

**VIRGINIA:**

A meeting of the Lancaster County Board of Supervisors was held in the courthouse of said county on Thursday, October 30, 2003.

Present: Cundiff H. Simmons, Chair  
F. W. Jenkins, Jr., Vice Chair  
Donald O. Conaway, Board Member  
B. Wally Beauchamp, Board Member  
William H. Pennell, Jr., County Administrator

Others

Present: Jack Larson, Planning/Land Use; Joe Staton, Carter White, C.C. Burgess and C.D. Hathaway, Virginia Department of Transportation; Susan Gaston and Jane Crowther, Omega Protein; George E. Thomas, Commissioner of the Revenue; Dr. Randolph Latimore and Lancaster Primary Staff; Joan Wenner, Northern Neck News; Robb Hoff, Rappahannock Record

Mr. Simmons called the meeting to order at 7:00 p.m.

**PUBLIC INPUT**

None

**PRESENTATION**

1. Master Commissioner of the Revenue – Mr. Pennell stated George E. “Sonny” Thomas has received certification as a Master Commissioner of the Revenue from the Commissioner of the Revenue Professional Career Development Program. In order to qualify for participation in this program the Commissioner must achieve performance objectives in the following areas: audits, confidentially policies,

customer service, ethnicities, freedom of information act, local option taxes, personal property taxes, personnel policies, state income tax and technology.

Mr. Simmons, Chairman of the Board of Supervisors awarded the certificate for this award to Mr. Thomas.

2. Lancaster Primary School – 2003 Blue Ribbon School – Mr. Pennell said a resolution has been prepared to honor the Lancaster Primary School for its designation as a **2003 No Child Left Behind Blue Ribbon School**.

Dr. Latimore stated it was great pleasure to stand before the Board of Supervisors to have the Lancaster Primary School recognized as a 2003 Blue Ribbon School. Lancaster Primary School was one of six schools in the Commonwealth to be honored this year. Mrs. Merle Stables, Principal and Alice Blackstone, Teacher are in Washington D.C. for a reception with the Secretary of Education and will receive the award tomorrow. Dr. Latimore said he was overjoyed with the accomplishments of the teachers, guidance counselors, secretaries, school nurse, bus drivers, custodians, parents and above all the students at the primary school.

Ms. Kathy Bush, Assistant Principal, said she accepted this honor on behalf of Mrs. Stables, Principal. She stated the credit goes to the teachers, volunteers, parents and most importantly the students who demonstrate everyday that they can do whatever they believe they can do. We have to continue to believe in our children and make sure that they always achieve the highest level, so that we can truly demonstrate that none of our children will be left behind.

Mr. Jenkins made a motion to adopt the following resolution honoring Lancaster Primary School for its designation as a 2003 No Child Left Behind Blue Ribbon School:

**LANCASTER PRIMARY SCHOOL  
FEDERAL BLUE RIBBON SCHOOL**

**WHEREAS**, the United States Department of Education has designated the Lancaster Primary School as a **2003 No Child Left Behind Blue Ribbon School**; and

**WHEREAS**, the Blue Ribbon Schools Program was established in 1982 to spotlight the country's most successful schools; and

**WHEREAS**, the Lancaster Primary School received federal Blue Ribbon School status for dramatically improving student achievement despite having a high proportion of students from disadvantaged backgrounds; and

**WHEREAS**, the Lancaster Primary School is fully accredited under Virginia's achievement-based accountability system; and

**WHEREAS**, Lancaster Primary School also met the complex federal definition for Adequate Yearly Progress under the No Child Left Behind Act of 2001; and

**WHEREAS**, the Superintendent of Public Instruction, Jo Lynne DeMary, stated "Lancaster Primary School is characterized by excellent instruction and educators committed to high standards and the belief that all children can learn and achieve;" and

**WHEREAS**, United States Secretary of Education Rod Paige honored Lancaster Primary School during an award ceremony in Washington, D. C. in October, 2003.

**NOW THEREFORE BE IT RESOLVED**, that the Lancaster County Board of Supervisors congratulates the pupils, parents, volunteers and staff of the Lancaster Primary School; Mrs. Merle Stables, Principal; Dr. Randolph H. Latimore, Superintendent and the Lancaster School Board for their hard work and success in achieving the status as a **2003 No Child Left Behind Blue Ribbon School**.

