

September 18, 2012  
Clarke County Board Of Supervisors  
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, 2<sup>nd</sup> Floor Berryville Clarke County Joint Government Center, 101 Chalmers Court, 2<sup>nd</sup> Floor, Berryville, Virginia on Tuesday, September 18, 2012.

Board Members Present

Barbara Byrd; J. Michael Hobert; Beverly McKay; John Staelin

Board Members Absent

None

Staff Present

David Ash; Jesse Russell; Brandon Stidham; Lora B. Walburn

Others Present

Wade Feller; Charlie Monroe; Dr. Michael Murphy; Dr. Lisa Floyd; Robina Rich Bouffault; Gem Bingol; Jeanne Abigail Custis Marcy; Keith Dalton; David Lasso; Val Van Meter; Ed Leonard; and other citizens

1) Call to Order

Chairman Hobert called the afternoon session to order at 1:04 p.m.

2) Adoption of Agenda

- Closed Session pursuant to §2.2-3711-A29 Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body

By consensus, the Board approved the agenda as modified.

### 3) VDOT

Wade Feller, Maintenance Operations Manager, with Charlie Monroe, Locality Supervisor, appeared before the Board to provide the monthly update.

#### Maintenance - September:

- Continued with second round mowing on secondary's;
- Applied dust control on non-hard surfaced routes;
- Contract tree crew removed broken and hanging limbs on various routes in the county;
- Cleaned and flushed pipes on routes 601 and 605;
- Trimmed brush around signs and for sight distance on various routes.
- Performed pipe repair on Rt. 50 and pipe cleaning on Rt. 601;

#### Maintenance – October:

- Contract tree crew will continue with limb removal;
- Continue and complete 2nd round mowing;
- Remove dead tree hazards;
- Conduct asphalt patching operations on route 606;
- Conduct “dry-run” and equipment preparation for upcoming winter operations.

#### Projects

- Rt. 636, Mosby Road: Proceeding on/ahead of schedule. Will be paving this week, weather permitting. Still anticipating completion before winter.
- Rt. 604, Ebenezer Road: Rural Rustic is completed.
- Rt. 1014, Paige St. Town of Berryville: Status unchanged.
- Turning Lanes Rt. 657/340: Still awaiting survey results and analysis.
- Lewisville Road: Traffic also conducted informal ride-thru for speed request on Lewisville Rd. They are preparing observations response.

#### Supervisor Comments:

- Supervisor Byrd:
  - Asked for mowing status on Route 340 by Chester Store opining that visibility is limited by high red-top fescue. Charlie Monroe advised that mowing operations

- are currently underway in that area. Mr. Feller added that a change to mowing operations is under consideration by VDOT.
- VDOT is preparing its report on the Lewisville Road drive-over.
  - Supervisor Byrd relayed a compliment from one of her constituents that the crossovers on Route 7 are great.
- Supervisor McKay:
- A resident reported traffic issues on Route 633 Annfield Road. Charlie Monroe will set up a ride through with Supervisor McKay.
- Supervisor Weiss:
- Asked for the status of the Yield sign on Route 7. Charlie Monroe stated that the yield sign that was on the wrong side was adjusted last week. Chairman Hobert requested a formal response from VDOT. He also stated that a citizen had expressed another safety concern at the same intersection.
- Supervisor Staelin:
- Senseny Road:
    - Citizens have been expressing concern that the proposed turn lanes will encroach on the residential side of the road.
    - Citizens want to see the lay-out.
    - Citizens assert that the right-of-way is not centered properly.
    - VDOT provided:
      - There is 100 feet of right of way.
      - Survey of area is in progress.
      - A VDOT engineer would have to provide response to citizen concerns.
      - It is not anticipated that additional land will be needed to complete the turn lanes.

#### 4) Clarke County Public Schools Update

Dr. Murphy, Superintendent, and Dr. Lisa Floyd, Director of Curriculum and Instruction, appeared before the Supervisors to provide the monthly School update.

- Highlights include:
- Received official notification today that CCPS is the recipient of a \$10,000 Virginia Middle School Teacher Core Grant. This grant allows CPS to train and compensate two teachers to become experts in mathematics.
  - In FY2013, CCPS transitions to revised VA Department of Education, School Nutrition Programs meals standards Final Rule Nutrition Standards in the National School Lunch and Breakfast Programs.

- Supervisor Byrd expressed concern that schools were being tasked with a societal change that requires the parental cooperation and support.
- Severe food allergies of some students allow only a three-minute window for EMS response.
- Today, the area is under a tornado watch.
- The Great Shake Out, the state-wide earthquake drill, will be held on October 18.
- Enrollment running consistent to projections; down 8 students from September 30, 2011 count.
- New high school:
  - Receiving rave reviews from parents and students.
  - HVAC issues being debugged.
  - Surplus school property is being dispersed to various agencies within the County. Remaining surplus will be sold.
- Staffing Considerations:
  - Adding an HVAC mechanic to staff. With the newer, more sophisticated systems, it could be more cost effective to have someone on staff as compared to hiring outside contractors.
  - Groundskeeper position responsible for all school locations.
- Elementary Renovations:
  - Contract signed with RRMM today.
  - School Board anticipates a presentation on options and alternates from RRMM on October 8.
  - Hope to have a contractor on site May / June 2013 and complete by summer 2014.
  - Goal is to limit student transition.
  - Goal is to eliminate trailers once the plan is in place for student locations during renovations.
  - Jim Brinkmeier, Renovation Committee Chair, recused himself from the process of selecting the Architect. A “clerk of the works” is being considered by the School Board.
- Dr. Murphy and Dr. Floyd provided information regarding SOL test data; adequate yearly progress transition; gap groups; test scores; graduation rates.
  - While the Schools are doing good things, the measures are difficult to meet.
  - School staff is doing a great job

- Supervisors Hobert, McKay and Weiss expressed various concerns regarding school statistics, performance measures and reporting.
- Supervisor Byrd asked Dr. Murphy if he would research the first year high school classes were held in what is now Johnson Williams Middle School.
- The Agricultural Department is working with historic Clermont Farm.

5) Citizens Comment Period

No citizens addressed the Board.

