

CLARKE COUNTY BOARD OF SUPERVISORS
December 15, 2009 Regular Meeting
Main Meeting Room

1:00 p.m.

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held in the Main Meeting Room, 2nd Floor Berryville Clarke County Joint Government Center, 101 Chalmers Court, 2nd Floor, Berryville, Virginia on Tuesday, December 15, 2009.

Board Members Present

Barbara Byrd; J. Michael Hobert; John Staelin; David Weiss

Board Members Absent

A. R. Dunning, Jr.

Staff Present

David Ash, Chuck Johnston, Tom Judge, Alison Teetor, Lora Walburn

Others Present

Robina Rich Bouffault, Dr. Michael Murphy, Keith Dalton, Jim Bogaty, Matt Conrad, Jim Wink, Gem Bingol, Val Van Meter, and other citizens

Call to Order

Chairman Staelin called the meeting to order at 1:03 p.m.

Adoption of Agenda

Supervisor Hobert to approve the agenda as modified.

- **Add Closed Session with Legal Counsel**
- **Add to Miscellaneous Letters of Support for Specific Projects from Help with Housing**

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.	- Absent
David S. Weiss	- Aye

A.R. Dunning, Jr. joined the meeting at 1:05 p.m.

Clarke County Public Schools Update

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

- Administration is reviewing School business practices.
- Administration is reviewing “Race to the Top” program compliance requirements.
- Following discussion with Sheriff Roper regarding the Alert Now system, it has been agreed that the systems are different enough that notification will remain with the respective organizations.
- 60% drawings of the new high school were delivered to the School Board Office today.
- The site plan is due December 18 and must be reviewed and approved by the School Board prior to presentation at the BADA meeting currently set for January 28, 2010. Chairman Staelin requested Chuck Johnston to explore the possibility of setting a special meeting for the BADA to review the site plan once approved by the School Board. Chuck Johnston deferred to Christy Dunkle, Town Planner.
- Enrollment is on target with projections. Dr. Murphy agreed to provide Chairman Staelin with the Fall Membership report.

Tom Judge distributed the Project Estimate Worksheet revised 12/15/09 at 12:02 p.m. He commented that some of the numbers had been refined and suggested that this be reviewed during the Finance segment of the meeting when setting public hearing for the proposed budget adjustment.

Supervisor Dunning moved to send a letter of commendation to Nancy Specht for her results and coaching ability.

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	- Aye

Consent Agenda

- 1) Approval of Four Easement Purchase Applications: Kern: - Tax Map# 20-((A))-22, 22.0 acres; Davis – Tax Map# 15-((A))-55, 42.9 acres; Canterbury – Tax Map#’s 6-((3))-4, 11.48 acres and 6-((3))-5, 8.34 acres; Grimm – Tax Map# 3-((3))-1, 10.5 acres

Vice Chairman Hobert moved to approve the item on the Consent Agenda.

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	- Aye

Citizens Comment Period

No citizens appeared to address the Supervisors.

VDOT

Jeff Lineberry, Resident Engineer, with Charlie Monroe, appeared before the Supervisors to provide the monthly update.

- Repairing shoulders on Route 7.
- Temporary repairs on unpaved roads Route 639 and Route 604.
- Performing some repairs on Route 605 going up the mountain. VDOT is working with the utilities and FEMA to restore the area. Pipes were damaged in a soft spot. A representative from the DNR is involved and has identified environmental issues.
- Conducting basic grading and stone placement on Route 604.
- Responses to three winter weather events, one snow and two freezing rain and ice, have gone well. Jeff Lineberry informed the Supervisors of the new anti-ice material being used can leave streaks in the road. He said that the material could last up to 72 hours depending on conditions.
- Looking at Route 340 for potential closure of a passing zone.

