

CLARKE COUNTY BOARD OF SUPERVISORS
December 16, 2008 Regular Meeting 1:00 p.m.
Board of Supervisors Meeting Room

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held in the Board of Supervisors' Meeting Room, 2nd Floor Circuit Courthouse, 102 N. Church Street, Berryville, Virginia on Tuesday, December 16, 2008.

Board Members Present

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

Staff Present

David Ash, Chuck Johnston, Nancy Olin, Alison Teetor, Lora Walburn

Others Present

Dr. Michael Murphy, Robina Rich Bouffault, Keith Dalton, Christie Dunkle, Alton Echols, Gem Bingol, Laura Oleniacz, Dennis Cox and other citizens

Call to Order

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

Adoption of Agenda

Supervisor Byrd moved to approve the agenda as modified:

- Miscellaneous:
 - o Add 08-27R Resolution supporting George Washington National Forest Management Plan
 - o Resolution Re: Construction of Proposed "Path" 765-Kilovolt Transmission Line

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

Approval of Minutes

Supervisor Byrd moved to approve the minutes for November 12, 2008 Work Session and November 18, 2008 Regular Meeting as presented.

The motion was approved by the following vote:

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

Clarke County Public Schools Update

Robina Rich Bouffault and Dr. Michael Murphy appeared before the Supervisors to provide the monthly update. Highlights include:

- All evening activities today have been cancelled due to inclement weather.
- Required training schedule has been established for 2009.
- Reviewing new high school programs and curriculum.
- Last Thursday, a staff meeting on permitting and coordination was held with Crabtree, Rohrbaugh and Associates, as well as Gannett Fleming.
- The School Board will be consulting a land use attorney in reference to school construction matters.
- Green initiatives will be a focus in construction of the new high school as permitted within the budget.
- The Curriculum Committee should soon be making their presentation to School Board.
- The School Board is anticipating as much as a \$1.2 million budget cut from the State. The budget shortfall will be addressed through attrition, class size adjustments, transportation, energy savings, and a hiring freeze.

Consent Agenda

Request for Easement Approval – Millwood Country Club and Valerie Kitchens

MEMORANDUM

TO: Board of Supervisors
 FROM: Alison Teetor
 DATE: December 16, 2008
 SUBJECT: Request for Easement Approval

The Easement Authority has preliminarily approved the following easements for acceptance. The Authority requests the Board of Supervisors to authorize the Chairman of the Board of Supervisors to execute deeds, easements, and other documents necessary to the transactions.

DONATION

The Millwood Country Club, Tom Cammack, President, has applied to the easement authority for approval of an easement donation. There are three parcels with a total of 53.4 acres located on the south side of Millwood Road (Route 723) on Country Club Lane approximately 1 mile west of Millwood.

Parcel A, 29-((A))-14, contains 47 acres, has three (3) unused Dwelling Unit Rights (DUR's), Parcel B, 29-((A))-13, contains 2.25 acres, has one (1) DUR and the Clubhouse, Parcel C, 29-((A))-12, contains 4.15 acres, and has one (1) DUR. All three of the DURs on Parcel A would be retired and the one remaining DUR on parcel B would be retired.

In reviewing the parcels, Parcel A meets all of the criteria, 3 DURs are being retired, it is over 40 acres, the property resource score was 60.66, and it is adjacent to an existing easement. Parcel B, meets 4 of the 4 criteria for parcels not qualifying for use value taxation, the resource score was 50.9, it is adjacent to an existing easement, it is retiring 1 DUR, and the Clubhouse is considered a contributing structure to the Greenway Rural Historic District. Parcel C, also could be considered to meet 3 of the 4 criteria, the resource score was 35.02, it is adjacent to an existing easement, and it offers protection to "Saratoga", one of only 2 National Historic Landmarks located in Clarke County.

On motion by Mr. Hobert, seconded by Ms. Radford, the Authority unanimously voted to approve the easement donation, December 4, 2008.