VOTE:	Cundiff H. Simmons	Aye
	F.W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye

3. Omega Protein – New Fish Oil Processing Facility – Reedville – Jane Crowther stated Omega Protein Corporation will build a new fish oil processing facility in Reedville, Virginia. The facility will include state-of-the-art processing equipment and controls that will allow the Company to refine, bleach and deodorize its menhaden fish oil and will also provide automated packing and refrigerated on-site storage capacity.

Ms. Crowther said some fats, such as those found in Omega-3 fatty acids, are essential for good health. New scientific studies suggest that increased consumption of the “good” fats found in Omega-3s can enhance brain and eye function, lower blood pressure and relieve rheumatoid arthritis, psoriasis and asthma.

Ms. Susan Gaston stated she looks forward to working with the community and asks for the Board of Supervisors support.

**VIRGINIA DEPARTMENT OF TRANSPORTATION**

Work Session on the Six-Year Plan – Robert Harper and Clyde Hathaway supplied handouts of the Draft Secondary System Construction Program – Projected Fiscal Year Allocation for 2004-05 through 2009-10 at an estimated cost of \$543,000 - \$563,000 per year. Clyde Hathaway gave the presentation and informed the board that the county-wide project items include rural additions, traffic and safety services, private entrance pipes, preliminary engineering, seeding, fertilization, subdivision, and site planning. The incidental budget items are small projects such as drainage improvements, clearing of intersections and improving alignment and the estimated cost would be \$20,000.

The first item is Rte 630/Taylor's Creek Road to improve the drainage and horizontal and vertical alignments. He said the right-of-way has been purchased and utilities have been relocated. This project will be advertised in December 2003 and construction will start in Spring 2004. The second priority is Rte 604/Merry Point Road, at the Rte 611 intersection, to improve alignment. Third and fourth priorities will be a consolidated project which includes Rte 614/Devils Bottom Road that runs past the primary school to a quarter of a mile east of Rte 669 to improve the alignment and replace the bridge. Priority five is Rte 605 near Pickardsville Road to improve the alignment. Priority six is Rte 607/Good Luck Road, a County Line Project with Northumberland, to improve the alignment a quarter of a mile west of Rte 200. Priority seven is Rte 642, Little Bay Road for the improvement of alignment and drainage.

Unpaved road projects include existing state maintained dirt roads that need to be paved. Priority one is Yopps Cove Road, Rte 637 to the dead end; VDOT has completed this project and is paying off the balance. The second item is Burnt Wharf Road, Rte 755 to the dead end and due to weather conditions this project will not start until Spring 2004. The third item is Airport Road, Rte 711 for the Rural Rustic Road program.

Mr. Staton said the Rural Rustic Road program is designed to pave dirt roads that are narrow, crooked, have poor sight distances, poor drainage and/or with historic walls. Because of the standards which VDOT has, these dirt roads would never be approved for

paving, so the legislature passed a bill that allows VDOT to pave roads “as is” meaning no improvements. The requirements are that the road must be in the highway system and carry 50 cars per day. The county must pass a resolution at a public hearing designating a road to pave as a Rural Rustic Road. The primary concern is that the county will not get additional money for the Rural Rustic Road.

Colin Smither stated he lives on VSH 632/Indiantown Road and said he was in favor of including this road in the Rural Rustic Road project with no improvement and no turn around as long as it does not affect the airport or the existing property lines.

Jerry Hamm stated 12 of the 14 Westview residents are in favor of adding this to the Rural Rustic Road project. He wanted to thank both the Board of Supervisors and VDOT for their assistance.

Carter White stated the paving of VSH 632/Indiantown Road would not take place until August 2006 when funding becomes available.