- Received the final report for Route 617 & Route 620 intersection. The recommendation is to put up a multi-way stop that will include signage on all approaches.
- Route 664 Neils Road – abandonment. VDOT has received comments from adjoining property owners expressing concern about the proposed closure. Supervisor Byrd asked if there was anything that could be done now to prevent dumping. Jeff Lineberry suggested signage but noted that it was a matter of enforcement. He said that VDOT could clean up what is in the right of ways and the affected property owners could also perform clean up. Kim Smith, affected owner on Frederick County side, spoke about closure of Wright's Mill Road. He informed the Supervisors that he had called the police and noted that the dumping has only gotten worse. He also volunteered to help with the clean up. Supervisor Byrd suggested having a meeting with the neighbors. Jeff Lineberry said that there could be an informal meeting but suggested that it might be more effective to pursue road closure and place notice of road closure.
- Route 636 Project – have a tentative scooping meeting set for January 13, 2010 at 10 am in the Berryville Clarke County Government Center. At the meeting, VDOT hopes to better define the scope to match up with the remaining funding. Jeff Lineberry briefly reviewed the stages in the process. He explained that as a result of the public hearing held on December 1 the Commonwealth Transportation Board would be meeting for further discussion. He said that the proposal was to cut funds from a number of projects across the state including future federal funding. However, it is believed that the budget will be left as stands without additions, which is currently set at \$2,846,929 including 2010 allocations with expenditures to date of \$53,050. He warned that this would be a "bare-bones" project without the amenities, such as curb and gutter, as on the rest of Mosby.
- Supervisor Weiss presented concerns raised by his constituents regarding shaded areas of Route 612 that are particularly dangerous in winter weather. Jeff Lineberry explained that once primary roads are stabilized they branch out to secondary roads such as Route 612 and treat roads with a mixed abrasive. He noted that VDOT does have portable warning signs for icy areas that do not melt as fast.
- Supervisor Byrd presented concerns raised by her constituents on Allen Road about overhanging branches of an oak tree. Jeff Lineberry advised that VDOT is attempting to ascertain which oak tree on the road is causing the problem and have asked the persons complaining to identify the tree.

FY09 Audit Review – 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, 2009* prepared for the County of Clarke, Virginia by Robinson, Farmer, Cox. Highlights of the presentation include:

- No difficulties performing the audit, such as incomplete records, were found.
- Adjustments to journal entries were posted.
- There were no disagreements with county principals.

- Audit comparisons with other jurisdictions should be available in January.
- Net assets: \$20.1MM
- Positive change in net assets of \$2.3MM.
- Equity / fund balance approximately \$14MM
- The County's fund balance is very healthy.
- Exhibit 11 General Fund Budget to Actual shows compliance with actual budget with \$2.4 MM less in expenditures than the final approved budget.
- Chairman Staelin requested that Tom Judge check the percent levy collected figures reported by Robinson, Farmer, Cox reminding that a mistake had been made in this calculation last year. Mr. McLearen interjected that the Treasurer supplies this figure and that it did appear that collections had dropped due to the current economy.
- Chairman Staelin requested a more detailed review of the FY09 audit by Tom Judge during the Committee meetings.

Closed Session

Vice Chairman Hobert moved to convene into Closed Session pursuant to §2.2.3711-A7 Consultation with legal counsel regarding acquisition of property and Senior Center property.

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

Set Date for January 2010 Organizational Meeting and Consider Request to Reschedule February 2010 Regular Meeting to Monday, February 8

By consensus, the Supervisors agreed to the following meeting dates and times:

- Friday, January 1 – Organizational Meeting, 12 Noon
- Monday, January 11 – Work Session; 10 am
- Tuesday, January 19 – Regular Meeting; 1 pm
- Monday, February 8, - Special Meeting and Work Session; 10 am
- Tuesday, February 16, Regular Meeting; 1 pm

Set Public Hearing: Text Amendment TA-09-09

The Clarke County Planning Commission recommends the amendment of the County Subdivision Ordinance:

- Section 7-C-3-(d), Water and sewage disposal systems, so as to require approved septic systems and 100% reserve systems for all existing homes when subdivided.

- Section 10-D, Boundary Line Adjustments, so as to establish criteria for the showing well and on-site sewage disposal systems on Boundary Line Adjustment plats.

Chuck Johnston reviewed the proposed amendment. He answered various questions posed by members without change to the proposed amendment.

Supervisor Byrd moved to set public hearing for January 19, 2010 at 6:30 pm or as soon thereafter as the matter might be heard on the proposed amendment TA-09-09.

