

CLARKE COUNTY BOARD OF SUPERVISORS  
January 20, 2009      Regular Meeting      1:00 p.m.  
Main Meeting Room

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held in the Main Meeting Room, 2<sup>nd</sup> Floor Berryville Clarke County Joint Government Center, 101 Chalmers Court, 2<sup>nd</sup> Floor, Berryville, Virginia on Tuesday, January 20, 2009.

Board Members Present

Barbara Byrd; A. R. Dunning, Jr.; J. Michael Hobert; John Staelin; David Weiss

Staff Present

David Ash, Chuck Johnston, Alison Teetor, Lora Walburn

Others Present

Dr. Michael Murphy, Robina Rich Bouffault, Dexter Odin, Keith Dalton, Dave Tyrell, Laura Oleniacz, Dennis Cox and other citizens

Call to Order

Chairman Staelin called the meeting to order at 1:00 p.m.

Adoption of Agenda

**Vice Chairman Hobert moved to approve the agenda as modified:**

- **Miscellaneous:**
  - o **General Assembly Updates**

**The motion carried by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Absent

Supervisor Weiss joined the Supervisors at 1:06 p.m.

#### Clarke County Public Schools Update

Dr. Michael Murphy appeared before the Supervisors to provide the monthly update for the Clarke County Public Schools. Highlights include:

- The Schools are busy with the winter schedule.
- The Superintendent is working with staff on FY10 budget that includes revenue enhancements, possible increased class sizes and a variety of budget cuts.
- The Superintendent noted that School employees are not expecting a pay raise.
- The Technology Services Administrator has been hired and will begin next week.
- The School Board has add a student representative to the Board as a non-voting member.
- High school construction meetings are being conducted to discuss education specifications, building design and educational program requirements.
- Supervisor Dunning queried Dr. Murphy regarding:
  - o Removal of citizen members from the construction committee.
    - Dr. Murphy stated that while Mr. Everly was technically off the construction committee, he had attended both construction committee meetings. Dr. Murphy opined that Mr. Everly had great qualifications and ability. He expressed his concern with making a citizen a point of contact for a \$28 million project budget. He stated that it was the supervision of the project not the oversight that was at issue. Dr. Murphy asserted that the School Board had selected Ed Breslaur as the contact person however Mr. Breslauer has recused himself. Therefore, the School Board is still in the process of selecting a contact person.
    - Dr. Murphy said that the Schools had many forums where citizens could participate including committees. He opined that even with the opportunities presented there was not a great deal of citizen involvement noting that only nine citizens participated in the five School committees. He said that he was working on a process that would include all citizens.
    - Supervisor Dunning stated that it was imperative to place qualified tax payers on School committees.
    - Supervisor Byrd stated that she did not believe in bringing people in just for the sake of adding community members. She asked Dr. Murphy to look for persons with expertise in the subject matter.
  - o Lack of openness.
    - Supervisor Dunning said that in these tough economic times it is important that the Schools be totally open with the people of this County. He opined that the new

administration appeared to be setting a trend toward secrecy. He stated that everyone wanted to see Dr. Murphy prosper, as well as the Schools. He asked for more cohesiveness and better circulation of information.

- Supervisor Byrd contributed that in the first ten months with the new School Board construction was moving forward, committees were put in place, and the process was opened up. She opined that recent actions have caused concern for she and her constituents. She asked Dr. Murphy to improve communication, to keep government transparent and open to the public.
- Dr. Murphy expressed his belief about conducting government in the open. He advised that toward that end the Schools were developing a strategic planning initiative.
- Illegal meetings.
  - Dr. Murphy asserted that he was unaware of any illegal meetings. He challenged the Supervisors to identify and bring forward any illegality.
- Construction changes that would add an additional \$500,000 to the budget.
  - Dr. Murphy qualified himself regarding his previous experience with school construction projects.
  - Dr. Murphy stated that it was his desire to make the new high school the most dynamic and viable facility for the citizens of Clarke County. He put forth his concerns regarding the current high school design:
    - Gym design was not adequate for playing regional tournament basketball.
    - A more flexible facility is needed. He noted that it was his prerogative and responsibility to suggest flexible uses.
    - An 800-seat auditorium is desirable but it would not be used that often speculating that it would only be used 20% of the time.
    - Inadequate number of toilets. He said that he had been told the number meets Code but he did not believe the number was sufficient for events.
    - He reminded everyone that the “base” school design was for a “middle school core not a high school core.”
    - He pointed out there was only one locker room in the green core noting that if there were a competing team it would have to use the boys or girls locker rooms in the blue core.
  - Dr. Murphy opined that construction of the high school would be a three-year process.
  - Robina Rich Bouffault put forth concerns as well. She stated that Dr. Murphy was an integral part of negotiations with Crabtree. She stated that at this point if changes were made they would lose any savings gained by using a pre-constructed.