DONATION

Valerie Kitchens has applied to the easement authority for approval of her parcels for easement donation. The property is located in Calmes Neck on the north side of Calmes Neck Lane, adjacent to the Shenandoah River and across from Ellerslie Farm, a VOF easement. The applicant currently own 4 lots. The 4 lots have a total of 3 DURs. The applicant wishes to retire all 3 of the remaining DURs. The parcels are described as follows:

<u>County Tax Map#</u>	<u>Acres</u>	<u>DUR's</u>	<u>Property Score</u>
31-((1))-85	5.59	1	51.5
31-((1))-86	5.21	1	46.7
31-((1))-91	5.28	0	41.5
31-((1))-92	<u>6.56</u>	<u>1</u>	53.4
Total	22.64 acres	3 DUR's	

Three of the four properties meet at least two of the criteria for donation as follows:

<u>County Tax Map#</u>	<u>Property Score</u>	<u>Adj. to easement</u>	<u>retire DUR</u>
31-((1))-85	51.5	yes	yes
31-((1))-86	46.7	no	yes
31-((1))-91	41.5	no	no
31-((1))-92	53.4	yes	yes

None of the parcels are over 40 acres. All scored over 35. Lots 85, 86, and 92 all retire 1 DUR. Lot 91 has an existing house. Based on the donation criteria Lots 85, 86, and 92 qualify for donation consideration. All parcels are currently in landuse. These lots border the parcels owned by Linda Thomas, that are also being considered for easement donation. Lots 85 and 92 combined have 450 feet of frontage on the Shenandoah River, a State Scenic River. If lots 85, 86, and 92 are approved for easement recordation, then lot 91 would qualify by being adjacent to an existing easement.

On motion by Mr. Ohrstrom, seconded by Ms. Radford, the Authority unanimously voted to approve the easement donation, November 24, 2008.

Supervisor Dunning moved to accept the items on the Consent Agenda as presented.

The motion was approved by the following vote:

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

Discussion with VOF Regarding Conservation Easements

Martha Little, Director of Stewardship Virginia Outdoor Foundation, and Brett Ellsworth, Assistant Attorney General, appeared before the Supervisors to provide an overview of the conservation easement conversion or diversion process and to answer questions from the Board.

Ms. Little explained that the first VOF test would be to determine that there were no other feasible alternatives and further that the taking is necessary for the growth of the community. When that test is met, then, the requirement of replacement land of like kind is then reviewed with a preference for contiguous land. Ms. Ellsworth stated that there was a high burden of proof placed upon the applicant that there be no other feasible alternatives. Ms. Little said VOF has a long history of strictly enforcing easement agreements.

Ms. Little advised that the Town of Berryville has requested to make a presentation at the January 22, 2009 meeting of the VOF Board. She stated that the Town was arguing that this was not a conversion or diversion request as they were not adversely affecting the easement.

Ms. Little further advised that the decision was dependent upon the wording of the specific deed of easement. To facilitate the review process, the County has been asked to provide a letter of determination of compliance [2232] with the Comprehensive Plan.

Ms. Ellsworth explained landowner rights advising that VOF owns the easement and neither party – landowner or VOF - could compel the other to do anything.

Chuck Johnston put forward that a conversion or diversion policy is not currently contained in the County's conservation easement policy.

Town of Berryville – Public Utility Facility [Outfall Line for Treated Effluent]

- a) Determination Of Proposed Utility Being In Accord With Comprehensive Plan: The Town of Berryville requests approval of a Special Use and Site Plan for a Public Utility Facility (outfall line for treated effluent).

On December 17, the Town of Berryville appealed the determination made by the Planning Commission regarding conformance to the County Comprehensive Plan per Virginia Code Section 2232. Legal counsel regarding this item, Henry Day, has recommended that the Board set public hearing on this appeal. Section 2232 specifies that the Board of Supervisors act within 60 days of submittal of the appeal.

Planning Commission Recommendation: Set a public hearing on the appeal of the determination of the Planning Commission on Friday, 2009 January 16 (This date is suggested to allow all Board members to attend.)

Chuck Johnston provided a brief synopsis of the appeal by the Town of Berryville. David Ash contributed that land use attorney, Henry Day, had recommended that the Board of Supervisors document their decision making process and set a public hearing for review of the matter.

Keith Dalton put forward that the Town considered this a very important project and asked for cooperation from the Board of Supervisors.

Supervisor Weiss requested that the Town explain why they were appealing the Planning Commission decision. Keith Dalton stated that what had been provided by the Planning Commission was, in his opinion, a "non-answer." Chuck Johnston responded that the Planning Commission felt that the landowner and VOF should make any decision regarding the property. He further noted that the Comprehensive Plan states that easements should be protected.

Supervisor Weiss moved to set the matter for public hearing at 1:00 pm on Friday, January 16, 2009 or as soon thereafter as the matter might be heard.