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

Committee Action

Personnel

Appointment to Authorities, Boards and Commissions

<i>Committee/Board</i>	<i>Appointee</i>	<i>Expiration Date</i>
Industrial Development Authority <i>Mr. McFillen is appointed to fill the un-expired term of Joe Blatz, who has served on the Authority since October 1999.</i>	Tom McFillen	10/30/2010
Industrial Development Authority <i>Mr. Frederickson is appointed to serve a four-year term replacing Carey Lokey, who has served on the Authority since December 2005.</i>	Allen Frederickson	10/30/2013
Conservation Easement Authority <i>Peter Engel is appointed to serve a three-year term replacing John Bieschke, who has served on the Authority since June 2003.</i>	Peter Engel	12/31/2012
Conservation Easement Authority <i>Ms. McKelvy is appointed as a citizen member to serve a three-year term.</i>	Pat McKelvy	12/31/2012
Northwestern Community Services Board	Kathleen Ruffo	12/31/2012

<i>Committee/Board</i>	<i>Appointee</i>	<i>Expiration Date</i>
<i>Mrs. Ruffo is reappointed to serve a three-year term.</i>		
Clarke County Sanitary Authority <i>Mr. Dunning is reappointed to serve a four-year term.</i>	Pete Dunning	1/5/2014
Clarke County Sanitary Authority <i>Mr. Mackay-Smith is reappointed to serve an additional term.</i>	Dan Mackay-Smith	1/5/2013

Supervisor Byrd moved to confirm the appointments as presented.

The motion was approved 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

Work Session

Amendments to Winery Ordinance.

Robert Mitchell provided his comments with the Supervisors meeting material regarding the proposed amendments to the winery ordinance that he had reviewed in conjunction with Chuck Johnston, Planning Administrator.

Chairman Staelin summarized that Mr. Mitchell's recommendations propose that the Supervisors amend the specific Zoning Ordinance to remove provisions related to minor commercial public assembly and did not include the establishment of regular business hours. Chuck Johnston interjected that the amendment to the Zoning Ordinance would be a subsequent action.

Chairman Staelin continued that it amends the definition of Special Events Ordinance. Chuck Johnston commented that the Supervisors could set public hearing on the proposed Code change now.

Chairman Staelin queried Mr. Johnston whether the proposed Zoning Ordinance amendment would go to the Planning Commission. Both Mr. Mitchell and Mr. Johnston responded that the proposed Zoning Ordinance change would start at the Planning Commission.

Chairman Staelin noted that the recommendation presented to the Board was a package. He opined that it would be appropriate to keep the package together.

Bob Mitchell recommended changing the definition of special event under the County Code Special Events section. He advised that this did not have to go to the Planning Commission and the Supervisors could set a public hearing today.

Chuck Johnston explained the recommended Zoning Ordinance amendment that changes the winery definition from special use to permitted use and adds supplemental regulations.

For clarification, Vice Chairman Hobert summarized his understanding that it removes any restriction on hours; and it also takes out the reference to five or less events being covered by the Special Events Ordinance. Robert Mitchell corrected that it takes out the provision with respect to minor commercial public assemblies.

Supervisor Weiss listed some basic triggers that lead to an event becoming a Special Events according to the ordinance including attendance by 150 or more people, for outdoor not indoor events, etc.

Supervisor Weiss moved to take this action to change the amendments before the Board to the following language:

WHEREAS, Clarke County desires to amend its zoning ordinance with respect to farm wineries to make it consistent with recent changes to the Code of Virginia; and

WHEREAS, Virginia Code § 15.2-2283.3 provides that usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public;

WHEREAS, Chapter 57 of the Clarke County Code ("Special Events Ordinance") regulates Special Events, as defined therein; and

WHEREAS, the County, in extensive study and work in 2006-2008 in drafting and considering the Special Events Ordinance, determined that activities and events which attract large numbers of people to a property and which constitute Special Events as defined in the Special Events Ordinance have a substantial impact on the health, safety, and welfare of the public as to potable water supply for drinking and sanitation purposes, sanitation facilities, waste management, access to emergency medical care and transport, fire protection, traffic control and traffic safety, food safety, and/or sound control; and

WHEREAS, the Special Events Ordinance applies throughout the County, including agricultural and forestal property; and

WHEREAS, the Board finds that there would not be a significant economic impact on farm wineries to apply for and obtain a permit pursuant to the Special Events Ordinance for those activities and events on farm winery property, which constitute Special Events under the Special Events Ordinance;