- There was lengthy discussion on road issues. Dr. Murphy advised that the School Board was meeting at 5:30 and hoped to move forward on this issue.
- The Schools did send a letter to the Town of Berryville Planning Commission about preference for a special use permit.
- Supervisor Weiss expressed his hope that the Schools would provide to the Town a right-of-way for Mosby. Robina Rich Bouffault, White Post School Board representative, stated that the Board had not made a formal decision on this matter.
- Robina Rich Bouffault stated that VDOT would be providing sketches to the School Board for review and comment. She advised that a submission of a site plan or sketch plan would not be ready within three or four months.
- Withholding of information from Board members, as well as not providing information prior to Board meetings.
  - Robina Rich Bouffault put forth that the Superintendent had recently failed to provide School Board members with attorney/client correspondence addressed to Janet Alger, School Board Chair, but sent to the Superintendent. She noted that School Board members were listed as recipients of on this letter. Dr. Murphy stated that he felt strongly that it was not appropriate to release the document to School Board members. Further, he had been instructed by the School Board Chair to withhold the information from the rest of the School Board until their scheduled meeting.
  - Supervisor Weiss stated that he had no desire to come between the School Board and the Superintendent. Supervisor Dunning concurred.

## Consent Agenda

Authorization to Execute for and On Behalf of the County of Clarke Any Actions Necessary for the Purpose of Obtaining Federal Financial Assistance Provided by the Federal Department of Homeland Security and Sub-granted Through the State of Virginia

David Ash presented the proposed resolution.

**Supervisor Dunning moved to accept the item on the Consent Agenda adding David Ash as agent with John Staelin, Chair, as alternate.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	- Aye
J. Michael Hobert, Vice Chair	- Aye
Barbara J. Byrd	- Aye
A.R. Dunning, Jr.	- Aye

David S. Weiss - Aye

Authorization to Execute for and On Behalf of the County of Clarke Any Actions Necessary for the Purpose of Obtaining Federal Financial Assistance Provided by the Federal Department of Homeland Security and Sub-granted Through the State of Virginia  
09-02R

BE IT RESOLVED BY THE Board of Supervisors of the County of Clarke, Virginia that David L. Ash, County Administrator, or John Staelin, Chair - Clarke County Board of Supervisors, is hereby authorized to execute for and on behalf of the named applicant, a public entity established under the laws of the State of Virginia, any actions necessary for the purpose of obtaining federal financial assistance provided by the federal Department of Homeland Security and sub-granted through the State of Virginia.

Passed and approved this 20<sup>th</sup> day of January, 2009.

Certification

I, David L. Ash, duly appointed and Clerk of the Clarke County Board of Supervisors do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Board of Supervisors of the County of Clarke, Virginia on the 20<sup>th</sup> day of January 2009.

\_\_\_\_\_  
David L. Ash, Clerk Clarke County Board of Supervisors

\_\_\_\_\_  
Date

Citizens Comment Period

No persons appeared to address the Supervisors.

VDOT

Jeff Lineberry, accompanied by Bob Childress and Charlie Monroe, provided the monthly update.

- Brush cutting operations are in process.
- Preparing to respond to situations caused by inclement weather
- VDOT personnel out to mitigate any issues with inaugural traffic.
- Maintenance budget has been cut by 12% coming out of pipe replacements, specific tasks, local budgets. It could mean less grading or elimination of dust control on unpaved roads.
- The details of adjustments to the Secondary Six-Year Plan are under discussion.

- Jeff Lineberry will verify the speed limit on Raven Rock and will provide the answer to Supervisor Weiss.
- Jeff Lineberry advised Supervisor Byrd that VDOT was awaiting delivery of the signage for Crums Church Road.
- Charlie Monroe advised Supervisor Byrd that VDOT has made temporary patches on potholes on Westwood Road until better weather allows more permanent solutions.
- Supervisor Byrd said Charlie Kackley has suggested a guardrail by Gusfaffsen. Jeff Lineberry stated that the problem was the cross over, which needs to be closed due to the accidents.

#### Update Calmes Neck Intersection Issue Bond

Jeff Lineberry advised that they were still in the same position and would encourage the County to work with the developer. Jesse Russell said that he has recently met with the contractor, who is uncertain as to what the total amount bonded was meant to cover; and further, what, if anything, the County could do as to enforcement.