The motion was approved by the following vote:

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

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

Planning Commission Recommendation: Postpone action on the proposed Special Use and Site Plan for a Public Utility Facility (outfall line for treated effluent) until the Board's January 20 regular meeting.

Following a brief review, **Supervisor Weiss moved to continue discussion on the matter to the January 2009 regular meeting.**

The motion was approved by the following vote:

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

Citizens Comment Period

A.C. Echols, representing Methodist Housing, explained that this organization would soon be making application for senior housing. He distributed minutes from the December 4, 1995 Board of Supervisors Adjourned Meeting referencing the rezoning of land in the Berryville Area Plan pertaining to Sub-Areas 6 and 7, located north and west of the Food Lion grocery store, for Housing for Older Persons. He requested that the Supervisors consider that the location of the proposed senior housing development was previously rezoned for housing for older persons.

Service Recognition

Supervisor Byrd presented Chairman John Staelin an award in recognition of ten years of service on the Clarke County Board of Supervisors beginning May 26, 1998.

VDOT

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

- Brush cutting on Route 634, Featherbed Lane, is in process, as well as pipe replacement.
- Grading non-hard surface roadways is underway.
- Repairing potholes on hard surface roads.
- Preparing for winter weather with crews treating roadways now and will be out throughout the night due to the forecasted weather event. Jeff Lineberry recommended that all stay at home, if possible, reminding that VDOT will first maintain major roadways.
- Supervisor Byrd asked about pothole repairs on Westwood Road. Jeff Lineberry stated that some repairs have been made but more extensive repair is needed in some areas.
- Supervisor Byrd asked about signage on Crums Church. Jeff Lineberry said that subsequent to review they had found that signs could be placed in this area that reference Berryville and Route 7.
- Supervisor Byrd advised that Ron Gustafson had contacted her about another car going through the fence on his property. She said that he was now asked if fencing was possible. Jeff Lineberry stated that VDOT was only responsible for fencing on roads with limited access. Supervisor Byrd provided VDOT with a copy of an email from Mr. Gustafson.

New High School

In response to questions regarding use of secondary road funds for the high school project, Jeff Lineberry advised that he would have the revised figures in February or March 2009. Chairman Staelin reiterated that the school roads would be the top priority.

Mr. Lineberry stated that he would appeal to the federal Federal government to have Mosby declared a connector road. If accepted, funding should be available by December 2009.

Jeff Lineberry explained that a roundabout, a non-traditional intersection, could be a possibility for this area. He discussed the benefits of a roundabouts providing for right-hand turns and traffic calming.

Chairman Staelin added that Dr. Davis had commented to him during a recent conversation that it was best to let VDOT design the project.

Christie Dunkle asked how phasing of the project would work. Jeff Lineberry provided explanation indicating that it could be phased or built as a single project.

Chairman Staelin clarified that VDOT provided for a penalty should a project be designed and not built.

Supervisor Weiss stated that the community did not have the ability to wait longer for the commencement of the high school project.

Update Calmes Neck Intersection Issue Bond

David Ash advised that Archana McLoughlin had framed questions for review by Robert Mitchell. The item was carried forward to the January 2009 regular meeting.

Update Salem Church Road Rock Issue

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

Set Public Hearing TA-08-08

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

1. Regarding Minor Commercial Public Assemblies:

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

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

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

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

Section 9-B, Definitions, so as to:

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

2. Regarding the allocation of Dwelling Unit Rights:

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

3. Regarding Site Plans and the use of explosives:
Section 6-G, Site Plan Contents so as to specify that development activities associated with Site Plans that involve the use of explosives conform to Clarke County Code Chapter 86, Explosives;
4. Regarding Site Plans the use of xeriscape landscaping practices:
Section 6-G, Site Plan Contents, and Section 6-H, Site Plan Improvements and Minimum Standards, so as to encourage xeriscape landscaping practices (use of native plant materials and landscape materials that have low water and nutrient requirements), and to require permanent irrigation systems to use rain catchment systems as their water source. TA-08-08

Chuck Johnston provided an overview of the proposed text amendment.

There was extended discussion regarding the proposed change in Item 4 Section 6-G. Chuck Johnston suggested that the language to “strongly encourage” use of rain catchment systems.

Alison Teetor put forward that the State is reviewing the use of rain catchment systems and their recommendations will be forth coming.

Supervisor Dunning moved to set the matter, as modified, for public hearing at 6:30 pm on Tuesday, January 20, 2009 or as soon thereafter as the matter might be heard.