WHEREAS, the Special Events Ordinance applies to all County property and the Board finds it would not be in the health, safety, and welfare interests of the public to exempt farm wineries from the provisions of the Special Events Ordinance; and

WHEREAS, in confirming that farm wineries shall be subject to the Special Events Ordinance, the Board has taken into account that events on farm winery property which classify as Special Events under the Special Events Ordinance may include some relationship between the event and the agricultural nature of a farm winery and/or that the event may be usual or customary for farm wineries throughout the Commonwealth; and

NOW, THEREFORE, BE IT ORDAINED by the Clarke County Board of Supervisors that the County Zoning Ordinance be, and is hereby, amended to amend Sections 3-A-1-a, 3-A-2-a, and 9-B-193, and to add Section 3-C-2-ii, as set forth on the attached Zoning Ordinance Text Amendments.

ZONING ORDINANCE TEXT AMENDMENT

Text to added showed ***in bold Italics***

Text to be deleted showed ~~struck through~~

3 DISTRICT REGULATIONS

3-A SCHEDULE OF DISTRICT REGULATIONS

- 3-A-1 Agricultural-Open Space-Conservation District
- 3-A-1-a Permitted Uses and Structures
- 3-A-1-a 1. Principal Uses and Structures
 - *. Wineries, Farm**
- 3-A-1-a 3. Special Uses
 - s. ~~Farm Wineries~~

3 DISTRICT REGULATIONS

3-A SCHEDULE OF DISTRICT REGULATIONS

- 3-A-2 Forestal-Open Space-Conservation District
- 3-A-2-a Permitted Uses and Structures
- 3-A-2-a 1. Principal Uses and Structures
 - *. Wineries, Farm**
- 3-A-2-a 3. Special Uses
 - q. ~~Farm Wineries~~

3-C SUPPLEMENTARY REGULATIONS

- 3-C-2 Uses in Various Districts

3-C-2-ii Wineries, Farm

- 1. Farm Winery may include the following activities:

- a. the production and harvesting of fruit and other agricultural products and the manufacturing of wine;
- b. the on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;
- c. ***the direct sale and shipment of wine by common carrier to consumers;***
- d. ***the sale and shipment of wine to the Alcoholic Beverage Control Board, licensed wholesalers, and out-of-state purchasers;***
- e. ***the storage, warehousing, and wholesaling of wine;***
- f. ***the sale of wine-related items that are incidental to the sale of wine;***
- 2. ***The owner or occupant of the property shall obtain such permit as required by Clarke County Code Chapter 57 (unless exempt under the provisions of § 57.3.2.) for an activity/event that is not primarily the on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the farm winery, but which constitutes a Special Event as defined in § 57-2.***

9 DEFINITIONS

9-B DEFINITIONS

9-B-193 WINERY, FARM:

~~A wine production and bottling operation, located on property with a producing vineyard and licensed by the Virginia Alcohol Beverage Control Board as a Class A or Class B Farm Winery. Accessory uses may include commercial facilities for wine tasting on-site retail wine sales, on-site wine consumption, on-site food preparation, and consumption, on-site food preparation and consumption, and events and festivals promoting the winery. Any food service shall obtain the required permits. Permits for events or festivals shall be obtained as required by Clarke County Code.~~

An establishment, licensed as a farm winery by the Commonwealth of Virginia, with:

- a. ***a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume or***
- b. ***a producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume.***

The terms "owner" or "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a Farm Winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative as long as such land is located in the Commonwealth.

(Section 4.1-100 of the Code of Virginia)

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

Robert Mitchell advised that with respect to the initiating request for an amendment to the Zoning Ordinance there was specific format in which it needed to be done by the Supervisors. He stated that he had not anticipated that the Board would act today and that the statutory language had not been prepared. Chairman Staelin requested that the matter be referred to the January meeting. Chuck Johnston put forth that he could work with Mr. Mitchell on the resolution and place it on the Planning Commission agenda without an action from the Board. He said that he would communicate to the Planning Commission the Supervisors intent.

Chuck Johnston read the proposed amendment to County Code Chapter 57 definitions special event.