Jeff Lineberry provided an overview of the typical bonding process. He noted that this bonding was with VDOT for work to be performed in the right of way.

#### Update Salem Church Road Rock Issue

The item was carried forward to the February 2009 regular meeting.

#### **Continued Public Hearing PH 09-01**

Special Use Request The Town of Berryville requests approval of a Special Use and Site Plan for a Public Utility Facility (outfall line for treated effluent) located generally on the south side of the public right of way for Harry Byrd Highway (Virginia Route 7) from the Berryville Waste Water Treatment Plant (362 Parshall Road) to the Shenandoah River (approximately 800 feet south of the Robert W. Smalley Sr. Bridge at Castleman's Ferry, [Route 7 bridge]), through Tax Map Parcels 15-((A))-8, 11, 13, 17C, 18, 20, 21; 15-((3))-8; 16-((A))-33, 36, 36A, 39, all located in Battletown Magisterial District, zoned Agricultural-Open-Space-Conservation (AOC). SUP-08-02 (aka SUP-04-01)

Chuck Johnston affirmed the request made by VOF to delay action on the matter until agreement can be reached between them and the Town.

**Supervisor Dunning moved to continue the matter of SUP-08-02.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Abstain
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Aye

**Supervisor Dunning moved to accept the changes made to the resolution as set forth during the January 16, 2009 meeting and with a further change to paragraph 14 changing from "will" to "might".**

**The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Abstain
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Aye

RESOLUTION OF THE BOARD OF SUPERVISORS OF CLARKE COUNTY UPHOLDING  
DETERMINATION OF ITS PLANNING COMMISSION ON APPEAL  
09-01R

WHEREAS, the Planning Commission of Clarke County at its meeting on November 7, 2008, determined pursuant to Section 15.2-2232 of the Virginia Code that a proposed sewage line from the Town of Berryville to the Shenandoah River was in substantial accord with the 2007 Clarke County Comprehensive Plan provided that the owners of the properties under Virginia Outdoors Foundation ("VOF") open space easement, identified as Tax Map Parcels 15-A-8 and 16-A-39, the Town of Berryville, and the Virginia Outdoors Foundation agree to the location of the proposed outfall line; and,

WHEREAS, the Town of Berryville filed an appeal of such decision by a letter dated November 15, 2008 and received by the Town November 17, 2008; and,

WHEREAS, the Board of Supervisors, upon proper notice and proper advertising, held a public hearing on the appeal on January 16, 2009; and,

WHEREAS, the 2007 Clarke County Comprehensive Plan calls for the preservation of farmland, riparian buffers and open space and the Board of Supervisors believes that one of the best ways of preserving these three items is through the use of permanent conservation easements; and,

WHEREAS, permanent conservation and open space easements have become an extremely important component of the County's Comprehensive Plan as 18% of the County is covered by an easement; and,

WHEREAS, the Clarke County Board of Supervisors believes that the landowners who have donated easements or who own land in easement expect their easements to be enforced; and,

WHEREAS, the Board of Supervisors believes that a violation of or lax enforcement of any single easement by any easement holder would run counter to the 2007 Clarke County Comprehensive Plan because any such lax enforcement would weaken all remaining easements in the County and thus lessen the County's ability to protect its scenic and environmental resources (open space, riparian buffers, forest land, etc) as called for in the Plan; and,

WHEREAS, the Clarke County Board of Supervisors believes that landowner confidence in the Commonwealth's and the County's easement programs would be severely diminished if there is any indication that easements will not be strictly enforced and that any action leading to such loss in confidence would reduce the number of people willing to put their land in easement and thus run counter to the 2007 Clarke County Comprehensive Plan; and,

WHEREAS, the 2007 Clarke County Comprehensive Plan designates the Town of Berryville as the growth area for the County; and,

WHEREAS, Berryville cannot serve its role as a growth area unless it expands its sewer capacity; and,

WHEREAS, the 2007 Clarke County Comprehensive Plan calls for improving the water quality of the streams and rivers flowing through the County; and,

WHEREAS, the proposed new Berryville Wastewater Treatment Plant will improve the quality of effluent entering the Shenandoah River; and,

WHEREAS, the 2007 Clarke County Comprehensive Plan calls for preserving agriculture; and,

WHEREAS, the treated effluent from the Berryville Wastewater Plant will be piped through farmland and farmers might be able to tap into the pipe to access "free" water suitable for irrigation; and,

WHEREAS, the Town of Berryville, in a letter dated March 14, 2008 to VOF stated that there are alternatives to the route for the proposed utility facility; and,

