.

By unanimous consent, the Board directed the County Administrator to notify VACo that the Chairman and Vice-Chairman have been elected as voting members at the annual meeting.

8) Assistant County Administrator/Community Development

a) Update on projects

1) Proposed waterline extension

Mr. Cooper stated that work is on-going in regards to the draft plans for the waterline extension. Staff has received final comments from almost all state agencies.

2) Museum Project

Mr. Cooper stated that the revisions to the scope of work for the project have been submitted to VDoT for review.

b) Consider re-appointment of Sherri McGuire to the Industrial Development Authority for a term expiring 9/30/13

Mr. Cooper informed the Board that Ms. Sheri McGuire's term on the Industrial Development Authority expired September 30, 2009, and she is willing to serve another 4 year term.

On a motion by the Chairman and carried, the Board appointed Ms. Sheri McGuire for term expiring September 30, 2013:

VOTE: Mr. Osl – aye Mr. Kennell – aye
Mr. Petty – aye Mr. Womack – aye
Mr. Oertel – aye

9) **County Attorney's Report -**

a) Revenue Recovery

County Attorney, Howard Estes, and Director of Emergency Services, Supervisor Kennell, informed the Board that the Emergency Services Committee agrees that the revenue recovery process is inevitable, but no other conclusions have been reached. Supervisor Kennell suggested that the Board hold a joint meeting with the ESC to discuss the Committees options.

Captain of the Cumberland Rescue Squad, Bruce Zirkle, addressed the Board, and stated that this process is not appropriate for the entire ESC, and suggested that the Board only

meet with the Cumberland and Cartersville Rescue Squads. Mr. Zirkle provided the Board with a petition in support of the Cumberland Rescue Squad billing for their own services.

By unanimous consent, the Board set a joint meeting with the ESC on Thursday, November 12, 2009 at 6:00 p.m. at the Cumberland Fire Department to discuss Revenue Recovery.

b) Water and Sewer Ordinance Amendments

Mr. Estes informed the Board that he and staff have continued to work on revising the Water and Sewer Ordinance. Updates will come to the Board as they become available.

c) Central Absentee Ballot Precinct

Mr. Estes informed the Board that the County received approval from the Department of Justice to create the central absentee ballot precinct. However, the approval did not come before the deadline for the upcoming election.

d) Road naming Ordinance

Mr. Estes informed the Board that the concerns brought up at the workshop have been addressed and are reflected in the revised Ordinance. The Board will be provided with a copy for review.

10) Board Member Comments-

The Chairman informed the Board that he and Supervisor Petty attended a Willis River Dam Flood Control Tour. Some of the dams may be in need of upgrades in the near future. The Chairman also stated that he was disappointed that the Board went against the Planning Commission's recommendations.

Supervisor Kennell informed the Board that the next District II Town Hall meeting will be held at the Cumberland Elementary School on Wednesday, October 21, 2009 at 7 p.m.

Supervisor Petty had no comments.

Supervisor Womack had no comments.

Supervisor Oertel inquired as to the requirements for the Cumberland Bulletin to serve as the County's paper of record.

11) Public Comments

There were no citizens signed up to speak.

12) Additional Information-

Assistant County Administrator, Jill Matthews, informed the Board that the Health Department will be in the Schools for the next two weeks to administer the H1N1 vaccine to students. The Health Department will also be extending office hours to accommodate citizens who wish to receive the vaccination.

13) Adjourn-

With no additional business to come before the Board, the Chairman adjourned the meeting until Thursday, November 12th at 6:00 p.m. at the Cumberland Volunteer Fire Department for a joint meeting with the ESC to discuss revenue recovery.

Chairman

County Administrator