The motion was approved by the following vote:

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

Set Public Hearing CC-08-05

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

Chuck Johnston presented to the Supervisors the request for amendment of the County Code.

Supervisor Byrd moved to set the matter for public hearing at 6:30 pm on Tuesday, January 20, 2009 or as soon there after as the matter might be heard.

The motion was approved by the following vote:

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

David S. Weiss - Aye

Energy Management Update

Alison Teetor, Energy Management Coordinator, provided the Supervisors with an update on the recently initiated Energy Management program. She advised that she had compiled the energy use per building noting that Parks and Recreation was the most efficient and the Animal Shelter was the least. She also briefly reviewed the results of her preliminary meetings with individual departments.

Committee Action

Personnel

Appointment to Authorities, Boards and Commissions

<i>Committee/Board</i>	<i>Appointee</i>	<i>Expiration Date</i>
Berryville Area Development Authority	A.R. Dunning, Jr.	3/31/2011
<i>Mr. Dunning is appointed to serve the un-expired term of Robina Rich Bouffault.</i>		

Vice Chairman Hobert moved to approve the appointment as presented.

The motion was approved by the following vote:

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

Work Session

2. Discussion of relocation to Joint Administrative Facility

- a. Location of departmental offices
- b. Public notice required prior to relocation
- c. Relocation activities

Large scale schematics of the building will be available at the meeting to aid discussion.

The Board discussed the proposed office locations in the new administrative building and directed the Administrator to assign the space and arrange for the sequential relocation of offices to the new building as quickly as areas are ready and manpower is available.

David Ash told the Supervisors that the architect had advised that written notice of substantial completion of the County wing, as well as the Library and meeting room wing, would be forthcoming. He did note that there were still some unresolved issues.

Mr. Ash further advised that a confirmation of support from the Supervisors for the relocation of Voter Registration was requested. He noted that a January 1 relocation date had been sited.

Vice Chairman Hobert moved to approve the relocation of the Voter Registrar to the Berryville Clarke County Joint Government Center.

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

David Weiss stated that he wanted to commend David Ash for the level of detail and the countless hours he has put into this project. He further commended David Ash for his efforts to maintain the project within the budget.

Further, Vice Chairman Hobert acknowledged David Weiss' participation and his contributions to the project.

3. Discussion—Development of Procedure in regard to revocation of unused special use permits.

The Board discussed the process by which unused special use permits would be identified and revocation proceedings established. A number of questions regarding notice, the need for public hearing, and benefits of recordation in the land records were referred to the County Attorney.

Following a brief explanation and update from Chuck Johnston, Vice Chairman Hobert requested that Mr. Johnston provide a short set of written recommendations for the development of procedures in regard to revocation of unused special use permits.

Bills And Claims

Supervisor Byrd moved to accept the report for the November 2008 General Government Bills and Claims.

The motion was approved by the following vote:

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

Establish Date and Time for 2009 Organizational Meeting

David Ash advised that the upcoming Supervisor meetings were being set on the cusp of the relocation to the new joint government center. He noted that legal notice was not required to relocate the meeting room.

Vice Chairman Hobert moved to set the Organization Meeting for January 12, 2009 at 10 am prior to the Work Session at 101 Chalmer Court in the Joint Government Center.

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

Miscellaneous

08-27R Resolution supporting George Washington National Forest Management Plan

Chairman Staelin provided the members with an overview of the proposed resolution.

Vice Chairman Hobert moved to approve 08-27R.

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

RESOLUTION SUPPORTING
GEORGE WASHINGTON NATIONAL FOREST MANAGEMENT PLAN
No. 08-27R

WHEREAS, the U.S. Forest Service is in the process of revising its 1993 Land and Resource Management Plan for the George Washington National Forest.

WHEREAS, the U.S. Forest Service's agency-wide strategic plan seeks to achieve six goals, including "Improve watershed condition."

WHEREAS, the provision of clean safe drinking water is one of the primary benefits that the George Washington National Forest provides to the communities that surround it.

WHEREAS, it has been estimated that approximately 44 percent of the land in the George Washington National Forest lies within watersheds that provide public drinking water to more than 260,000 Virginia residents in 22 adjacent communities, by means of reservoirs and surface waters.

WHEREAS, the watersheds of surface waters that flow from the George Washington National Forest, such as the North River and the North and South Forks of the Shenandoah River, provide drinking water to an additional 165,000 people in communities including Bridgewater, Broadway, Front Royal, Harrisonburg, Middletown, Strasburg, Winchester and Berryville.