WHEREAS, the VOF is responsible for determining whether there are feasible alternatives to the route that would eliminate or reduce the negative impacts of the proposed utility facility on open space easements, pursuant to Section 10.1-1704 of the Virginia Code; and,

WHEREAS, on December 16, 2008 staff members of VOF and the Attorney General's Office told the Clarke County Board of Supervisors that their organizations have a long and consistent history of strictly enforcing Section 10.1-1704 and the easements VOF holds; and,

WHEREAS, the Clarke County Board of Supervisors has been asked to determine whether the proposed utility facility is in substantial compliance with the 2007 Clarke County Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED, that the Clarke County Board of Supervisors expects VOF and the Attorney General's Office to continue to strictly enforce Section 10.1-1704 of the Virginia Code and the open space easements VOF holds in Clarke County.



FURTHER, BE IT RESOLVED, that because the Clarke County Board of Supervisors has been assured that VOF has, and will continue to enforce both the easements it holds and the laws of the Commonwealth, the Clarke County Board of Supervisors hereby determines that the proposed utility facility is in substantial conformance with the 2007 Clarke County Comprehensive Plan.

MOTION MADE: Supervisor David S. Weiss

VOTING

In favor: A.R. Dunning, Jr.; John Staelin; David S. Weiss

Opposed: Barbara Byrd

Absent: J. Michael Hobert

ADOPTED 16<sup>th</sup> day of January 2009

Attest:

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David L. Ash, Clerk  
Clarke County Board of Supervisors

#### Set Public Hearing CC-09-01

The Clarke County Board of Supervisors will consider the amendment of Clarke County Code, Chapter 120, Noise, so as to delete the current text in its entirety and adopt new text so as to update and clarify these provisions.

Chuck Johnston and Jesse Russell appeared before the Supervisors to review the proposed amendment, as well as to answer questions posed by the Board.

**Supervisor Dunning moved to set the matter for public hearing at 6:30 pm on Tuesday, February 17, 2009 or as soon thereafter as the matter might be heard.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Aye

#### Set Public Hearing CC-09-02

The Clarke County Board of Supervisors will consider the amendment of Clarke County Code, Chapter

57, Special Events:

§57-2, Definitions, so as to change the definition of Special Events to include activities that occur 10 or more times in a calendar year,

§57-3, Permit Required, and §57-4, Application for Permit, so as to clarify the requirements for a permit and the criteria for a permit application, and

§57-6, Action on Applications, so as to allow the Board of Supervisors and the County Administrator to approve any number of Special Events for multiple years at the same location.

Chuck Johnston reviewed the proposed amendment to Chapter 57, which he advised was parallel to the recent re-adoption of this chapter.

Following discussion, **Supervisor Weiss moved to set the matter, as presented, for public hearing at 6:30 pm on Tuesday, February 17, 2009 or as soon thereafter as the matter might be heard.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Absent
David S. Weiss	-	Aye

Supervisor Dunning left the room at 2:50 p.m.

#### Set Public Hearing TA-08-09

The Clarke County Planning Commission recommends the amendment of:

The County Zoning Ordinance:

Section 4-K-4-b-5, Change to Another Nonconforming Use, so as to replace the Board of Zoning Appeals with the Board of Supervisors as the entity that decides whether a nonconforming use can be replaced with another nonconforming use;

Section 4-K-6, Uses Eligible for Special Use Permits Not Nonconforming Uses, so as to delete this section;

Section 5-B, Special Use Permit Procedures, so as to state: "A property shall be deemed to have been granted a special use permit for a use if, at the time of the adoption of the ordinance provision permitting that use in the zoning district as a special use, the use was either a permitted use in the district or a legal nonconforming use."

Section 5-D, Special Use Permit Amendment, so as to state: "A property which has been granted a special use permit for a use, or a property which is deemed to have been granted a special use

permit for a use pursuant to section 5-B-5, shall be required to apply for an amended special use permit in the event the use is enlarged or expanded;" and "The procedures for applying for an amended special use permit shall be the same procedures as for special use permit applications as set forth in Section 5-B;"

Section 6-E, Site Plan Procedures, so as to state in part: "A Site Plan shall become null and void if it is not submitted, in a form complying with all conditions established by the Planning Commission, to the Planning Commission Chair and Zoning Administrator for signature within six months from the date of approval by the Planning Commission..." and to state in part that "An approved final site plan shall be valid for not more than five years, if a final certificate of occupancy has not been issued for the structures shown on the Site Plan..."