6) Approval of Minutes

Supervisor Staelin requested a change on Page 149 12) Miscellaneous Items, Berryville Graphics to remove the first bullet "*Draft Governor's Development Opportunity Fund Local Grant Performance Agreement.*"

Supervisor Byrd requested that Page 158 of the minutes be amended to record original access comments, "*Supervisor Byrd commented that while it was known that the Thomas' had granted the church access through their property she asked who originally granted the church access rights. Mrs. Gochenour responded that she believed that access was originally granted by Thomas, Lord Fairfax, the landowner at the time the church was built.*"

**Supervisor Staelin moved to approve the minutes for August 21, 2012 as modified. The motion carried by the following vote:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

7) Consent Agenda

- A. 2012 VACo Conference Voting Credentials for the Annual Business Meeting

**VACo 2012 Annual Meeting  
Voting Credentials Form  
Form may be returned by mail or fax (804-788-0083)**

Voting Delegate:  
(Supervisor)

Name J. Michael Hobert  
Title Chair - Board of Supervisors  
Locality Clarke County

Alternate Delegate:  
(Supervisor)

Name John Staelin  
Title Supervisor - Millwood Distrist  
Locality Clarke County

Certified by:  
(Clerk of the Board)

Name David L. Ash  
Title County Administrator / Clerk to the Board of Supervisors  
Locality Clarke County

**VACo 2012 Annual Meeting  
Proxy Statement**

\_\_\_\_\_ County authorizes the following person to cast its vote at the 2012 Annual Meeting of the Virginia Association of Counties on November 13, 2012.

\_\_\_\_\_, a non-elected official of this county.

**-OR-**

\_\_\_\_\_ a supervisor from \_\_\_\_\_ County.

This authorization is:

Uninstructed. The proxy may use his/her discretion to cast \_\_\_\_\_ County's votes on any issue to come before the annual meeting.

Instructed. The proxy is limited in how he/she may cast \_\_\_\_\_ County's votes. The issues on which he/she may cast those votes and how he/she should vote are:  
(List issues and instructions on the back of this form)

Certified by: Name \_\_\_\_\_  
Title \_\_\_\_\_  
Locality \_\_\_\_\_

**Supervisor Byrd moved to approve the items on the Consent Agenda. The motion carried by the following vote:**

- Barbara J. Byrd - Aye
- J. Michael Hobert - Aye
- Beverly B. McKay - Aye
- John R. Staelin - Aye
- David S. Weiss - Aye

8) Set Public Hearing: TA -12-04 Merger of Parcels.

Proposed text amendments to add new language, §10-E Merger of Parcels; to amend Article 2, Usage and Definitions; and to amend §12-E, Vacation of Plat, of the Clarke County Subdivision Ordinance; and to amend Article 9, Definitions, of the Clarke County Zoning Ordinance. The purpose of the text amendments is to require any merger of parcels to be reviewed and approved via final plat by the Zoning Administrator for compliance with County ordinances. The text amendments would also amend the current definition of “merger” in the Ordinances to distinguish the transaction from a “vacation,” and would correct a code reference error in §12-E of the Subdivision Ordinance.

Brandon Stidham provided an overview of the proposed text amendment recommended by the Planning Commission.

The Board asked various questions regarding fees and surveys. Following discussion, the Board requested Mr. Stidham follow up on surveys with Robert Mitchell.

Noting the expense associated with surveys, Supervisor Staelin requested that the matter be held over until after consulting with Mr. Mitchell.

**Vice Chair Weiss moved to hold the matter over subsequent to consultation with and opinion from Robert Mitchell. The motion carried by the following vote:**

Barbara J. Byrd	-	Aye
J. Michael Hobert	-	Aye
Beverly B. McKay	-	Aye
John R. Staelin	-	Aye
David S. Weiss	-	Aye

9) Economic Development Project: Berryville Graphics

John Staelin read from the Berryville Graphics Economic Development Proposal

- Businesses can expand and move any place they desire. Thus, Virginia, like most other sates, offers cash incentives to encourage businesses to move within its borders. It must be noted, however, that Virginia offers less in cash incentives than most states because it offers businesses so many other advantages. CNBC, for example has stated that Virginia one of the best states for business. Virginia gets its high rating because of its low tax rates, its good educational system, its right-to-work laws and its regulatory climate; not for the cash incentives it offers.

- The Governor's Office is the group that negotiates with businesses that want to move or expand in Virginia. As state and local taxpayer funds are used the Governor's office ensures that all the deals will pay back both the Commonwealth and the locality within three years.
- The Berryville Graphics facility has been in operation since 1956. It has been consistently profitable and is profitable today.
- The owners of Berryville Graphics, Bertelsmann AG, also own other printing companies in Virginia and other States. Last fall Bertelsmann looked into consolidating some of its smaller operations into other existing facilities. Senior management at Bertelsmann narrowed the choice for that consolidation down to two possible locations, Louisville, Kentucky and Berryville, Virginia.
- It is expensive to move printing equipment and train new workers. Thus, Berryville Graphics asked the Governor's Office if the Commonwealth would pay part of the cost of its proposed consolidation if the jobs and equipment came to Virginia vs. Kentucky.
- The Governor's Office knew there was a competition between Kentucky and Virginia for the jobs and equipment. If the Kentucky facility had been chosen not only would 84 New York jobs have gone to Kentucky (vs. VA), 102 Frederick County VA jobs would also have been lost as well. The Berryville plant could have also been affected in the longer term due to the competitive nature of the industry. Members of the Governor's office studied the economics of the situation and decided the Commonwealth should offer a total of \$467,200 in grants to Berryville Graphics if Clarke County and the Town of Berryville would provide \$200,000 of the funds. (By State law these offers require a set local match.) It was announced that of the State funds, it \$67,200 of the grant was to come from the Virginia Jobs Investment Program and \$200,000 was to come from the Governor's Opportunity Fund.
- The grant amount was set after looking at the expected new tax revenues to be derived by the expansion. The state and the localities determined that the entire grant amount provide to Berryville Graphics would be repaid via added tax revenues within about three years.
- Clarke, like most other counties, has a history of investing taxpayer money to encourage business to move within its borders. Clarke built the Business Park with taxpayer money that was ultimately repaid from the sale of Park lots. Now the Business Park brings in thousands in tax revenues annually. Clarke also used both taxpayer and private funds to provide sewer service to the Waterloo Business District. Those funds have also been repaid via hookup fees and added annual tax revenues.
- If the Board of Supervisors approves this action today Clarke County will spend \$106,000 to aid the Governor's efforts to support the Berryville Graphics' expansion in Clarke County. (The Town of Berryville will invest \$94,000) The County's share of the funds will come from the "profits" the County received in the past from the sale of Business Park lots.
- Berryville Graphics will make its investment at the Berryville facility over a three year period. The added tax revenues derived from that three-year expansion is expected to pay back all the local taxpayer funds expended during that same three-year period. After that, it is expected that the Town and County will receive a total of about \$100,000 annually in new tax revenue from the facilities and equipment associated with the expansion. That is an annual



return of about 50% on the original \$200,000 investment in addition to the many other local benefits received by the community's retention of a fortified Berryville Graphics.