Supervisor Dunning moved to set public hearing on the proposed amendment to definitions section of the special event ordinance Chapter 57 of the Code of Clarke County at next regular meeting of the Board of Supervisors, Tuesday, January 19, 2009 at 6:30 pm or as soon thereafter as the matter may 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

Supervisor Weiss concluded that this amendment included all areas making them all the same.

Chuck Johnston concurred stating that this had been the original impetus pointing out that this amendment would bring consistency among businesses.

Chairman Staelin added that with or without a business license all would be treated equally.

Supervisor Byrd said that the current Special Events Ordinance had taken two years to revise and it was still being refined. Supervisor Weiss noted that the Special Events Committee had anticipated refinement.

Supervisor Weiss asked to make an editorial comment. He said that people have worked through this system. He said that he knew that it had caused Mr. Bogaty "heartburn" but that this was not the intent for staff was attempting to be proactive in

addressing problems before they might arise. He opined that it shows that the Board of Supervisors is receptive, does listen and takes comments. Mr. Weiss said that it shows that the system does work, as well as the ability to work through issues to find solutions that serve the health, safety and welfare of the citizens and businesses.

Green Advisory Committee Report. Action: Further discussion.

John Staelin informed the Supervisors that he had met with Alison Teetor to discuss the report and she will be providing review of comments in January.

Finance

New High School Appropriation Timing.

Tom Judge reviewed the timing advising that it was recommended that public hearing be set for January. He advised that the total had been reduced by \$66,874 from that shown in material provided prior to the meeting.

There followed discussion of funding options. Tom Judge was instructed to research the risks and benefits RDA versus VPSA.

Vice Chairman Hobert moved to set public hearing at the January 19, 2010 regular at 6:30 pm or as soon thereafter as the matter may be heard on the following resolution:

Be it resolved that the FY10 School Capital Projects Budget be amended to increase expenditure by \$10,288,653 and to recognize revenue from debt proceeds of \$9,788,653 both for the purpose of constructing a new high school.

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

Chairman Staelin requested that Tom Judge prepare a system for review of bills and claims and present to the Supervisors at a Work Session.

Disposition of Remaining FY09 Carry over [\$493,717]

The School Board has identified the following areas for use of FY09 carry-over funds: Food Service deficit, current fiscal year Commonwealth cuts, FY11 Commonwealth cuts, phasing out of federal stimulus funds.

Bills and Claims

J. Michael Hobert Supervisor Buckmarsh/Blue Ridge District – November review

Vice Chairman Hobert moved to accept the report for the October 2009 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

Chairman Staelin moved to approve the report for the November 2009 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

Government Projects Update

David Ash provided the following update:

- Joint Government Center:
 - o Remedial work on vapor barrier, stormwater system and emergency generator problems as been completed.
 - o Bob Mitchell has prepared documents for review by the Joint Building Committee regarding extended warranties on such things as carpeting and HVAC.
- Circuit Courthouse:
 - o Design is complete.

- o Sheriff has gotten buy-in from affected departments.
- o If the Supervisors authorize, the building could go to bid in January.

Miscellaneous

Help With Housing

David Ash explained that he had received a request from Help With Housing to send two letters of endorsement. He said that the projects would use pre-development money to study the possible purchase of a structure in Boyce for low-to-moderate income housing. David Ash informed the Board that he had been unable to make contact with Paula Costello at Help With Housing. Val Van Meter, Winchester Star, told Mr. Ash that Paula Costello was out of town and suggested contacting Mrs. Joseph Blatz, who is on the Help with Housing Board.

The Supervisors instructed David Ash to seek more information on the project.

Summary Of Required Action

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Explore the possibility of setting a special meeting for the BADA to review the high school site plan once approved by the School Board.	Chuck Johnston
2.	Provide Fall Membership Report.	Mike Murphy
3.	Send a letter of commendation to Nancy Specht for her results and coaching ability.	David Ash
4.	Check the percent levy collected figures reported by Robinson, Farmer, Cox for FY09.	Tom Judge
5.	Provide a more detailed review of the FY09 audit by during the Committee meetings.	Tom Judge
6.	Check room availability and enter meeting dates established for January and February.	Lora B. Walburn
7.	Advertise for public hearing TA-09-09	Lora B. Walburn
8.	Update database and provide letters of appointment.	Lora B. Walburn
9.	Advertise for public hearing FY10 School Capital Projects Budget Adjustment.	Lora B. Walburn
10.	Research the risks and benefits RDA versus VPSA.	Tom Judge