The County Subdivision Ordinance:

Section 1-C-1, Recordation of Plats, so as to add, to the section that now says: "A Record Plat shall become null and void if it is not submitted to the Clerk of the Circuit Court of Clarke County for recordation within six months from the date evidencing approval by the Planning Commission.", provisions that allows the Planning Commission to grant an additional six months to record a plat and that allows one year (or more if approved by the Planning Commission) for plat recordation when construction of proposed public facilities has commenced or has been bonded.

Supervisor Dunning rejoined the meeting at 2:59 pm

Chuck Johnston reviewed the proposed changes to Zoning and Subdivision Ordinances. He advised that Robert Mitchell, County Attorney, had provided legal review.

Subsequent to review, it was agreed to add under 6-E review by the Supervisors and add to 5-B text to state that a use that becomes a Special Use by a text amendment shall submit a site plan of the use and that references to action by the Planning Commission and Commission Chair also include references to the Board of Supervisors and Board Chair as the Board acts on Site Plans associated with Special Use applications.

**Supervisor Byrd moved to set the matter, as modified, for public hearing at 6:30 pm on Tuesday, February 17, 2009 or as soon thereafter as the matter might be heard.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Aye

Energy Management Update

Alison Teetor, Energy Management Coordinator, while unable to attend the regular meeting, did provide the Supervisors with a written update on the Energy Management program that included a \$750 funding request for programmable thermostats.

Following discussion, by consensus, the Supervisor instructed David Ash to work with staff on the proposed green initiatives.

## Committee Action

### Personnel

#### *Appointment to Authorities, Boards and Commissions*

<i>Committee/Board</i>	<i>Appointee</i>	<i>Expiration Date</i>
Board of Zoning Appeals <i>Mr. Borel is recommended for re-appointment to serve an additional five-year term subsequent to approval by the Clarke County Circuit Court.</i>	Alain Borel	2/12/2014
Board of Zoning Appeals <i>Ms. Volk is recommended for re-appointment to serve an additional five-year term subsequent to approval by the Clarke County Circuit Court.</i>	Laurie Volk	2/12/2014

**Supervisor Dunning moved to approve the appointment as presented.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Aye

### Work Session

#### *1. Board of Supervisors Organizational Meeting*

David Ash advised that minutes for the Organizational Meeting would be presented for review with the February packet.

2. *Discussion: Draft Economic Development Report*

Chairman Staelin encouraged the Supervisor to review the report if they had not already. Vice Chairman Hobert advised that the Industrial Development Authority had met and provided input. He also told the Board that there was a scheduling issue with the January 28 Economic Development Advisory Committee.

Finance Committee

1. *Budget Calendar Review*

The meeting on February 19 will be held in the Board of Supervisors Meeting Room.

2. *Supplemental Instructions for FY 2010 Agency/Departmental Budget Requests*

David Ash briefly reviewed the draft memorandum to staff regarding the FY2010 budget.

**Vice Chairman Hobert moved adopt the budget calendar as modified and the letter to departments and agencies re FY2010 budget.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Aye

Use of Funding for Salary Increases

To: Certain Departments and Agencies

From: The Clarke County Board of Supervisors

Date: January 20, 2009

The Governor's proposed budget amendments for the current and next fiscal years include no funding for salary increases. Some employees have received no increase since December 2007, and under the Governor's budget, may not receive Commonwealth support for salary increases until the next biennium.

In the past, the Clarke County Board of Supervisors has supplemented state salaries to ensure equity among agencies, and to ensure fair compensation, even when Commonwealth

funding was inadequate. Local funds were prioritized to accomplish this, but with local revenue projected to be less, and no additional funds from the Commonwealth, the Board of Supervisors is unable to provide funding for salary increases in the FY 10 fiscal year.

In an effort to maintain salary equity among the agencies we fund, we ask that budget requests this year not include proposed salary increases, and that agencies with separate authority for establishing salary levels make any change for FY 10 parallel with changes made by the Board of Supervisors. This should ensure that equity among agencies is maintained until the Board can return to a pattern of annual increases.

Your effort and patience during these times of scarcity is appreciated.

## Bills And Claims

**Vice Chairman Hobert moved to accept the report for the December 2008 General Government Bills and Claims.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Aye

## Berryville Clarke County Joint Government Center Update

David Weiss advised that a meeting with the architect and the contractor is scheduled for Friday, January 23.