Mr. Jenkins made a motion to designate VSH 711/Airport Road a Rural Rustic Road in the following resolution:

#### **ROUTE 711 - AIRPORT ROAD**

**WHEREAS**, during the 2002 session of the General Assembly, legislation was passed to revise §33.1-70.1 of the Code of Virginia, to allow for the improvement and hard surfacing of certain unpaved roads deemed to qualify for and be designated a Rural Rustic Road; and

**WHEREAS**, such roads must be located in a low-density development area and have a minimum of 50 vehicles per day (vpd), and have no more than 500 vpd; and

**WHEREAS**, this Board is unaware of pending development that will significantly affect the existing traffic on the road; and

**WHEREAS**, the citizens that utilize this road have been made aware of this road being paved with minimal improvements; and

**WHEREAS**, this Board believes Route 711 (Airport Road) should be designated a Rural Rustic Road, from Route 354 to End of State Maintenance owing to its qualifying characteristics; and

**WHEREAS**, the road aforesaid is in this Board's six-year plan for improvements to its secondary system of state highways.

**NOW, THEREFORE, BE IT RESOLVED**, the Lancaster County Board of Supervisors hereby designates and requests the Resident Engineer to concur in the aforesaid road as a Rural Rustic Road.

**BE IT FURTHER RESOLVED**, the Lancaster County Board of Supervisors requests that this road be hard surfaced and, to the fullest extent prudent, be improved within the existing right of way and ditch-lines to preserve as much as possible the adjacent trees, vegetation, side slopes, and rural rustic character along the road in their current state.

**BE IT FURTHER RESOLVED** that a certified copy of this resolution is forwarded to the Resident Engineer for the Virginia Department of Transportation.

VOTE:	Cundiff H. Simmons	Aye
	F. W. Jenkins, Jr.	Aye
	Donald O. Conaway	Aye
	B. Wally Beauchamp	Aye

Mr. Beauchamp made a motion to designate VSH 632/Indiantown Road a Rural Rustic Road in the following resolution:

## **ROUTE 632 - INDIANTOWN ROAD**

**WHEREAS**, during the 2002 session of the General Assembly, legislation was passed to revise §33.1-70.1 of the Code of Virginia, to allow for the improvement and hard surfacing of certain unpaved roads deemed to qualify for and be designated a Rural Rustic Road; and

**WHEREAS**, such roads must be located in a low-density development area and have a minimum of 50 vehicles per day (vpd) and have no more than 500 vpd; and

**WHEREAS**, this Board is unaware of pending development that will significantly affect the existing traffic on the road; and

**WHEREAS**, the citizens that utilize this road have been made aware of this road being paved with minimal improvements; and

**WHEREAS**, this Board believes Route 632 (Indiantown Road) should be designated a Rural Rustic Road, from 0.40 miles west of Route 222 to the End of State Maintenance owing to its qualifying characteristics; and

**WHEREAS**, the road aforesaid is in this Board's six-year plan for improvements to its secondary system of state highways.

**NOW, THEREFORE, BE IT RESOLVED**, the Lancaster County Board of Supervisors hereby designates and requests the Resident Engineer to concur in the aforesaid road as a Rural Rustic Road; and

**BE IT FURTHER RESOLVED**, the Lancaster County Board of Supervisors requests that this road be hard surfaced and, to the fullest extent prudent, be improved within the existing right of way and ditch-lines to preserve as much as possible the adjacent trees, vegetation, side slopes, and rural rustic character along the road in their current state; and

**BE IT FURTHER RESOLVED** that a certified copy of this resolution is forwarded to the Resident Engineer for the Virginia Department of Transportation.

VOTE:	Cundiff H. Simmons	Aye
	F. W. Jenkins, Jr.	Aye
	Donald O. Conaway	Aye
	B. Wally Beauchamp	Aye

Mr. Conaway made a motion to approve the Virginia Department of Transportation Six Year Plan for Improvements to the Secondary System of Highways for 2004-2005 through 2009-2010 and the Secondary Construction Budget for Fiscal Year 2004-2005 in the following resolution:

**SIX-YEAR PLAN 2004/2005 – 2009/2010**

**WHEREAS**, a public hearing was held at the regular monthly meeting of the Board of Supervisors of Lancaster County in the Courthouse at Lancaster, Virginia on October 30, 2003; and

**WHEREAS**, a joint public hearing was held by the Board of Supervisors and the Virginia Department of Transportation for the consideration of a Six-Year Plan For Improvements To The Secondary System of Highways for 2004-2005 through 2009-2010 and the Secondary Construction Budget for Fiscal Year 2004-2005.