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
11.	Advertise public hearing on the special event ordinance amendment.	Lora B. Walburn
12.	Notify the Planning Commission of the Supervisors intent to amend the special even ordinance to address issues raised by TA-09-03.	Chuck Johnston
13.	Prepare a system for review of bills and claims and present to the Supervisors at a Work Session.	Tom Judge
14.	Seek more information about Help With Housing Projects.	David Ash
15.	Process Ordinance for PH 09-28 TA-09-11.	Chuck Johnston, Lora B. Walburn
16.	Process Ordinance for PH 09-29 TA-09-13.	Chuck Johnston, Lora B. Walburn

At 4:10 pm Chairman Staelin recessed the meeting until 6:30 pm.

At 6:30 pm Chairman Staelin reconvened the meeting.

Citizens Comment Period

No citizens appeared to address the Supervisors.

PH 09-30 SUP-08-02 [aka SUP-04-01] Revised Special Use and Site Plan Request

The Town of Berryville requests approval of a Special Use and Site Plan for a Public Utility Facility (outfall line for treated effluent) and located generally along and in 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 150 feet north 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))-22, 33, 36, 36A, 40 all located in Battletown Magisterial District, zoned Agricultural-Open-Space-Conservation (AOC).

Chuck Johnston reviewed the request by the Town of Berryville for a Special Use and Site Plan for a public utility facility outfall line for treated effluent. He told the Supervisors that the item had been before the Supervisors in March when it was indefinitely held due to questions regarding the proposed location of the line. Using the maps provided by the Town, Mr. Johnston traced for the Supervisors the modified route of the outfall line that has shifted to the north side of Route 7.

Dave Tyrell, Town Engineer, using an enlarged section of the modified route, provided greater detail of the proposed line and project. He also presented photographs for the Supervisor's review. Mr. Tyrell answered numerous questions posed by the Supervisors.

Dean Westman, WR&A – project engineer, stated that they were working toward resolving E&S issues.

At 6:54 p.m. Chairman Staelin opened the public comment portion of the public hearing. Being no persons present wishing to address the matter the public comment portion of the public hearing was closed.

Chuck Johnston recommended that the Supervisor approve contingent obtaining agreement between the Town and the landowners; obtaining easements, as well resolving issues raised by Chester Engineering.

Vice Chairman Hobert moved for approval of the request by the Town of Berryville for a special use and site plan for the public utility facility located generally along the public right of way Harry Byrd Highway from the Berryville Waste Water Treatment Plant to the Shenandoah River subject to and conditioned upon:

- **The Town of Berryville acquiring the necessary right to place the line along the appropriate route; and**
- **Satisfactory resolution of technical issues as determined by Chester Engineering and County staff.**

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

PH 09-28 TA-09-11 Zoning Ordinance Text Amendment

The Clarke County Board of Supervisors shall consider the amendments of the County Zoning Ordinance, Section 7, Appeals, Variances, and Zoning Map Interpretations:

- Section 7-A-5, Board of Zoning Appeals – Organization and Procedures, deleting the requirement that any action must be taken by a majority of the entire Board, not just of those members present; and
- Section 7-C-5-b, Variances, deleting the requirement that the Board should not grant a variance unless a hardship that 'approaches confiscation' is alleviated.

Chuck Johnston reviewed the proposed amendment to the Zoning Ordinance.

At 6:59 p.m. Chairman Staelin opened the public comment portion of the public hearing. Being no persons present wishing to address the matter the public comment portion of the public hearing was closed.

Supervisor Dunning moved to approve text amendment TA-09-11.

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

ZONING ORDINANCE TEXT AMENDMENT

Text to added showed ***in bold Italics*** Text to be deleted showed ~~struck through~~

7 APPEALS, VARIANCES, AND ZONING MAP INTERPRETATIONS

7-A Board of Zoning Appeals – Organization and Procedures

7-A-5 Quorum

For the conduct of any hearing ~~and the taking of any action~~, a quorum shall be not less than a majority of all the members of the Board.