Following discussion of the various outstanding issues with the construction, **Vice Chairman Hobert moved to convene into Closed Session pursuant to Section §2.2.3711- A7 of the Code of Virginia to discuss probable litigation and contract negotiations. The motion was approved by the following vote:**

John R. Staelin, Chair	-	Aye
J. Michael Hobert, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
David S. Weiss	-	Aye

The members of the Board of Supervisors being assembled within the designated meeting place, with open doors and in the presence of members of the public and/or the media desiring

to attend, **Supervisor Byrd moved to reconvene in open session. The motion carried as follows:**

John R. Staelin, Chair	- Aye
J. Michael Hobert, Vice Chair	- Aye
Barbara J. Byrd	- Aye
A.R. Dunning, Jr.	- Aye
David S. Weiss	- Aye

**Supervisor Byrd moved to execute the following Certification of Closed Session:**

#### CERTIFICATION OF CLOSED SESSION

WHEREAS, the Board of Supervisors of the County of Clarke, Virginia, has convened a closed meeting on the date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3700 of the Code of Virginia requires a certification by the Board of Supervisors of the County of Clarke, Virginia that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE BE IT RESOLVED, that the Board of Supervisors of the County of Clarke, Virginia, hereby certifies that, to the best of each members knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which the certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board of Supervisors of the County of Clarke, Virginia.

**The motion was approved by the following roll-call vote:**

John R. Staelin, Chair	- Aye
J. Michael Hobert, Vice Chair	- Aye
Barbara J. Byrd	- Aye
A.R. Dunning, Jr.	- Aye
David S. Weiss	- Aye

No action was taken on matters discussed in closed session.

#### Miscellaneous

##### General Assembly Updates

Chairman Staelin and Vicechairman Hobert advised that the state budget continues to dominate the discussion with a additional cuts from \$300 to \$500 million expected.

The Supervisors were advised that legislation has been put forth that would limit counties on approval of alternate on-site sewage systems.

Chairman Staelin instructed staff to ensure that Resolution No. 08-29R VACo Resolution regarding the Commonwealth's FY 2009-2010 Budget Shortfall was forwarded to the County's legislative representatives.

#### Summary Of Required Action

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Execute and forward to the Sheriff's Office 09-02R.	David Ash
2.	Add updates on Calmes Neck Salem Church Road rock issue to the February agenda.	David Ash
3.	Add continued discussion on SUP-08-02 to the February agenda.	David Ash
4.	Advertise for public hearing and add to the February agenda: CC-09-01, CC-09-02 and TA-08-09 – as modified.	Lora Walburn
5.	Revise TA-08-09 as instructed.	Chuck Johnston
6.	Provide notice of appointment and update database.	Lora Walburn
7.	Add to the County website the FY10 Budget Calendar meeting schedule, as modified.	Lora Walburn
8.	Send memo regarding pay increases to those agencies funded by the County..	David Ash
9.	Speak with Bobby Levi regarding soundproofing in the Closed Session Room at the joint facility.	David Ash
10.	Discuss with the Sheriff the dog issue raised by Supervisor Dunning.	David Ash
11.	Check to ensure VACo resolution [get number and title] was forwarded to Clarke County's legislative representatives.	Lora Walburn
12.	Investigate Property Tax Rates on Page 110 of the FY08 Financial Report.	Tom Judge
13.	Update County Code with CC-08-05.	Lora Walburn
14.	Revise TA-08-08 as instructed.	Chuck Johnston

At 4:11 pm Chairman Staelin recessed the meeting until 6:30 pm.

At 6:30 pm Chairman Staelin reconvened the meeting.



Due to scheduling conflict, Supervisors Dunning and Hobert were unable to attend the evening session.

#### Citizens Comment Period

No citizens appeared to address the Supervisors.

#### Annual Financial Report by Robinson Farmer Cox

Matt McLearen, Robinson, Farmer, Cox Associates, provided an overview of the audit report distributed at the meeting titled *Financial Report Year Ended June 30, 2008* prepared for the County of Clarke, Virginia by Robinson, Farmer, Cox. Highlights of the presentation include:

- No problems found during the audit.
- There was an increase in net assets greater than two million dollars during fiscal year 2008 resulting from construction projects.
- The net fund balance is at 71%, which Mr. McLearen described as a good measure of the strength of the County's equity.
- The County was found to be in compliance with budgetary laws.
- Comparisons with other jurisdictions will be forthcoming.

Chairman Staelin requested Tom Judge to investigate Property Tax Rates on Page 110. Chairman Staelin thanked Mr. McLearen for his report.

#### PH 09-02: CC-08-05

The Clarke County Board of Supervisors will consider the amendment of the Clarke County Septic Ordinance so as to add Article IV, Section 143-21, Limitation on Residents in Single-Family Dwelling Served by On-Site Sewage Disposal Systems. CC-08-05

Chuck Johnston reviewed the proposed amendment to the Clarke County Code Chapter 143 Septic Ordinance. He advised that Robert Mitchell, County Attorney, was recommending that County Code be amended to reflect changes previously made to zoning ordinances.