WHEREAS, under the 1993 George Washington National Forest Management Plan most of the land in drinking water reservoirs watersheds (72 percent) is managed without ground disturbing activities and U.S. Forest Service data appears to indicate that water quality in the reservoir watersheds is substantially better than in surface watersheds in other parts of the George Washington National Forest.

WHEREAS, the 1993 George Washington National Forest Management Plan permits ground disturbing activities on most of the land (64 percent) in surface watersheds that provide drinking water through river intakes.

NOW, THEREFORE, BE IT RESOLVED, that the undersigned hereby support the following revisions to the George Washington National Forest Management Plan to ensure the quality and quantity of drinking water sources within the forest boundaries:

- The U.S. Forest Service shall formally identify all the drinking watersheds serving reservoir and surface water resources within the George Washington National Forest.
- The U.S. Forest Service shall establish management objectives that encompass the health of the entire drinking watershed, in order to ensure that conditions within the watershed will maintain, protect and enhance drinking water quality.
- The U.S. Forest Service shall continuously gather the information required to assess its performance against its watershed objectives and send summaries of the performance data to

all affected localities on at least an annual basis.

ADOPTED this 16th day of December 2008

CERTIFICATION I hereby certify that this is a true and correct Resolution approved by the Clarke County Board of Supervisors.

David L Ash, Clerk
Clarke County Board Of Supervisors

Resolution Re: Construction of Proposed "PATH" 765-Kilovolt Transmission Line

Chairman Staelin provided an overview of the resolution adopted by the Frederick County Board of Supervisors. He proposed that the Clarke County Board of Supervisors adopt a similar resolution.

Supervisor Byrd moved to approve the adoption of a resolution similar to the Resolution Re: Construction of Proposed "Path" 765-Kilovolt Transmission Line

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

Resolution Re: Construction of Proposed "PATH" 765-Kilovolt Transmission Line
No. 08-28R

WHEREAS, in September 2007 PJM directed construction of \$1.8 billion in electric transmission upgrades in the PJM region; and

WHEREAS, said upgrades include a 250 mile, 765-kilovolt transmission line extending from a substation in southwestern West Virginia to a proposed substation in Kemptown, Maryland located near Frederick, Maryland; and

WHEREAS, said transmission line is proposed to pass through northern Clarke County scarring our rural area; and

WHEREAS, this Board and its constituents have concerns relative to the impact and benefit of this proposal to either Clarke County or the Commissioner of Virginia; and

WHEREAS, this Board and its constituents oppose locating the proposed "PATH" 765-kilovolt transmission line through Clarke County to serve the middle Atlantic area and New England.

NOW, THEREFORE, BE IT RESOLVED, that the Clarke County Board of Supervisors strongly opposes the routing of the PATH Line through Clarke County.

ADOPTED this 16th day of December 2008

David L. Ash, Clerk
Clarke County Board of Supervisors

Closed Session Legal Matters §2.2.3711-A7

Supervisor Dunning moved to convene into Closed Session pursuant to Section §2.2.3711- A7 of the Code of Virginia to discuss legal matters. The motion was approved by the following vote:

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

The members of the Board of Supervisors being assembled within the designated meeting place, with open doors and in the presence of members of the public and/or the media desiring to attend, **Supervisor Weiss 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 Dunning moved to execute the following Certification of Closed Session:

CERTIFICATION OF CLOSED SESSION

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

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

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

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

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

No action was taken on matters discussed in closed session.

Summary Of Required Action

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Process approved minutes.	Lora B. Walburn
2.	Advertise public hearing SUP-08-02.	Lora B. Walburn
3.	Add Special Use and Site Plan for a Public Utility Facility (outfall line for treated effluent) January 20 regular meeting.	David Ash
4.	Add Calmes Neck update to January 20 regular meeting.	David Ash
5.	Add Salem Church Road update to January 20 regular meeting.	David Ash
6.	Advertise public hearing for TA-08-08 and CC-08-05.	Lora B. Walburn
7.	Provide notice of appointment.	Lora B. Walburn
8.	Provide written confirmation of support from the Supervisors for the relocation of Voter Registration.	David Ash
9.	Provide a short set of written recommendations for the development of procedures in regard to revocation of unused special use permits.	Chuck Johnston
10.	Process executed resolutions 08-27R, 08-28R, 08-29R.	Lora B. Walburn
11.	Update County Code CC-08-03 and CC-08-04.	Lora B. Walburn

At 4:08 pm Chairman Staelin recessed the meeting until 6:30 pm.