7-B Appeals of Administrative Determinations

7-B-8 The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer.

7-C Variances

7-C-5 Action on Variance Application

7-C-5-b No variance shall be granted by the Board unless it finds that:

1. The property owner has shown that
 - a. the property was acquired in good faith, and
 - b. the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property because of (i) the exceptional narrowness, shallowness, size, or shape of the property, or (ii) exceptional topographic condition or other extraordinary situation or condition of the piece of property, or (iii) the condition, situation, or development of property immediately adjacent thereto; or
2. The Board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship ~~approaching confiscation~~, as distinguished from a special privilege or convenience sought by the applicant.

7-C-6 The concurring vote of a majority of the membership of the Board shall be necessary to approve a variance.

PH 09-29 TA-09-13 Zoning Ordinance Text Amendment

The Clarke County Board of Supervisors shall consider the amendment of the County Zoning Ordinance, Sections 3-A-1-f and 3-A-2-f, Vegetated Property Buffer in the AOC and FOC Zoning Districts, so as to require Zoning Administrator review of clearing activities within the vegetated property buffer's no-clear areas.

Chuck Johnston reviewed the proposed amendment to the Zoning Ordinance.

Supervisor Dunning suggested that the proposed amendment be expanded to include written approval by a Planning Commissioner, preferably from the district, as well as written approval of the Zoning Administrator.

At 7:14 p.m. Chairman Staelin opened the public comment portion of the public hearing. Being no persons present wishing to address the matter the public comment portion of the public hearing was closed.

Supervisor Dunning moved to approve text amendment TA-09-13 with the change with the written approval of the Zoning Administrator and a Planning Commissioner [preferably of the election district in which the subject property is located].

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

ZONING ORDINANCE TEXT AMENDMENT

Text to added showed ***in bold Italics*** Text to be deleted showed ~~struck through~~

3-A-1 Agricultural-Open Space-Conservation (AOC) Zoning District
33-A-1-f Vegetated Property Buffer

- (2/21/03) Except for those land uses listed as exempt, existing woody vegetation within 25 feet
(3/12/07) of all property lines shall be retained on parcels of less than 20 acres recorded after 21 February 2003.
1. Dead trees and shrubs may be removed.
 2. Invasive alien species may be removed. Invasive alien species shall be those listed by the Virginia Department of Conservation and Recreation.
 3. The following types of development may be located in the vegetated property buffer, **with the written approval of the Zoning Administrator and a member of the Planning Commission (preferably a Commission member from the Election District where the subject property is located)**, provided no more land, trees, or vegetation shall be disturbed than is necessary for construction, use, and maintenance of:
 - a) driveways and access easements of not less than 30 feet,
 - b) electric, gas, and telephone utility easements,
 - c) on-site water facilities and sewage disposal systems, if the Planning Commission determines that not allowing such facilities or systems in the buffer would prohibit the practical development of such facilities or systems,
 - d) public water and sewer lines (including water and sewer lines constructed by private interests for dedication to public agencies), or
 - e) fences.

3-A-2 Forestal-Open Space-Conservation (FOC) Zoning District

33-A-2-f Vegetated Property Buffer and Clearing Limits

- (2/21/03) 1) Except for those clearing activities listed in section 3-A-2-f-9, existing woody
(6/21/05) vegetation shall be retained within 25 feet of all property lines on parcels of four acres or more with a dwelling constructed after 18 February 2003,
- 2) Except for those clearing activities listed in section 3-A-2-f-9, existing woody vegetation shall be retained within 50 feet of the edge of public rights of way or 25 feet of the edge of private access easements on parcels of four acres or more with a dwelling constructed after 21 June 2005.
 - 3) Except for those clearing activities listed in section 3-A-2-f-9, existing woody vegetation shall be retained on parcels with:
 - a) an average slope (within area to be cleared) from 7% up to 15 % and over the elevation of 800 feet above sea level, except for 2 acres for a house site, and
 - b) an average slope (within area to be cleared) from 15% up to 25 %, except for 1 acre for a house site, or 1.5 acres if an erosion and sediment control plan is prepared by a professional engineer and approved by the Zoning Administrator for dwellings constructed after 21 June 2005.
 - 4) Except for those clearing activities listed in section 3-A-2-f-9, clearing is allowed within 200 feet of the house site area described in the previous section provided:
 - a) there are no clear-cut openings,
 - b) the thinning of trees of 2 inches or more in diameter (measured 4.5 feet above ground), is allowed, if randomly spaced with not more than 50% of the crown cover removed within any 10 year period,
 - c) pruning of branches is limited to the bottom 1/3 of the tree, and
 - d) clearing within 200 feet of house site areas shall be done before issuance of final certificate of occupancy.
 - 5) Except for those clearing activities listed in section 3-A-2-f-9, existing woody vegetation shall be retained on all parcels:

- a. on slopes of 25% or more, and
 - b. on slippage soils.
- 6) Tree Protection during Construction
- a. Critical Root Zone

Tree preservation areas shall be identified on the subdivision plat or construction plans. A "critical root zone" (CRZ) shall be delineated on the plans and clearly marked and protected in the field prior to any land disturbance. The CRZ is the area underneath the Tree Drip Line as defined in Section 9-B-180.
 - 1. General Requirements
 - a) Before any land disturbance, suitable protective barriers, such as safety fencing, shall be erected outside of the CRZ of any tree or stand of trees to be preserved. Protective barriers shall remain so erected throughout all phases of construction. No grade changes or storage of equipment, materials, debris, or fill shall be allowed within the area protected by the barrier. No construction traffic, parking of vehicles, or disposal of liquids is permitted within the CRZ.
 - b) Trees likely to die as a result of site disturbance activities within 25 feet of the safety fence, as identified in the tree conservation plan, shall be removed.
- 7) Revegetation/tree replacement, in consultation with a Forestry Consultant or Certified Arborist and within the guidelines described below, shall be required for all areas where any clearing occurs in excess of the standards for maximum cleared area or in required vegetative buffer.
- a. Replacement criteria.

Trees that are removed shall be replaced so that there is, at a minimum, no loss of tree canopy coverage upon maturity of the replacement trees. All trees to be used as replacement trees shall be:

 - 1) a Virginia native tree species as identified in the Virginia Department of Forestry's Tree Seedling Brochure described by the Virginia Native Plant Society (<http://www.dcr.virginia.gov/dnh/native.htm>);
 - 2) be of minimum quality as identified in the American Standard for Nursery Stock (ANSI Z60.1-2004) (as amended);
 - 3) planted as described in the American Standard for Nursery Stock ANSI Z60.1-2004 (as amended); by a qualified landscape contractor to insure survival; and a minimum of 4 feet in height with caliper dependent on species.
- 8) Clearing for agricultural uses shall require a Conservation Farm Management Plan approved by either the regional Soil and Water Conservation District or the federal Natural Resources Conservation Service and submitted to the County Zoning Administrator. The following clearing activities shall be allowed in the no-clear areas:
- a) Dead trees and shrubs may be removed.
 - b) Invasive alien species may be removed. Invasive alien species shall be those listed by the Virginia Department of Conservation and Recreation.
 - c) Forestry activities as described in Section 3-C-2-k.
 - d) Clearing for the following activities may occur in the vegetated property buffer,
with the written approval of the Zoning Administrator and a member of

the Planning Commission (preferably a Commission member from the Election District where the subject property is located), provided no more land, trees, or vegetation shall be disturbed than is necessary for construction, use, and maintenance of:

- 1) driveways and access easements of not more than 30 feet wide,
- 2) electric, gas, and telephone utility easements, 3) on-site water facilities and sewage disposal systems, if the Planning Commission determines that not allowing such facilities or systems in the buffer would prohibit the feasible construction of such facilities or systems,
- 4) public water and sewer lines (including water and sewer lines constructed by private interests for dedication to public agencies), or
- 5) fences
- 6) Forestry activities as described in Section 3-C-2-K.

Adjournment

There being no further business to be brought before the Board at 7:19 pm Chairman Staelin adjourned the meeting.

Next Regular Meeting Date

The next regular meeting of the Board of Supervisors is set for Monday, January 19, 2010 at 1:00 p.m. in the Main Meeting Room, 101 Chalmers Court, 2nd Floor, Berryville, Virginia.

ATTEST: December 15, 2009

John Staelin, Chair

David L. Ash, County Administrator

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