At 6:48 pm, Chairman Staelin opened the public comment portion of the public hearing. There being no persons desiring to address the Supervisors regarding this matter the public comment portion of the public hearing was closed.

Supervisor Weiss stated that he believed this to be a good ordinance to have in place that will allow the County to remedy such problems should they arise.

Supervisor Byrd moved to adopt the amendment to the Clarke County Code CC-08-05 as presented.

The motion was approved by the following vote:

John R. Staelin, Chair	- Aye
J. Michael Hobert, Vice Chair	- Absent
Barbara J. Byrd	- Aye
A.R. Dunning, Jr.	- Absent
David S. Weiss	- Aye

Proposed Text Amendments

Sections to be added shown in bold Italics      Section to be deleted shown struck through

Chapter 143 Septic Systems

***ARTICLE IV Recordation of Onsite Sewage Disposal Permit Limitations***

***§143-21***

- A. ***Effective [six months from Date of Adoption], the number of persons who are permanent full-time residents occupying a single-family dwelling served by an on-site sewage disposal system with a Virginia Department of Health permit shall not exceed two per the number of bedrooms allowed by that permit.***
- B. ***Upon being notified by the County of a violation of this ordinance the owner of the property shall take action within thirty (30) days of such notice to cure the violation by (i) reducing the number of residents in the dwelling or (ii) applying to the Virginia Department of Health to expand the current disposal system for a sufficient number of bedrooms to accommodate the number of full-time resident occupants in the dwelling, and, if the application for expansion is denied, to apply, if eligible, to the Board of Septic and Well Appeals for a variance for a system designed to accommodate the number of full-time resident occupants in the dwelling. In the event an owner applies for such an expansion of the system and/or for such a variance, an action for a violation of this ordinance shall not be initiated by the County while any such application is pending. If any such application is granted, the owner of the property shall have ninety (90) days from the granting of the ordinance to install the approved system.***
- C. ***No person shall be charged with a violation of the provisions of this Article based upon the number of persons occupying a dwelling prior to [six months from Date of Adoption].***

[Subsequent sections will be renumbered]

PH 09-03: TA-08-08

The Clarke County Planning Commission recommends the amendment to the County Zoning Ordinance:

1. Regarding Minor Commercial Public Assemblies:

Section 3-A-1, Schedule of District Regulations of the AOC Zoning District, so as to establish as a Special Use: "Minor Commercial Public Assemblies" for up to 149 people conducted more than six times in a calendar year by a Business Licensed entity;

Section 3-A-2, Schedule of District Regulations of the FOC Zoning District, so as to establish as a Special Use: "Minor Commercial Public Assemblies" for up to 149 people conducted more than six times in a calendar year by a Business Licensed entity;

Section 3-C-2, Supplementary Regulations, so as to establish regulations for:

"Public Assemblies" stating: "The minimum area for a Public Assembly is a parcel, or multiple adjoining parcels of land under the same ownership, of at least six acres,"

Section 9-B, Definitions, so as to:

1. establish a definition for the use: "Minor Commercial Public Assemblies", and
2. amend the definition of "Country Inns" so as to increase from 99 to 149 the number of people that could be allowed at a public assembly associated with a Country Inn;

2. Regarding the allocation of Dwelling Unit Rights:

Section 3-D, Allocation of Dwelling Unit Rights as so to insert a new section 3-D-5, "Errors in 1980 Tax Map" that states that the allocation of dwelling unit rights based on the number and size of parcels shown in the 1980 Tax Maps may be changed based on more accurate information recorded with the Clerk of the Circuit Court or surveys of parcels.

3. Regarding Site Plans and the use of explosives:

Section 6-G, Site Plan Contents so as to specify that development activities associated with Site Plans that involve the use of explosives conform to Clarke County Code Chapter 86, Explosives;

4. Regarding Site Plans the use of xeriscape landscaping practices:

Section 6-G, Site Plan Contents, and Section 6-H, Site Plan Improvements and Minimum Standards, so as to encourage xeriscape landscaping practices (use of native plant materials and landscape materials that have low water and nutrient requirements), and to encourage permanent irrigation systems to use rain catchment systems as their water source. TA-08-08

Chuck Johnston reviewed the various amendments to County Zoning Ordinances proposed under TA-08-08.

Chairman Staelin requested under 6G Explosives revisions: "will be used"; "blasting plan approved by the Board of Well and Septic Appeals"; and "No explosive will be used".