- Additional benefits of the this action are; a) 102 regional jobs will be saved and 84 new jobs will come to Berryville from out-of-state locations, b) Berryville Graphics will become a main Bertelsmann facility and thus will be better positioned to benefit from future expansions or consolidations, c) the local businesses that provide services to Berryville Graphics will see more business and d) the new employees at the facility are likely do some of their shopping in Berryville.
- There are risks associated with any decision but every effort was taken to minimize the risks associated with this effort. Berryville Graphics has agreed to specific performance measures that must be met. If it does not do so it is required to return all or part of the grant funds it will receive.

The goals Berryville Graphics has agreed to are:

1. \$10,614,520 in new (to Virginia) capital investment will be made in Berryville within three years. (i.e. new equipment, building upgrades and the transfer of equipment from locations outside Virginia) The value is based on the original purchase price of the equipment. Some of the equipment will be brand new. All of the equipment is modern but a good portion of the equipment being transferred in has already been depreciated the maximum allowable amount, down to 20% of its original purchase price. The depreciated value is the value on which the County's and Town's Machinery and Tools taxes will be calculated.
2. An additional \$8,705,086 in capital investment will be transferred from Frederick County to Berryville within three years. Again, the value is based on the original purchase price and much has been depreciated.

*Note: even using the depreciated value of the equipment listed in #1 and #2, the total continuing tax revenue to be received by the County and Town (e.g. Real Estate and Machinery and Tools taxes) associated with the company's investment is expected to be about \$100,000 per year three years from now.*

3. A total of 186 new jobs will be created at the Berryville facility within three years. These jobs must be in addition to the number employed as of 1/19/2012. At least 84 of those jobs are to be new jobs in Virginia (not jobs transferred from other Virginia locations) and at least 30% of the new jobs must be offered to Virginia residents.
4. The average wage of the new Clarke County jobs is to be at least \$41,584.

### **Comments On The Process For Obtaining A Governor's Opportunity Fund Grant**

The Governor's Opportunity Fund (GOF) was set up by the General Assembly and is governed by the laws and regulations of the Commonwealth. A complete description of the program can be found on the Internet at <http://virginiaallies.org/incentives.html> and [http://www.yesvirginia.org/whyvirginia/financial\\_advantages/business\\_incentives.aspx](http://www.yesvirginia.org/whyvirginia/financial_advantages/business_incentives.aspx).

The above websites explain the rules of the program and how to apply for a grant. The website also provides sample contracts and the contact information for those responsible for the program.

The program's rules have been in effect for years and have been followed by countless localities. Some of the key steps and rules are outlined below.

- The Virginia Economic Development Partnership (VEDP) is the group that is to negotiate all Governor Opportunity Fund contracts with the companies involved. These negotiations are handled in two distinct steps. The first set of negotiations between the company and VEDP simply defines a general framework for an agreement. If the two sides cannot agree to a general framework the process ends without any action. VEDP keeps the Locality informed of its progress during this first negotiation process but requires that the negotiations be kept confidential.

(In our case, the Board of Supervisors received updates about the Berryville Graphics negotiations in Closed Session on January 17<sup>th</sup> and February 6<sup>th</sup>. The Town got its update in Closed Session on February 14<sup>th</sup>.)

- One rule of the GOF program is that neither the Locality nor the company can announce the GOF award until after the Governor's announcement is made. "Upon approval of a GOF grant or loan, neither the locality nor the company shall announce or confirm the proposed project without coordination with VEDP. The new jobs and capital investment targets in the performance agreement will be used in the press release when the public announcement is made. If the targets are not used for the public announcement of the project, or if the public announcement is made by anyone other than the Governor, the grant award is subject to being reduced or withdrawn."

(In our case, the Berryville Graphics' proposal was approved in concept by the Governor's Office on the Governor's trip to Germany and the Award was announced on June 12. The Governor's Office distributed a press release about the proposed Berryville Graphics grant award at that time. The local papers covered the story. Several Town and County officials were asked what they thought about the Governor's action and were quoted as saying they supported it. They also made it clear to the public that the deal required a \$200,000 local match and that they felt that the match would be a good investment of local taxpayer funds. Prior to the Governor's announcement, neither the company nor any local official was allowed to mention the proposed project in public.)

- Another rule of the program is that Governor's Office requires that it receive a letter of support from the Locality regarding the project before the Governor makes his decision about it.

(In our case, the draft for the County's letter of support was written by the staff at VEDP to ensure it followed all the program's guidelines. The draft was reviewed by the County's counsel and signed by David Ash, the County Administrator. It was submitted to the Governor's Office on June 1<sup>st</sup>. The letter did not constitute an action by the Board of Supervisors and did not formally commit to the expenditure of any funds. A final decision with regard to committing funds could not be made at that time as a second set of negotiations was still needed between the Berryville Graphics and VEDP. That set of

negotiations would create the detailed agreement between the parties. That second set of negotiations could not even start until after June 12<sup>th</sup>, the date the Governor gave his tentative approval of the project. If that second set of negotiations was not successful the entire deal would have to be cancelled.)

- After the tentative award is first announced by the Governor a team from the VEPD negotiates the details of the Performance Contract with the Company. Again, local government is kept informed of the negotiations but is barred from discussing the details of the negotiations in public.

(In our case the deadline for coming to that agreement was September 30, 2013. The negotiations were delayed by holiday schedules and the Board of Supervisors did not receive the final wording of the contract until September 17, 2012.)

- Local government has nothing to vote on until after the company and the Governor's Office have finalized their detailed agreement. Only after the agreement is finalized can the Locality truly discuss the detailed agreement and take action to either approve or reject it.

(In our case that date for such a discussion is September 18, 2012, the date of the first Board of Supervisor's first meeting after receipt the final contract from VEPD.)

Vice Chair Weiss opined that this was a sensible transaction that kept an established business in the county. He expressed his appreciation for Supervisor Staelin's efforts.

Supervisor Byrd commented on the addition of high paying jobs.

Supervisor McKay commented that Supervisor Staelin worked tirelessly for the citizens. He also expressed appreciation for Supervisor Staelin's efforts.

Chairman Hobert concurred with previous comments made by fellow Board members. He asserted that this was a good step toward economic development particularly in connection with for a long-standing company in the community, as well as an excellent investment for the Town and County.

- A. Authorize and Execute County and Town Agreement Regarding Berryville Graphics, Inc. Economic Development Project.

### **COUNTY AND TOWN AGREEMENT REGARDING BERRYVILLE GRAPHICS, INC. ECONOMIC DEVELOPMENT PROJECT**

THIS AGREEMENT dated the 18<sup>th</sup> day of September, 2012, is by and between the County of Clarke County, Virginia ("County") and the Town of Berryville, Virginia ("Town").