At 6:35 pm Chairman Staelin reconvened the meeting.

Citizens Comment Period

No citizens appeared to address the Supervisors.

PH 08-17 School Carryover Request

School Carryover Request "Be it resolved that FY 09 School Operating Fund expenditure be increased by \$475,655, and that FY 09 School Capital Fund expenditure be increased \$221,641, for a combined total of \$697,296, representing unspent funds from FY 08, and that the same be appropriated to each fund, for expenditures relating to contingency planning, safety and security, infrastructure, technology, and instructional materials."

Rick Catlett, Clarke County Public School Administrator, was present to answer questions from the Supervisors concerning the funding request.

At 6:37 pm, Chairman Staelin opened the public comment portion of the public hearing. There being no persons desiring to address the Supervisors regarding this matter the public comment portion of the public hearing was closed.

Supervisor Weiss expressed his appreciation for the openness and thoroughness of the presentation.

Supervisor Dunning moved to approve the School carryover request.

"Be it resolved that FY 09 School Operating Fund expenditure be increased by \$475,655, and that FY 09 School Capital Fund expenditure be increased \$221,641, for a combined total of \$697,296, representing unspent funds from FY 08, and that the same be appropriated to each fund, for expenditures relating to contingency planning, safety and security, infrastructure, technology, and instructional materials.

The motion was approved by the following vote:

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

David S. Weiss - Aye

Supervisor Byrd joined the meeting at 6:39 pm.

PH 08-18 Rezoning RZ-08-01

Rezoning RZ-08-01: 7-Eleven, Inc. (Agent: Jason Azar, Huron Consulting) requests the amendment of the County Zoning Map to rezone a 1.5137 acre portion of Tax Map Parcel 7-((A))-37 from the Agricultural-Open Space-Conservation (AOC) District to the Highway Commercial (CH) District and Historic Access Corridor Overlay District (HC), located at 10929 Harry Byrd Highway, Longmarsh Magisterial District.

Chuck Johnston presented the rezoning request for 7-Eleven, Inc. RZ-08-01 and answered the various questions posed by the Supervisors.

Paul J. Gauthier, legal counsel for applicant of Vanderpool, Frostick & Nishanian, P.C., spoke in support of the request on behalf of the applicant and provided more detailed information regarding the proposed commercial expansion that would occur subsequent to approval of the rezoning request. He stated that they believed that this was positive for the adjacent neighbors stating that there would be greater screening of the on-site dumpster bringing it up to new standards.

Supervisor Dunning stated that the persons living at the southwest corner have a driveway that runs adjacent to this property and that there was a buffer of trees there that covers a 90 degree turn. He reiterated that it was the Planning Commission's desire that all affected parties work to protect the buffer.

Chairman Staelin queried Mr. Gauthier about the addition of diesel pumps. Mr. Gauthier explained that, while it was not standard, diesel would be added at this location on the outside. He assured that the design was not intended for the fueling of large tractor-trailers.

At 6:51 pm, Chairman Staelin opened the public comment portion of the public hearing. There being no persons desiring to address the Supervisors regarding this matter the public comment portion of the public hearing was closed.

Supervisor Byrd moved to accept RZ-08-01.

The motion was approved by the following vote:

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

ORDINANCE
(Approved 2008 December 16)

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held at the Circuit Courthouse of said County on 2008 December 16, at 6:30 p.m. On motion by Supervisor Byrd, the Board of Supervisors approved the following amendment to the County Zoning map by a unanimous vote.

WHEREAS, a portion of Tax Map Parcel 7-((A))-37 is currently zoned Highway Commercial (HC) and Historical Access Corridor Overlay District (HC), and a convenience store and garage have been located on this portion of the parcel for over 50 years; and

WHEREAS, the proposed rezoning of the remainder of the parcel will permit the expansion of the existing convenience store, and will permit safer access and vehicle movement within the parcel; and

WHEREAS, the rezoning of the remainder of the parcel will result in all of the parcel being zoned to the same zoning district, thereby bringing the property into conformity with typical zoning practices, and

NOW THEREFORE BE IT RESOLVED THAT, the Clarke County Zoning map be amended to rezone a 1.5137 acre portion of Tax Map Parcel 7-((A))-37 from the Agricultural-Open Space-Conservation (AOC) District to the Highway Commercial (CH) District and Historic Access Corridor Overlay District (HC), located at 10929 Harry Byrd Highway, Longmarsh Magisterial District. RZ-08-01