**NOW THEREFORE BE IT RESOLVED**, that the Lancaster County Board of Supervisors approves the Six-Year Plan For Improvements To The Secondary System of Highways for 2004-2005 through 2009-2010 and the Secondary Construction Budget for Fiscal Year 2004-2005.

VOTE:	Cundiff H. Simmons	Aye
	F. W. Jenkins, Jr.	Aye
	Donald O. Conaway	Aye
	B. Wally Beauchamp	Aye

### Virginia Scenic Byway

Mr. Donald Shaklin stated he has a petition signed by 750 residents requesting that VSH 614/ Devil's Bottom Road be designated as a Virginia Scenic Byway. He said the residents do not want VDOT to use funds on the Devil's Bottom Road project.

Mr. Staton stated a Scenic Byway leads to scenes of natural beauty and places of historical and social significance. However, the wooden bridge will need to be replaced.

Mr. Conaway stated that Devil's Bottoms Road needs to be kept on the six year plan to protect the safety and welfare of the citizens of Lancaster County.

By consensus of the board, the county administrator will draft a resolution for consideration at the November 24, 2003 meeting to ask VDOT to designate Devil's Bottom Road as a scenic byway.

### Merry Point Ferry

Mr. Staton said Hurricane Isabel damage to the Merry Point ferry was extensive and it would be four or six months before the ferry reopens.

### Lively Caution Light

Mr. Jenkins asked how long it would be until the caution light is erected in Lively.

Mr. Staton stated it would probably be a year.

## PUBLIC HEARING

1. Update of Lancaster County Chesapeake Bay Preservation Ordinance – Mr. Larson presented the recommended update of the county’s Chesapeake Bay Preservation Ordinance to reflect changes in state regulations pertaining to local enforcement of the Chesapeake Bay Preservation Act. This draft ordinance has been recommended by the Planning Commission.

Mr. Larson stated this matter was removed from the public hearing agenda in September due to Hurricane Isabel. Since the September docket memorandum was written, additional efforts have been made to achieve some “middle ground” with CBLAD. The most recent effort was a meeting with Martha Little and Beth Baldwin, CBLAD representatives, Mr. Simmons and himself on October 16, 2003. The CBLAD representatives stated this issue would be referred to the Attorney General’s office if there was no resolution. The Talking Points from the October 16, 2003 meeting were as follows:

### Septic Systems

**CBLAD** – Pump out or inspection every five years  
**Lancaster County** – Correction of problem systems

### Accessory Structures

**CBLAD** – No new structures encroaching in 100’ buffer of RPA  
**Lancaster County** – Treated same as primary structure

### Degree of Encroachment for New Structures

**CBLAD** – *Minimum necessary* to achieve a *reasonable building site*  
**Lancaster County** – Based entirely on when lot was created (can encroach as close as 50’ to tidal wetlands if created prior to May 12, 1998 – can encroach as close as 75’ if lot created between May 12, 1988 and August 31, 1990 – no encroachment (no exceptions) on lots created on September 1, 1990 or after

### Administrative approval process vice formal exception (Board of Supervisors) for encroachment into 100’ buffer

- New structures:  
**CBLAD** – formal exception  
**Lancaster County** – administrative approval up to 50’ seaward – formal exception within 50’ seaward
  
- Additional impervious cover  
**CBLAD** – administrative approval – all – subject to minimum necessary and reasonableness determinations  
**Lancaster County** – same rules as for new structures

Mr. Larson said no compromises were reached. He does not believe Lancaster County can change its position to that required by CBLAD and still implement the ordinance consistently and within existing resources. For that reason, the draft ordinance remains unchanged. The Planning Commission is forwarding this draft ordinance recommending approval of the update.

Mr. Larson stated advertising as required by law has been conducted and to date there has been no public input.

Mr. Simmons made a motion to adopt the updated Chesapeake Bay Preservation Ordinance (attached) to reflect changes in state regulations pertaining to local enforcement of the Chesapeake Bay Preservation Act by amending 6.1, deletion of 4.5 and renumbering the ordinance.

VOTE:	Cundiff H. Simmons	Aye
	F. W. Jenkins, Jr.	Aye
	Donald O. Conaway	Aye
	B. Wally Beauchamp	Aye

**CONSENSUS DOCKET**

Motion was made by Mr. Jenkins to approve the Consensus Docket and recommendations as follows:

A. Minutes for August 28, 2003, September 25, 2003, and October 11, 2003

Recommendation: Approve each set of minutes.