WHEREAS, both the County and the Town desire to help Berryville Graphics, Inc. ("Berryville Graphics") expand its business in Berryville; and

WHEREAS, the Commonwealth of Virginia has offered to provide Berryville Graphics with a \$200,000.00 grant from the Governor's Opportunity Fund and \$67,200.00 in support through the Virginia Jobs Investment Program; and

WHEREAS, the Governor's Opportunity Fund requires a match of \$200,000.00 from the participating localities; and

WHEREAS, both the County and Town will receive additional tax revenues from Berryville Graphics as a result of its expansion and are willing to share the cost of the \$200,000.00 local match; and

WHEREAS, the Industrial Development Authority of Clarke County, Virginia ("IDA") has also agreed to support Berryville Graphics' expansion September 18, 2012 by acting as the entity for the distribution of the state and local funds and by advancing the Town's portion of the local match; and

WHEREAS, the County, Berryville Graphics, and the IDA have entered into a Performance Agreement setting forth performance requirements by Berryville Graphics and provisions for the administration of the state and local funds; and

WHEREAS, the County must request the Governor's Opportunity Fund grant by September 30, 2012, and the grant and the local match must be paid by the IDA to Berryville Graphics within 30 days of receipt of the grant by the County; and

WHEREAS, the County and the Town desire to set forth their agreement for providing local match and for fiscal administration of the provisions of the Performance Agreement for the state and local funds.

NOW, THEREFORE, the County and Town agree-as follows:

1. The County will pay \$106,000.00 (53.0%) of the local match.
2. The Town will pay \$94,000.00 (47.0%) of the local match, which amount shall be advanced by the IDA pursuant to a separate agreement between the Town and the IDA.
3. Clarke County shall act as fiscal agent for receiving the Governor's Opportunity Fund grant and distributing the grant to the IDA, for monitoring Berryville Graphic's compliance with the Performance Agreement, and for receiving and distributing any repayments under the Performance Agreement.
4. If Berryville Graphics does not meet its targets under the Performance Agreement and repayments are made by Berryville Graphics, the local portion

of such repayments shall be distributed 53% to the County and 47% to the Town.

B. Authorize and Execute Governor's Development Opportunity Fund Clarke Local Grant Performance Agreement

Supervisor Staelin distributed a final, revised version of the following:

**GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND CLARKE LOCAL GRANT  
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this 18<sup>th</sup> day of September, 2012, by and among the **COUNTY OF CLARKE, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **BERRYVILLE GRAPIDCS, INC.** (the "Company"), a Delaware corporation authorized to transact business in the Commonwealth, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF CLARKE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$200,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to expand, improve and operate a manufacturing facility in the Locality (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, and creating and maintaining a significant number of New Jobs, as hereinafter defined;

WHEREAS, the Authority wishes to make a grant of \$200,000 from funds provided to it by the Locality (the "Local Grant") for the purpose of inducing the Company, directly or indirectly, to expand, improve and operate the Facility in the Locality, thereby making or causing to be made a significant Capital Investment, and creating and maintaining a significant number of New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant and the Local Grant (together, the "Grants"), the use of the proceeds of the Grants, the obligations of the Company regarding Capital Investment and New Job creation and maintenance, and the repayment by the Company of all or part of the Grants under certain circumstances;

WHEREAS, the expansion and operation of the Facility will entail a capital expenditure of approximately \$10,614,520, of which approximately \$9,905,225 will be invested in machinery and equipment and approximately \$709,295 will be invested in the up-fit of the building;

WHEREAS, the expansion and operation of the Facility will further entail the creation and maintenance of 84 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the Grants:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the

Receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

### **Section 1. Definitions.**

For the purposes of this Agreement, the following terms shall have the following definitions:

"Capital Investment" means a capital expenditure by or on behalf of the Company in Taxable real property, taxable tangible personal property, or both, at the Facility on or after April 1, 2012. Capital Investment includes the acquisition price of equipment to be transferred to the Facility from the Company's current facilities in other states, which assets are estimated to have had an acquisition price of \$7,224,275. Capital Investment does not include the acquisition price or other value of equipment transferred to the Facility from the Company's current facility in Frederick County, Virginia. The total capital expenditure of \$10,614,520 is referred to in this Agreement as the "Capital Investment."

"Maintain" means that the New Jobs created pursuant to the Grants will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company's employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$41,584. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 464 full-time jobs at the Facility as of January 19, 2012. The New Jobs must be in addition to the 102 full-time jobs to be transferred to the Facility from the Company's current facility in Frederick County.

"Performance Date" means September 30, 2015. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made

and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least \$10,614,520 and to create and maintain at least 84 New Jobs at the Facility, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

### **Section 2. Targets.**

The Company will develop and operate the Facility in the Locality, make a Capital Investment of at least \$10,614,520, and create and maintain at least 84 New Jobs at the Facility, all as of the Performance Date.

The Locality and the Authority hereby strongly encourage the Company to ensure that at least thirty percent (30%) of the New Jobs are offered to "Residents" of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

The average annual wage of the New Jobs of at least \$41,584 is more than the prevailing average annual wage in the Locality of \$38,200. The Locality is not a high-unemployment locality, having an unemployment rate for 2011, which is the last year for which such data is available, of 5.0% as compared to the 2011 statewide unemployment rate of 6.2%. The Locality is not a high-poverty locality, with a poverty rate for 2010 which is the last year for which such data is available, of 8.3% as compared to the 2010 statewide poverty rate of 11.1%.

The Company shall provide the option for its current 81 employees to move from its facility in Frederick County to the Facility. Pursuant to Section 2.2-115(D) of the Virginia Code, the Secretary of Commerce and Trade sent a letter to the Chairmen of the Senate Finance and House Appropriations Committees explaining and justifying this move.

### **Section 3. Disbursement and Use of Grants.**

(a) *Disbursement and Use of GOF Grant:* By no later than September 30, 2012, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by September 30, 2012, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The GOF Grant in the amount of \$200,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Authority. Within 30 days of its receipt of the GOF Grant proceeds, the Authority will disburse the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The Company will use the GOF Grant proceeds for (i) public and private utility extension or capacity development on and off site, (ii) grading, drainage, paving, and any other activity required to prepare a site for construction, or (iii) construction or build-out of publicly or privately owned buildings, as permitted by Section 2.2-115(D) of the Virginia Code.

(b) *Disbursement and Use of Local Grant:* The Authority will receive at least \$200,000 from the Locality for the purpose of making the Local Grant. The Local Grant in the amount of \$200,000 will be disbursed by the Authority to the Company at the same time that the Authority disburses the GOF Grant proceeds to the Company. The disbursement of the Local Grant to the Company is being made as an inducement to the Company to achieve the Targets at the Facility.

The Company will use the Local Grant proceeds to offset the cost of utility extension work to service the Facility and the cost of the up-fit to the Facility.