Supervisor Byrd and Weiss suggested under 6G Xeriscape remove "shall" add "is discouraged".

At 7:02 pm, Chairman Staelin opened the public comment portion of the public hearing. There being no persons desiring to address the Supervisors regarding this matter the public comment portion of the public hearing was closed.

**Supervisor Weiss moved to adopt the County Zoning Ordinance amendments TA-08-08 as modified.**

**The motion was approved by the following vote:**

John R. Staelin, Chair	- Aye
J. Michael Hobert, Vice Chair	- Absent
Barbara J. Byrd	- Aye
A.R. Dunning, Jr.	- Absent
David S. Weiss	- Aye

ORDINANCE  
(Approved 2009 January 20)

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held at the Circuit Courthouse of said County on 2009 January 20, at 6:30 p.m. On motion by Supervisor Weiss, the Board of Supervisors unanimously (absent: Dunning, Hobert) approved the proposed Text Amendment of the Zoning Ordinance.

WHEREAS, the Clarke County Zoning Ordinance is established to protect the health, safety, and welfare of the community;

WHEREAS, County regulations have been established for public assemblies of 150 or more people as a Special Events, and of 24 or fewer people as Home Occupations;

WHEREAS, the Dwelling Unit Rights that were established in 1980 for parcels in the AOC and FOC Zoning Districts, were based on the 1980 Tax Map of the Commissioner of the Revenue, were allocated without regard go possible errors in that map as to parcel area and parcel information recorded in the Office of the Clerk of the Circuit Court;

WHEREAS, ensuring that Clarke County Code Chapter 86, Use of Explosives, is complied with by uses shown on site plans will ensure water sources and utility lines are protected;

WHEREAS, encouraging the use of xeriscape landscaping practices and the use of rain catchment systems for irrigation for commercial uses will help preserve groundwater and public water resources;

NOW THEREFORE BE IT ORDAINED THAT the Board of Supervisors has approved the amendment of the County Zoning Ordinance:

1. Regarding Minor Commercial Public Assemblies:
  - Section 3-A-1, Schedule of District Regulations of the AOC Zoning District, so as to establish as a Special Use: "Minor Commercial Public Assemblies" for up to 149 people conducted more than six times in a calendar year by a Business Licensed entity;
  - Section 3-A-2, Schedule of District Regulations of the FOC Zoning District, so as to establish as a Special Use: "Minor Commercial Public Assemblies" for up to 149 people conducted more than six times in a calendar year by a Business Licensed entity;
  - Section 3-C-2, Supplementary Regulations, so as to establish regulations for: "Public Assemblies" stating: "The minimum area for a Public Assembly is a parcel, or multiple adjoining parcels of land under the same ownership, of at least six acres,"
  - Section 9-B, Definitions, so as to:
    - a. establish a definition for the use: "Minor Commercial Public Assemblies", and

- b. amend the definition of "Country Inns" so as to increase from 99 to 149 the number of people that could be allowed at a public assembly associated with a Country Inn;
2. Regarding the allocation of Dwelling Unit Rights:  
Section 3-D, Allocation of Dwelling Unit Rights as so to insert a new section 3-D-5, "Errors in 1980 Tax Map" that states that the allocation of dwelling unit rights based on the number and size of parcels shown in the 1980 Tax Maps may be changed based on more accurate information recorded with the Clerk of the Circuit Court or surveys of parcels;
3. Regarding Site Plans and the use of explosives:  
Section 6-G, Site Plan Contents so as to specify that development activities associated with Site Plans that involve the use of explosives conform to Clarke County Code Chapter 86, Explosives; and
4. Regarding Site Plans the use of xeriscape landscaping practices:  
Section 6-G, Site Plan Contents, and Section 6-H, Site Plan Improvements and Minimum Standards, so as to encourage xeriscape landscaping practices (use of native plant materials and landscape materials that have low water and nutrient requirements), and to encourage permanent irrigation systems to use rain catchment systems as their water source.

ATTEST:

David L. Ash, County Administrator

#### Adjournment

There being no further business to be brought before the Board at 7:03 pm Chairman Staelin adjourned the meeting.

#### Next Meeting Date

The regular meeting of the Board of Supervisors is tentatively set for Tuesday, February 17, 2009 at 1:00 p.m. in the Board of Supervisors / Main Meeting Room, 101 Chalmers Court, 2<sup>nd</sup> Floor, Berryville, Virginia.

ATTEST: January 20, 2009

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John Staelin, Chair

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David L. Ash, County Administrator

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Minutes Recorded and Transcribed by:  
Lora B. Walburn  
Deputy Clerk, Board of Supervisors