B. VACo Annual Conference – Voting Credentials

Recommendation: Designate the County Administrator as the Lancaster County Board of Supervisors voting representative at the 2003 Virginia Association of Counties annual meeting.

VOTE:	Cundiff H. Simmons	Aye
	F. W. Jenkins, Jr.	Aye
	Donald O. Conaway	Aye
	B. Wally Beauchamp	Aye

**CONSIDERATION DOCKET**

The Board considered the following items on its Consideration Docket:

1. Approval of October 2003 Salaries and Invoice Listings

Motion was made by Mr. Conaway to approve the Salaries for October 2003 in the amount of \$148,769.66 and Invoice Listings for October 2003 in the amount of \$696,904.67.

VOTE:	Cundiff H. Simmons	Aye
	F. W. Jenkins, Jr.	Aye
	Donald O. Conaway	Aye
	B. Wally Beauchamp	Aye

2. Bids for Snow Removal Service Contract – Mr. Pennell stated James Revere put out an invitation to bid on snow and ice removal from all ingress/egress lanes, sidewalks and parking areas at the Lancaster Courthouse, Social Services/Health Department Building, Refuse Collection and Recycling Sites, Lancaster County Animal Shelter, and Parking Lot across from the Courthouse. Mr. Revere

received one bid for snow removal from Michael’s Turf & Landscaping Services Inc. at an hourly rate of \$48.00 per man and usually using two men.

By consensus of the board, bid for the snow removal service contract was tabled for additional details to be provided regarding the bid.

3. Planned Unit Development – Mr. Larson said recent rezoning applications have demonstrated the desirability of having a Planned Unit Development provision in the zoning ordinances.

Mr. Larson is requesting the Board of Supervisors approve forwarding this matter to the Planning commission. Given some of the issues with the Highbank rezoning request, the County Attorney has recommended that we consider providing for Planned Unit Developments (PUDs). His rationale is that requests like Highbank and the now withdrawn Bragg application are more appropriate as PUDs rather than rezoning to R-2, Residential, Apartment. The County Attorney has provided the board with a draft PUD ordinance and recommended this as a good starting point in developing one in Lancaster County.

Mr. Larson said he would like the Board of Supervisors to refer this matter to the Planning Commission for action by that body as appropriate.

Mr. Beauchamp made a motion to refer the Planned Unit Development matter to the Planning Commission.

VOTE:	Cundiff H. Simmons	Aye
	F.W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye

4. Amend Reassessment Contract with Blue Ridge Mass Appraisals – Mr. Pennell stated at the September 25, 2003 meeting of the Lancaster County Board of Supervisors, the members directed the county administrator to negotiate an amendment to the countywide appraisal contract extant with Blue Ridge Mass Appraisals for properties damaged or destroyed during Hurricane Isabel. A \$20.00 per parcel amendment for each property Blue Ridge Mass Appraisal has to visit and estimate the damage done by the Hurricane has been negotiated. Blue Ridge will not charge the county this fee if the Commissioner of the Revenue works some of the claims and merely informs Blue Ridge of the results.

Mr. Jenkins made a motion to Amend Reassessment Contract with Blue Ridge Mass Appraisals to add a \$20.00 per parcel fee for reappraised parcels as a result of damages caused during Hurricane Isabel and to authorize the county administrator to execute this contract amendment.

VOTE:	Cundiff H. Simmons	Aye
	F.W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye

5. Transfer Funds from Capital Improvement to General Fund – High School Roof Project - Mr. Pennell stated the Lancaster County Board of Supervisors directed that future expenditures from the Capital Improvement Account be specifically approved at a regular meeting of the Board of Supervisors.

Mr. Pennell said he has received the following request for payment from Dr. Latimore:

High School Roof, Brothers Construction	\$ 76,770.00
High School Roof, Mactac Engineering and Consulting	<u>6,200.00</u>
Total	<u>\$82,970.00</u>

Mr. Beauchamp made a motion to approve the expenditures and appropriate \$82,970.00 from the Capital Improvement Account to the General Fund to cover the expenses.