**Section 4. Break-Even Point; State and Local Incentives.**

VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
GOF Grant	\$200,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	67,200

The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Local Grant	\$200,000

The proceeds of the GOF Grant shall be used for the purposes described in Section 3(a). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The proceeds of the Locality's grant shall be used for the purposes described in Section 3(b).

**Section 5. Repayment Obligation.**



(a) *If Minimum Statutory Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the GOF Grant. Failure by the Company to meet either of these minimum statutory eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire amount of both Grants must be repaid by the Company to the Authority.

(b) *GOF Grant – If Minimum Statutory Eligibility Requirements are Met:* For purposes of repayment, the GOF Grant is to be allocated as \$100,000 (50%) for the Company's Capital Investment Target and \$100,000 (50%) for its New Jobs Target. If the Company has met at least ninety percent (90%) of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the GOF Grant. If the Company has not met at least ninety percent (90%) of either or both of its Targets at the Performance Date, the Company shall repay to the Authority that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$6,368,712 (60% of the Capital Investment Target) and only 42 New Jobs have been created and Maintained (50% of the New Jobs Target), the Company shall repay to the Authority forty percent (40%) of the moneys allocated to the Capital Investment Target (\$40,000) and fifty percent (50%) of the moneys allocated to the New Jobs Target (\$50,000).

(c) *Local Grant- If the Statutory Minimum Requirements are Met:* The following provisions of this subsection (c) apply only if the Company has met both of the minimum statutory eligibility requirements set forth in subsection (a). For purposes of repayment, the Local Grant is to be allocated as \$200,000 (100%) for the Company's Capital Investment Target, as modified in the following provisions of this subsection (c).

For the purposes of the Local Grant, the Locality, the Authority and the Company have assumed that capital expenditures will be made in the Locality in the following categories of expenditures and in the following time frames:

Building Improvements:

Within 1 year: \$ 709,295

New Equipment:

Within 2 years:

\$1,876,665

Within 3 years: 2,680,950

All Relocated Equipment (Being Transferred into the Locality; Value When Purchased):

Within 2 years: \$11,150,553

Within 3 years: \$15,929,361

Based upon these numbers, the Company will have made capital expenditures at the Facility (including the acquisition value of all relocated equipment) by the end of the second year of \$13,736,513 and by the end of the third year of \$19,319,606.

If by September 30, 2014, the Company has not made capital expenditures at the Facility (including the acquisition value of all relocated equipment) of at least \$10,989,201 (80% of \$13,736,513), a repayment of a portion of the Local Grant will be due from the Company to the Authority calculated by subtracting the percentage of the capital expenditures so made from 80%, then multiplying the difference by \$135,000. For example, if the Company has made such capital expenditures of \$10,302,385 (75% of \$13,736,513):  $80\% - 75\% = 5\% \times \$135,000 = \$6,750$  repayment.

If by the Performance Date, the Company has not made capital expenditures at the Facility (including the acquisition value of all relocated equipment) of at least \$19,319,606, a repayment of a portion of the Local Grant will be due from the Company to the Authority calculated by subtracting the percentage of the capital expenditures so made from 100%, then multiplying the difference by \$200,000, and subtracting one-half of any repayment made in accordance with the prior paragraph. For example, if the Company made 82% of its capital expenditures required by September 30, 2014, so owed no repayment in accordance with the prior paragraph, but made such capital expenditures at the Facility by the Performance Date of only \$17,387,645 (90% of \$19,319,606):  $100\% - 90\% = 10\% \times \$200,000 = \$20,000$  repayment. For a further example, if the Company owed a repayment as described in the prior paragraph of \$6,750 and made such capital expenditures by the Performance Date of only \$17,387,645 (90% of \$19,319,606):  $100\% - 90\% = 10\% \times \$200,000 = \$20,000 - \$3,375$  (1/2 of \$6,750) = \$16,625 repayment.

(d) *Determination of Inability to Comply:* Notwithstanding subsections (a), (b) or (c), if the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire amount of both Grants to the Authority. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets.

(e) *Repayment Dates:* Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or September 30, 2014 (as to subsection (c) above) or the Determination Date, as applicable. Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality. Any money repaid to the Locality allocable to the GOF Grant shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

**Section 6. Company Reporting.**

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at January 1, 2013 and covering the period through the prior September 30, and at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented

to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

**Section 7. Notices.**

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

Berryville Graphics, Inc.  
25 Jack Enders Blvd  
Berryville, VA 22611  
Attention: Mark Bone, General Manager

With a copy to:

Berryville Graphics, Inc.  
25 Jack Enders Blvd  
Berryville, VA 22611  
Attention: Blaine York, Controller

if to the Locality, to:

County of Clarke  
101 Chalmers Court,  
Suite B Berryville, VA 22611  
Attention: David Ash, County Administrator

With a copy to:

Robert T. Mitchell, Jr., County Attorney  
9 E. Boscawen St.  
Winchester, VA 22601

if to the Authority, to:

IDA of Clarke County, Virginia  
101 Chalmers Court,  
Suite B Berryville, VA 22611  
Attention: Jesse Russell, Economic Development  
Coordinator

With a copy to:

County of Clarke  
101 Chalmers Court,  
Suite B Berryville, VA 22611  
Attention: David Ash, County Administrator

If to VDEP, to:

Virginia Economic Development Partnership  
901 East Byrd Street, 19th Floor  
Post Office Box 798 (zip: 23218-0798)  
Richmond, Virginia 23219  
Attention: President and CEO

With a copy to:

Virginia Economic Development Partnership  
901 East Byrd Street, 19th Floor  
Post Office Box 798 (zip: 23218-0798)  
Richmond, Virginia 23219  
Attention: General Counsel

**Section 8. Miscellaneous.**

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the GOF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

C. Authorize Request for Payment Letter

Mr. Martin J. Briley  
President and Chief Executive Officer  
Virginia Economic Development Partnership  
P.O. Box 798  
Richmond, Virginia 23218-0798

Dear Mr. Briley/Martin:

I am writing to request the release of the \$200,000 Governor's Opportunity Fund grant for Berryville Graphics, Inc. Therefore, in accordance with the payment procedures, a request is formally submitted for the release of these funds, and we certify the following:

1. Clarke County has taken the necessary steps to implement its commitment to the local financial participation as outlined in our Opportunity Fund application of June 1, 2012.
2. These funds will be expended only for those purposes outlined in the Opportunity Fund application of June 1, 2012.
3. All funds are expected to be obligated and spent by June 30, 2013.
4. Any funds not used will be returned to the Commonwealth.
5. A copy of the performance agreement between the locality and the company is attached to this letter.