Attest:

David L. Ash, County Administrator

PH 08-19

Text Amendment TA-08-06: The Clarke County Planning Commission recommends the amendment of the County Zoning Ordinance:

Section 3-A-1, Agricultural-Open Space-Conservation District – (AOC) so as to:

1. amend the list of Accessory Uses to delete the acreage requirement for Tenant Houses;
2. amend the list of Special Uses to change "Processing of Fruit and Vegetables" to "Processing of Agricultural Products not produced in Clarke County";

Section 3-A-2, Forestal-Open Space-Conservation District – (FOC) so as to:

1. amend the list of Accessory Uses to delete the acreage requirement for Tenant Houses;
2. amend the list of Special Uses to change "Processing of Fruit and Vegetables" to "Processing of Agricultural Products not produced in Clarke County";

Section 3-C, Supplementary Regulations, so as to establish regulations for: Processing of Agricultural Products produced in Clarke County: "A proposal for the Processing of Agricultural Products produced in Clarke County shall submit a site plan, per Section 6 of this Ordinance, subject to administrative approval by the Zoning Administrator. Any facilities used for such processing shall be set back at least 500 feet from incorporated town limits, the Berryville Annexation Area, the Rural Residential Zoning District, and parcels less than six acres in area;" and

Section 9-B, Definitions, so as to amend the definition of the term "Agriculture": The use of land devoted to the production of agricultural products and the processing of such agricultural products that are produced in Clarke County." TA-08-06

Chuck Johnston presented the Planning Commission recommendations for amendment of the County Zoning Ordinance TA-08-06.

Chairman Staelin requested a language change on page 103 of the packet from to read "an applicant for a proposal."

At 6:57 pm, Chairman Staelin opened the public comment portion of the public hearing. There being no persons desiring to address the Supervisors regarding this matter the public comment portion of the public hearing was closed.

There was lengthy discussion on tenant houses. Due to concerns expressed by the Supervisors, Chuck Johnston suggested separating tenant houses from agricultural processing.

Vice Chairman Hobert refrained from discussion and vote citing a conflict of interest.

Supervisor Weiss moved to amend Section 3-A-1 Item 1 and Section 3-A-2 Item 1 Tenant Houses.

The motion was defeated by the following vote:

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

Supervisor Dunning moved to amend Section 3-A-1 Item 2 and Section 3-A-2 Item 2, Section 3-C, Section 9-B Agricultural Processing as modified.

The motion was approved by the following vote:

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

ORDINANCE
(Approved 12/16/08)

At a regular meeting of the Clarke County Board of Supervisors held at the County Circuit Courthouse, at 6:30 p.m., the motion by Supervisor Weiss to amend Section 3-A-1 and Section 3-A-2 regarding the acreage requirement for Tenant Houses failed by a 1-3-1 vote (Yes: Weiss; No: Byrd, Dunning, and Staelin; Abstained: Hobert). On motion by Supervisor Weiss, the Board of Supervisors unanimously approved the other proposed Text Amendments of the Zoning Ordinance, as described below.

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

WHEREAS, agricultural activities are the dominant land use in Clarke County;

WHEREAS, expanding the processing of fruit and vegetables to include all agricultural products will encourage agricultural development and activities in County;

NOW THEREFORE BE IT ORDAINED THAT the County's Zoning Ordinance, Section 3-A-1, Agricultural-Open Space-Conservation District – (AOC) be amended so as to amend the list of Special Uses to change "Processing of Fruit and Vegetables" to "Processing of Agricultural Products not produced in Clarke County"; Section 3-A-2, Forestal-Open Space-Conservation District – (FOC) so as to amend the list of Special Uses to change "Processing of Fruit and Vegetables" to "Processing of Agricultural Products not produced in Clarke County"; Section 3-C, Supplementary Regulations, so as to establish regulations for Processing of Agricultural Products produced in Clarke County: "An applicant for a proposal for the Processing of Agricultural Products produced in Clarke County shall submit a site plan, per Section 6 of this Ordinance, subject to administrative approval by the Zoning Administrator. Any facilities used for such processing shall be set back at least 500 feet from incorporated town limits, the Berryville Annexation Area, the Rural Residential Zoning District, and parcels less than six acres in area;" and Section 9-B, Definitions, so as to amend the definition of the term "Agriculture": The use of land devoted to the production of agricultural products and the processing of such agricultural products that are produced in Clarke County."