VOTE:	Cundiff H. Simmons	Aye
	F.W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye

6. Letter of Local Government Approval – The Department of Emergency Services has applied to the Virginia Office of Emergency Medical Services to establish the following agency: Lancaster County Emergency Medical Services. This agency will be a division of the Department of government approval for this agency to operate within the locality and provide Advance and Basic Life Support services to the county.

Mr. Simmons made a motion to approve this matter to meet the Virginia Office of Emergency Medical Services application requirements and authorize the County Administrator to execute the letter.

VOTE:	Cundiff H. Simmons	Aye
	F.W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye

## **BOARD REPORTS**

### **Biosolids**

Mr. Conaway stated he read an article whereas two men were sentenced for polluting the Rappahannock River at Christchurch School violating the Clean Water Act. The Board of Supervisors needs to start looking at this issue. The citizens in District 2 will be greatly affected by the dumping of sludge and/or biosolids according to the applications on file. He asked how the dumping of sludge and/or biosolids will affect people with shallow wells. He would like to know about increasing the buffer zone; the treatment processing; what are the long term effects; and who will monitor the dumping. He would like to know “what is safe?”

Mr. Larson stated there will be a public hearing at the regular Board of Supervisors November 24, 2003 meeting. He said this issue has been heard twice by the Planning Commission. The Planning Commission had a model ordinance developed by the Virginian Association of Counties and that was a draft ordinance that counties could use; however the problem is that we can not put any type of restriction or prohibition because the county is controlled by state law. Counsel has reviewed the Hanover and Brunswick Counties’ ordinance pertaining to biosolids that had some significant restrictions. At the October Planning Commission meeting both model ordinances were presented and there were seven additional requirements or prohibitions which would do a better job at protecting the citizens of the county. This is allowed only in agricultural zoned districts.

## **APPOINTMENTS**

### **NN-MP Community Services Board**

Mr. Jenkins made a motion to reappoint Alice Coates to the NN-MP Community Services Board as Lancaster County's representative for a three-year term expiring on December 31, 2006.

VOTE:	Cundiff H. Simmons	Aye
	F.W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye

Planning Commission

Mr. Simmons made a motion to appoint Jack S. Russell to the Lancaster County Planning Commission as a representative for District 4 for a four-year term expiring on October 30, 2007.

VOTE:	Cundiff H. Simmons	Aye
	F.W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye

Board of Equalization

Mr. Beauchamp made a motion to appoint Jack Fitzpatrick to the Lancaster County Board of Equalization of real estate assessments.

VOTE:	Cundiff H. Simmons	Aye
	F.W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye

## COUNTY ADMINISTRATOR

Mr. Pennell said he received a letter from the Deputy Director of DHCD and they are in the process of reviewing current planning district boundaries. He would like to have permission of the Board of Supervisors to send a letter to the Department of Housing and Community Development that the Northern Neck Planning District Commission is correctly configured.

Agreed to by consensus.

### FEMA 404 Program

Mr. Pennell stated there a competitive program of migration through FEMA called 404 Program in which a certain percent of the amount of money that was spend to recover from Hurricane Isabel is put into a pool, that can be use for public and private proposes. He would to have the Board of Supervisors permission to advertise to if anyone living in low land areas in a flood zone, who would be interested in filling out an application. The total cost of elevating they house out of the flood zone properly the federal government would pick up 75% and of the remaining 25% there is a belief the that state will pick up 20% and leaving the home owner with 5%.

By consensus of the board, the county administrator will advertise to see if there are any interested home owners for the FEMA 404 Program.

### WKWI Agreement

Mr. Pennell said he, Mr. Beauchamp and Sheriff Crockett has been trying to do a number of thing to help in the future with emergency services. One of the biggest concerns was not have WKWI on the air. He has talked to the county attorney and it is not appropriate for the county to spend money to put generators on private property. They have come up with a plan that can accomplish this and not at the public expense.

The county will be putting in a fire/rescue repeater at WKWI, which will be housed in a small building being donated by Brook Hill Communication to Lancaster County. The same thing will be done for White Stone and Litwalton. WKWI has been charging the county \$200.00 per month to keep the Sheriff's repeater and the cost would have been increased to \$250.00 plus \$100.00 for the fire/rescue repeater for a total of \$350.00 per month. They would like to use the \$350.00 per month as credit toward the purchase of a 20 kilowatt generator fully installed at \$16,500 + \$750 to get 500 gallon propane tank and necessary hook up.