Regards,  
J. Michael Hobert, Chair

**Supervisor Staelin moved to approve the agreements as presented and that the Chair or the County Administrator be authorized to execute along with the authorization letter requesting release of funds. The motion carried by the following vote:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

10) Board of Supervisors Personnel Committee Items

A. Expiration of Term for appointments expiring through December 2012.

09/10/2012 Summary: A list of appointments expiring through December 2012 is provided for Committee review. At the meeting, the Personnel Committee reviewed the pending appointments through December 2012. No recommendations were made at the meeting.

09/18/2012 Summary: No recommendations made during the 9/18/2012 meeting.

B. Appointments to Warren/Clarke County Microenterprise Assistance Program Management Team.

09/10/2012 Summary: As requested, recommendations for possible appointees will be available for review by the Personnel Committee. At the meeting, the Personnel Committee identified a number of potential appointees. No recommendations were made pending determination of willingness to serve.

09/18/2012 Action: **Supervisor Byrd moved to appoint the following persons to the Warren / Clarke County Microenterprise Assistance Program Management Team:**

1. **County Administration: Brandon Stidham, Planning Director**
2. **Town of Berryville: Christy Dunkle, Assistant Town Manager**
3. **Town of Boyce: Laurel Greene**
4. **County representative: Robert (Bobby) Hobbs**
5. **County representative: Steve Blakeslee**
6. **County representative: Charlie McIntosh**
7. **County representative: Michael Hoffman**
8. **(Alternate) County representative: Dr. Eric Myer**

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

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

C. County Attorney Position Review

09/10/2012 Summary: The Personnel Committee will discuss options specific to the County Attorney position. At the meeting, the Personnel Committee discussed various options to fill the recently vacated County attorney position but deferred action pending Finance Committee review.

9/18/2012 Summary: The matter was not discussed at the 9/18/2012 meeting.

11) Board of Supervisors Work Session Items

A. Lewisville Road Update Only

09/10/2012 Summary: Via email on 8/21, Supervisor Byrd requested Ed Carter, VDOT, meet with her to do a drive down Lewisville Road to get his opinion on the possibility of a

lowered speed limit. On 9/7, Ed Carter advised that Lewisville Road is on Traffic Engineering's 9/12 schedule for review.

9/18/2012 Summary: David Ash summarized this item for the Board. No action was taken.

**B. Closed Session**

09/10/2012 Summary: Closed Session is planned pursuant to Va. Code §2.2-3711(A)(29) for discussion of contract negotiations.

At the meeting, **Supervisor Staelin moved to convene into Closed Session pursuant to §2.2-3711-(A)(29) for discussion of bargaining position and negotiating strategy concerning contracts involving the expenditure of public funds. The motion carried as follows:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Absent
John R. Staelin	- 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 Staelin moved to reconvene in open session. The motion carried as follows:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Absent
John R. Staelin	- Aye
David S. Weiss	- Aye

**and further 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:**

Barbara J. Byrd	-	Aye
J. Michael Hobert	-	Aye
Beverly B. McKay	-	Absent
John R. Staelin	-	Aye
David S. Weiss	-	Aye

No action was taken on matters discussed in Closed Session.

9/18/2012 Summary: David Ash summarized this item for the Board. No action was taken.

**C. Comprehensive Plan Update Consultant RFP Update**

09/10/2012 Summary: Brandon Stidham provided an update on the Comprehensive Plan Update Consultant RFP. The Supervisors instructed Mr. Stidham to proceed with the RFP and to work with Mr. Judge to determine the legality and advisability of including non-binding cost estimates.

9/18/2012 Summary: David Ash summarized this item for the Board. No action was taken.

**D. Results of Pesticide Sampling – Report Only**

9/10/2012 Summary: Included in the packet is the August 8, 2012 Results of Pesticide Sampling Report by Alison Teetor.

9/18/2012 Summary: David Ash summarized this item for the Board. No action was taken.

**12) Finance Committee:**

**1. Assistant Commonwealth's Attorney position**

A resignation at the Commonwealth's Attorney Office has led to the attached request for a part-time Commonwealth's Attorney (approx. 20 hours per week), and the need to reevaluate the County Attorney function. The Finance Committee discussed the amount of local tax funds that should be committed to the Assistant Commonwealth's Attorney position, and how that decision would impact funding of the County Attorney position.



The County Attorney position was thereafter discussed, but it was determined that further information was needed to determine whether an employment relationship, or an outside contractor relationship, would be in the best interest of the community. No recommendation was made by the Committee pending receipt of this additional information.

9/10/2012 Summary: The Finance Committee recommends approval of the following: *"Be it resolved that FY 12 Unemployment Compensation Fund budgeted expenditures be increased \$13,769, and the same appropriated, for the purpose of paying unemployment claims."*

9/18/2012 Action: Tom Judge briefly reviewed the request advising that there would be future discussions of this matter. The Board took no action.

2. Acceptance of August Bills and Claims

The Finance Committee recommends acceptance.

09/18/2012 Action: **Supervisor Staelin moved to accept the August 2012 General Government Bills and Claims as presented. The motion carried by the following vote:**

Barbara J. Byrd	-	Aye
J. Michael Hobert	-	Aye
Beverly B. McKay	-	Aye
John R. Staelin	-	Aye
David S. Weiss	-	Aye

3. Standing Reports

Reconciliation of Appropriations. Information Only

13) County Entrance Signs Update by Supervisor John Staelin

Supervisor Staelin stated that the Economic Development Advisory Committee, with Jesse Russell, Economic Development Coordinator, had compiled and reviewed various options. Highlights of the update and Board discussion include:

- EDAC opted for a simple, attractive sign with graphics, as long as it does not detract from the sign.
- EDAC opted for "Clarke County" on the sign without "catch" phrase.
- Initially two signs will be placed one each on Route 7 and 50. More signs can be added if deemed necessary to both ends of Routes 7, 50, and 340.

- Signs can be placed in VDOT right of ways.
- By consensus, the Board agreed to generally support and encourage the EDAC to proceed.

#### 14) Government Projects Update

The monthly project update was provided by David Ash. Highlights include:

- Berryville-Clarke County Government Center
  - The air handling unit for the meeting room wing disintegrated and this morning the replacement was lifted by crane through the roof doors.
  - In the process of replacing the air handling unit this morning, it is believed that a hatch was left open. With the heavy rains, water has been running down the main stairwell causing the Facility Manager to shut down the central stairs.
  - A specification book has been requested from the consultant.
  - Bids to be solicited in next week; will be given 30 days to respond.
  - Work will not start before December possibly January.
  - The BCCGC Joint Building Committee has discussed at length strategy pertaining planning to lessen the impact, as well as the transition of employees. Vice Chairman Weiss put forth that the JBC is trying to structure the retrofit in a way that allows to be accomplished by zone.
- Senior Center/Parks Building
  - Contractor hopes to be complete with all but the punch list by month's end.
  - Original schedule set final by mid-October to the beginning of November.
  - Getting natural gas to site was the largest hold up in this project.
- Sheriff's Office
  - There is a provision in the contract requiring settlement with the first architect before proceeding with someone else. Therefore, the County is waiting on transfer of responsibility from the current architect to Chester Engineering.
- 36 East Main – Former Library
  - Need to compile realtor reports.
- Parks and Recreation
  - Tennis court resurfacing is complete.
  - School tennis courts will be done as priority, time, and funding are determined by School District.

## 15) Miscellaneous Items

Distribution of "Local Government Official's Guide to the Virginia Freedom of Information Act"

David Ash distributed the 5<sup>th</sup> Edition, 2012 of the "Local Government Official's Guide to the Virginia Freedom of Information Act" by Roger C. Wiley. He informed the Board that this long-awaited update, released last week, replaces the 4<sup>th</sup> Edition, 2007.

## 16) Summary of Required Action

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Amend and process August minutes.	Lora B. Walburn
2.	Forward approved 2012 VACo Conference Voting Credentials for the Annual Business Meeting.	Lora B. Walburn
3.	TA -12-04 Merger of Parcels follow up with Bob Mitchell on surveys.	Brandon Stidham
4.	TA -12-04 Merger of Parcels hold set public hearing pending further review by Brandon Stidham.	David Ash
5.	Process Berryville Graphics Documents.	Lora B. Walburn
6.	Execute Berryville Graphics Documents.	J. Michael Hobert
7.	Update database to include Warren / Clarke County Microenterprise Assistance Program Management Team and appointees.	Lora B. Walburn
8.	Execute letters of appointment.	J. Michael Hobert

## 17) Board Member Committee Status Reports

Supervisor Byrd

- Social Services: Monthly meeting will be held tomorrow morning; and to gain greater understanding of the department, it will continue to meet Social Workers to get a brief synopsis of their duties.
- Humane Foundation:
  - Meets September 19 at noon.

- Next rabies clinic will be held October 20 from 1 to 3 pm and will include dog agility, pony rides, and barbeque.
- Senior Center: The processor will not be charging to cut up the beef, lamb or pork donated to the Senior Center.

Supervisor John Staelin

- Sanitary Authority met this morning and discussed expansion at the Handy Mart in Waterloo, as well as ways the Industrial Development Authority might be able to work through the various issues.

Vice Chairman David Weiss

- Building and Grounds issues presented during Project Update.

Supervisor McKay

- NSVRC: Meets again in October.

Chairman Hobert:

- Joint Administrative Services: Meets Monday, September 24.
- Parks and Recreation Advisory Board: Continues to meet quarterly.

18) Closed Session

At 2:13 pm, **Supervisor Staelin moved to convene into Closed Session pursuant to §2.2-3711-A29 Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.**

**The motion carried as follows:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- 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, at 2:30 pm, **Supervisor McKay moved to reconvene in open session. The motion carried as follows:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

**Supervisor McKay 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:

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

See Agenda Item 9 for Board action following Closed Session.

Chairman Hobert recessed the meeting at 3:16 pm.

Chairman Hobert reconvened the meeting at 6:31 p.m.

19) Citizen Comment Period

No citizens addressed the Board.

20) Continued Public Hearing PH 12-08:

Verizon Wireless requests approval of a Special Use and Site Plan for constructing a monopole on the property located in the 100 block of Mount Carmel Road, Tax Map Parcel 39-A-71, Millwood Election District, zoned Forestal Open-Space Conservation (FOC). SUP-12-01

Jesse Russell provided an update of activities since the August 21, 2012 public hearing where the Supervisors postponed action on the request to allow revision of the site plan to further address the road design and some of the stormwater issues requiring further review. Highlights include:

- Site plan has been revised and the County’s engineers issued a letter of approval.
- A partial waiver of the landscape buffering along the “pinch point” area had been requested by Verizon. The applicant now has agreement with the church to do a landscaping plan.
- Verizon has agreed to remove the existing monopole across Mt. Carmel Road within 60 days of a CO on the new monopole. This is now part of the conditions and been noted on the site plan.
- As requested, Verizon has provided a map of depicting the current and proposed expanded coverage area.

Supervisor Staelin asked how the landscaping issue had been resolved.

Mr. Russell replied that Pastor Adams sent a letter stating that she and the church trustees agreed with the landscaping plan and was in agreement with the partial waiver being requested by Verizon from the Board of Supervisors.

Chairman Hobert asked if the landscaping plan was incorporated in the conditions or whether the waiver was identified in any kind of motion that would be made by the Board.

Mr. Russell replied that there was nothing in regard to a condition on the applicant for the actual partial waiver therefore the Board would have to agree to waive.

Chairman Hobert clarified that the Board would need to make a motion to approve the partial waiver of the required plan and the adoption of whatever conditions are appropriate.

Brandon Stidham and Jesse Russell concurred.

Chairman Hobert asked if the landscaping plan for the “pinch or choke point” was going to be fulfilled.

Mr. Russell replied in the affirmative advising that the church had approved the plan and the cost.

Chairman Hobert asked if staff was recommending that the plan be adopted as a condition to the special use permit.

Mr. Russell replied in the affirmative advising that Verizon and the church had agreed privately to an offsite landscaping plan on the church site.

Supervisor Staelin asked if there was any documentation of the agreement between Verizon and the church.

Mr. Russell replied that there was no contract.

A Verizon representative responded that Verizon had sent an offer letter that the church accepted.

Vice Chairman Weiss asked if the church took money in lieu of the actual planting would they be required to plant the buffer.

Mr. Russell replied that there was no requirement that he could make the church plant the buffer.

Vice Chairman Weiss expressed concern regarding the potential problems of allowing two parties to have an agreement that the county could not enforce.

Mr. Russell replied that the burden is on the adjacent property owner in this matter and the Supervisors, by granting the partial waiver of the landscaping plan, would have acted properly. He opined that if the property owner chose not to plant the buffer it would hurt the church not the applicant.

Supervisor Byrd asked if the waiver would weaken the County's buffer requirements.

Mr. Russell responded that he did not believe the waiver would weaken the County's rule. He added that the whole idea of a special use plan was to protect adjacent property owners from any negative impacts and to ensure the protection of public health, welfare and safety.

Brandon Stidham addressed the Board regarding potential future use of the access road. Highlights include:

- There are no driveway standards or access road standards in the ordinance for the tower access road.
- There were concerns regarding access to future dwellings or future uses of the property because the subject property is large with two dwelling unit rights.