Mr. Pennell said that Lancaster County and WKWI would enter a five year agreement. He stated he does not have a contract written, however; he has talked to James Cornwell, County Attorney to have this contract written and executed.

Mr. Beauchamp made a motion to have the County Administrator and County Attorney draft the following contract and have the county administrator to execute the contract.

This Agreement executed this 10<sup>th</sup> day of October, 2003, by and between the **BOARD OF SUPERVISORS OF THE COUNTY OF LANCASTER, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, (the "County"), and **BUFFALO BROADCASTERS, INC., D/B/A WKWI-FM and RADIO THREE PARTNERS**, Post Office Box 819, Kilmarnock, Virginia, 22482, ("WKWI").

**WHEREAS**, the County has determined that a need exists to ensure continuous and uninterrupted communications for its residents and its emergency services; and,

**WHEREAS**, the County has determined that placing antennae on an existing communications tower and providing a generator for power to the same within the County of Lancaster would further protect the health, safety, and welfare of the citizens; and,

**WHEREAS**, WKWI, owns real property within the County of Lancaster on which is located an existing communications tower suitable for the needs of the County; and,

**WHEREAS**, WKWI has indicated its desire to lease existing tower space and a portion of real property to the Board for the location of such antennae and communications equipment and to pay the County for the provision of the generator under a lease/purchase arrangement.

WITNESSETH

**NOW THEREFORE**, for and in consideration of the mutual promises contemplated hereby and for other good and valuable consideration, receipt of which is hereby acknowledged, the County and WKWI do agree as follows:

**1. Provision of Tower Space**

WKWI does hereby agree to lease to the County tower space sufficient for the location of two VHF High Band Antennae (the “Antennae”) at WKWI’s existing communications tower located at 101 Radio Road, Kilmarnock, Virginia (the “Tower”). The County acknowledges that one antenna is already located on the Tower and that another VHF High Band antenna is to be provided by the County to be located in a position on the Tower suitable to meet the needs of the County.

**2. Communications Shelter and Generator**

WKWI agrees to permit the County to construct upon the Tower property a communication shelter (the “Shelter”) to provide for the operation of the Antennae. Said Shelter shall be located on the property in an area suitable to both parties and in sufficient proximity to the Tower to allow the operation of the County Antennae.

WKWI also agrees to permit the County to locate upon its real property a generator of sufficient size and design to operate the communications equipment contemplated herein in the event of electrical service failure (the “Generator”). WKWI agrees to allow the Generator to be connected to its electrical system to provide uninterrupted electrical service to WKWI and the County’s communication equipment in the event of a power failure.

### **3. Term**

This Agreement shall have an initial term of five (5) years from the date of this Agreement (the “Initial Term”). The Agreement will be automatically extended at the end of the Initial Term for an extended term of five (5) years (the “Extended Term”). In the event that the County wishes not to extend the term of this Agreement, notice of termination shall be sent to WKWI at any time prior to the end of the Initial Term of the Agreement.

### **4. Lease of Generator and Rent**

WKWI agrees to lease from the County the Generator that is to be installed by the County at the rate of \$350 per month during the Initial Term. At the end of the Initial Term, the Generator shall be the property of WKWI without further consideration.

The County and WKWI agree that the monthly rent for the Initial Term for the provision of space on the Tower for the second (Fire/Rescue) antenna and the site for the Shelter shall equal the monthly amount that WKWI will pay for the lease of the Generator. As these amounts are equal, no monetary compensation will be mailed to either party, except as may be otherwise indicated herein or as the same may be needed for accounting purposes. The monthly rent for the Extended Term

for the provision of space on the Tower and the Shelter shall be at the rate of \$350 per month paid by the County to WKWI.

The current monthly rent for the first (Sheriff) antenna located on the tower is and shall remain \$200 per month for the initial and extended term of this agreement.