- In the FOC district there is no set requirement that a dwelling automatically have a driveway constructed to the County's minimum standard. The standard is triggered only in the case of subdivision or construction of a dwelling on a property that has been subdivided since July 2005.

Supervisor Staelin asked if a buffer would be required for a driveway.

Mr. Stidham replied that buffer standards would not apply for a driveway.

Supervisor Byrd asked about access for emergency vehicles.

Mr. Stidham replied that the property owner would not be required to build a driveway to the standard set forth in subdivision ordinance.

Mr. Stidham read and reviewed the text of staff's recommended condition: 6) *The proposed access road for the tower site shall be used for the purposes set forth in this special use permit and to allow the property owner to access the subject property. Design and construction of the access easement shall be in substantial accordance with the site plan entitled, "Verizon Wireless Millwood Replacement," prepared by Morris & Ritchie Associates dated 9/21/2011 and revised 9/11/2012. Any future substantive change to the design of the access road shall require review and amendment of this and any other applicable conditions of the special use permit by the Board of Supervisors.*

Mr. Stidham stated that Verizon Attorney, David Lasso, had reviewed and accepted the conditions included staff's recommended Condition No. 6).

Mr. Stidham read and reviewed the text of *Alternate Condition 6) The proposed access road for the tower site shall be used for the purposes set forth in this special use permit and to allow the property owner to access the subject property. Design and construction of the access easement shall be in substantial accordance with the site plan entitled, "Verizon Wireless Millwood Replacement," prepared by Morris & Ritchie Associates dated 9/21/2011 and revised 9/11/2012. The proposed access easement shall not be used to provide for access to future residential or commercial structures without review and amendment of these conditions by the Board of Supervisors.*

Mr. Stidham explained that the alternate was identical except the last sentence

Vice Chair Weiss asked questions on the access road, subdivision and Board options.

Supervisor Byrd opined that she did not know how the access road could be configured to make it acceptable for a residential road.

Supervisor McKay commented that he was comfortable with road as it is for cell tower access; however, he was uncomfortable approving a road that would be inadequate for residences and possibly inaccessible to emergency vehicles.



Mr. Stidham clarified that neither one of the conditions would apply if the property owner chose to build a driveway completely separate from the tower access road.

Chairman Hobert asked for clarification that the engineer had reviewed and determined that a road could be built between the boulders without going onto the neighboring property.

Mr. Stidham replied in the affirmative stating that the County had received an approval letter from Chester Engineering.

Mr. Russell added that conditions on the site plan include installation of safety fencing to clearly designate the boundary during construction.

Chairman Hobert asked if the conditions would be included on the site plan.

Mr. Stidham replied in the affirmative explaining that the site plan was part of the special use permit.

Pastor Adams, Mt. Carmel Baptist Church, stated that the church had made its decision and was very happy with the fact that there will be a buffer. She said that the church is very satisfied with the landscaping design by Verizon, as well as the wide selection of plants proposed.

Chairman Hobert asked if the Church's satisfaction and approval was given with the understanding that it is possible that two houses could be built on the adjacent property creating more traffic.

Pastor Adams stated that the church was well aware of this possibility. She stated that she believed that Mr. Thomas would respect the Church in future planning.

David Lasso, Verizon attorney, expressed thanks to those involved in the project. He stated that a great deal of work had gone into this project and it was deeply gratifying to see that the church was happy with the resolution. He commented that the requirement for a vegetative buffer is what necessitated the discussion and the "pinch point" area did not have sufficient room to plant the buffer on the Thomas' land. He noted that the church would be taking on the vegetative buffer. Mr. Lasso concluded that the facts of this case are special to the situation and asked the Board to approve the special use and site plan.

Patsy Gochenour, member of Caretakers of God's Creation, a community of United Methodists who care about God's creations: commented that she understood that Verizon could not use the former logging access road when it moved the monopole further up the mountain. She indicated that she had been confused by the proceedings and could not get a visual so she followed Supervisor Byrd's suggestion to walk the land. She expressed concern that the heavy equipment needed for construction would destroy the landscape

and asked if trees would be cut down to provide site access. She concluded by asking if Verizon and the landowners could find another better way rather than to destroy the beauty and peace of this little church in the Blue Ridge Mountains.

Chairman Hobert asked the landowners if they cared to speak.

Mr. and Mrs. Thomas expressed their thanks.

Supervisor Staelin put forward that it was important to him that the church's interests be protected. He said that he intended to ask the Building Department to carefully monitor to ensure that church property was not harmed during construction.

**Supervisor Staelin moved to approve the special use permit and site plan for a Verizon 100' camouflaged monopole located in the 100 block of Mount Carmel Road on the property identified as Tax Map Parcel 39-A-71 subject to the following conditions:**

- 1) No construction work on Sundays or during any funeral that may occur during the rest of the week;**
- 2) No blasting for the construction of the road or monopole site;**
- 3) Remove the existing monopole located on the other side of Mt. Carmel Road and to restore the site per County ordinance and as agreed to by the property owners within 60 days of issuance of a certificate of occupancy by the Building Department for the new monopole;**
- 4) Install construction fence along the pinch point area along the property line so as to provide a visual boundary of the property line;**
- 5) Any large equipment that cannot maneuver within the confines of the road and subject property be replaced with smaller equipment that can stay within the subject property boundaries;**
- 6) The proposed access road for the tower site shall be used for the purposes set forth in this special use permit and to allow the property owner to access the subject property. Design and construction of the access easement shall be in substantial accordance with the site plan entitled, "Verizon Wireless Millwood Replacement," prepared by Morris & Ritchie Associates dated 9/21/2011 and revised 9/11/2012. Any future substantive change to the design of the access road shall require review and amendment of this and any other applicable conditions of the special use permit by the Board of Supervisors.**

Further, using the recommended No. 6 not Alternate No. with the notation that there is a partial waiving of the landscaping plan as previously discussed. The motion carried by the following vote:

Barbara J. Byrd

- Aye

J. Michael Hobert	-	Aye
Beverly B. McKay	-	Aye
John R. Staelin	-	Aye
David S. Weiss	-	Aye

Chairman Hobert asked the Zoning Administration to follow up with the church on the vegetative buffer.

At 7:20 pm, Chairman Hobert closed the public hearing.

#### 21) Adjournment

There being no further business to be brought before the Board at 7:25 pm Chairman Hobert adjourned the Board of Supervisors meeting.

#### Next Regular Meeting Date

The next regular meeting of the Board of Supervisors is set for Tuesday, October 16, 2012 at 1:00 p.m. in the Main Meeting Room, 101 Chalmers Court, 2nd Floor, Berryville, Virginia.

ATTEST: September 18, 2012

\_\_\_\_\_  
J. Michael Hobert, Chair

\_\_\_\_\_  
David L. Ash, County Administrator

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