## **5. Notices**

Any notice required to be sent under this Agreement are to be sent to the following addresses:

County of Lancaster  
c/o William H. Pennell, Jr., County Administrator  
8311 Mary Ball Road  
Lancaster, Virginia 22503

WKWI  
c/o Joe W. Patton, General Manager  
Post Office Box 819  
Kilmarnock, Virginia 22482

## **6. Insurance**

Each party agrees to maintain adequate insurance sufficient to protect its respective interest in the property referenced herein. The County shall maintain insurance sufficient to protect its interest in the Antennae, the Shelter, and the Generator. WKWI agrees to maintain property and liability insurance for the property where the Tower, the Shelter, and the Generator will be located.

## **7. Termination**

The County shall have the option to terminate this Agreement at any time. Said termination shall be effective upon the County mailing notice of termination to WKWI to the address listed herein. Upon termination during the Initial Term, WKWI shall have the right to purchase the Generator for the balance remaining pursuant to Section 4 hereof, to be paid in one (1) lump payment.

#### **8. Public Service Announcements**

During the Initial or Extended term, in the event of flood, fire, hurricane, tornado, or other event that may present a danger to property or persons within the County of Lancaster or at such times as the County may request through its county administrator, WKWI agrees to provide employees to broadcast information to its listeners that will assist the County in transmitting advice, information and warnings to its residents to maintain public safety.

#### **9. Inspection and Maintenance**

WKWI agrees to ensure the Generator remains in proper working condition during the Initial and Extended Term and to provide weekly inspections thereof to ensure that it is in proper working order and ready to operate in the event of power failure. Said inspections are to be conducted by a competent individual with the requisite knowledge and certifications to make such inspections. All inspections performed shall be documented indicating the date of the inspection, name of the inspector and any deficiencies discovered during the inspection.

The County has the right to inspect the Tower, the Antennae, the Shelter and the Generator at any time and shall have the right to come upon the property of WKWI to make inspection of the Tower, the Antennae, the Shelter or the Generator. The County may also request and WKWI agrees to provide records of any inspections made by WKWI or its agents.

**10. Further Assurances**

The parties hereby covenant that they have the power and authority to enter into this Agreement and bind themselves to the terms of this Agreement. The parties agree to execute, complete, or file such other documents or take such actions as may be necessary or reasonably requested by the other party to effectuate the purpose of this Agreement. It is hereby acknowledged that the real estate upon which the Antennae and Shelter are to be located is owned in the name of Radio Three Partners, a Virginia Partnership, and a subsidiary of WKWI.

**11. Choice of Law, Jurisdiction, and Venue**

The terms of this contract and any interpretation thereof shall be construed pursuant to the laws of the Commonwealth of Virginia.

The parties hereto agree that jurisdiction and venue shall only be proper in the courts of Lancaster County, Virginia.

**12. Severability**

Should any provision in this Agreement be held unconstitutional, unlawful, invalid, or unenforceable, such provision shall be stricken from this Agreement and the remaining provisions shall continue in full force and effect and shall not be affected by the stricken provisions.

**13. Assignment**

This Agreement may be assigned by either party. It is the understanding of the County that WKWI intends to sell a portion of its operation. Upon such transfer, this agreement will be assigned to the new purchaser of WKWI. The subsequent purchaser assumes all rights, responsibilities and obligations of WKWI hereunder.

VOTE: Cundiff H. Simmons Aye  
F. W. Jenkins, Jr. Aye  
B. Wally Beauchamp Aye  
Donald O. Conaway Aye

R. L. Self Wood Yard

Mr. Pennell stated that Ronnie Self signed a contract to take wood waste from county citizens and eighteen days later Hurricane Isabel hit. He is currently working with Ronnie Selph and FEMA. FEMA will not reimburse Mr. Self, but will reimburse the county.

Mr. Pennell would like the Board of Supervisors to approve the advancement of \$50,000 to Mr. Self which is money the county will receive from FEMA.

Mr. Simmons made a motion to approve the advancement of \$50,000 to Ronnie Self.

VOTE: Cundiff H. Simmons Aye  
F. W. Jenkins, Jr. Aye  
B. Wally Beauchamp Aye  
Donald O. Conaway Abstain

**ADJOURNMENT**

Motion was made by Mr. Beauchamp to adjourn.

VOTE:	Cundiff H. Simmons	Aye
	F. W. Jenkins, Jr.	Aye
	B. Wally Beauchamp	Aye
	Donald O. Conaway	Aye