PH 08-20

County Code Text Amendment CC-08-03: The Clarke County Board of Supervisors will consider the amendments of the Clarke County Well Ordinance section 184-1 definitions, add a separation distance between wells, section 184-10 General requirements to add requirements for the installation of closed loop groundwater systems and to eliminate the use of hydrofracturing, and Appendix 1, table 1 to clarify setback distances; and Clarke County Septic Ordinance, 143-9-H Subsurface Investigations, so as to exempt emergency repairs from the resistivity requirements and Section 143-10, to clarify the application of 100% reserve area to merged lots.

Chuck Johnston presented the proposed changes to the Code of Clarke County CC-08-03.

At 7:21 pm, Chairman Staelin opened the public comment portion of the public hearing.

Abby Marcy, Berryville: spoke in favor of adoption of the proposed amendment.

There being no other persons desiring to address the Supervisors regarding this matter the public comment portion of the public hearing was closed.

Supervisor Weiss asked Mr. Johnston for clarification on setback requirements and reserve areas.

Vice Chairman Hobert moved to approve the proposed code amendment CC-08-03.

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

ORDINANCE
(Approved 12/16/08)

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held at the Circuit Courthouse of said County on 2008 December 16 at 6:30 p.m. On motion by Supervisor Hobert, the Board of Supervisors approved the following ordinance by a unanimous vote.

WHEREAS, the Clarke County Comprehensive Plan states under Objective 3, Policy 20. Recognize that karst terrain underlies the majority of the Shenandoah Valley and that groundwater in these areas is highly susceptible to contamination.

WHEREAS, the Clarke County Septic Ordinance and the Clarke County Well Ordinance currently regulate the installation of residential sewage disposal systems and wells;

WHEREAS, clarification of these ordinances provides for better implementation;

NOW THEREFORE BE IT ORDAINED THAT, the Clarke County Well Ordinance Section 184-1, Definitions, will be amended to add a separation distance between wells, Section 184-10 General Requirements will be amended to add requirements for the installation of closed loop groundwater systems and to eliminate the use of hydrofracturing, and Appendix 1, table 1 to clarify setback distances; and the Clarke County Septic Ordinance, Section 143-9-H Subsurface Investigations, will be amended so as to exempt emergency

repairs from the resistivity requirements and Section 143-10, Design and installation, will be amended to clarify the application of 100% reserve area to merged lots.

PROPOSED ORDINANCE and CODE TEXT AMENDMENTS

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

Chapter 184 Wells
§ 184-1. Definitions.
[Amended 03-08-03; 04-
04-20; 05-03-15]

When used in this chapter, the following terms shall have the meanings given to them:

FOUNDATION – *any structural support that includes masonry footings or pier construction, such as for use to support decks and buildings.*

PRIVATE WATER SUPPLY SYSTEM -- A water supply system from which water is not available to the public, its location and outlets being on private property and serving not more than one *single family* dwelling and *one dwelling less of than 600 square feet*, or an agricultural unit. For the purpose of this chapter, an agricultural unit shall be comprised of the main dwelling, tenant houses for the farm employees and other related farm buildings. Commercial and industrial units referred to herein are those employing fewer than 25 persons where water is not available to the public.

§ 184-9. Location of water supplies.

[Amended 99-08-17]

All water supply systems shall conform to the following site requirements:

Well Separation. Any new well installed shall be located a minimum of 100 feet from any other well. This requirement shall not apply to any lot or parcel recorded prior to (date of adoption), if such lot or parcel is not sufficient to accommodate this separation distance, as determined by the Clarke County Health Department. However, the maximum amount of separation possible shall be provided.

§ 184-10. General requirements.

[Amended 03-08-19; 05-03-15]

- H. Chemical or physical alteration of wells after drilling.
 - (1) Hydraulic fracturing of wells ~~may be permitted by the Agent under the provisions of this chapter and shall be considered on a case by case basis-~~ **is prohibited.**
 - (2) The use of explosives in wells is prohibited.
 - (3) The use of chemical and biologic additives to remove contaminants and/or to improve well yields may be permitted by the Agent under the provisions of this chapter and shall be considered on a case-by-case basis.
- J. *Ground-source heat pumps*
 - a. Open-looped ground-source heat pump wells are prohibited. [Added 03-08-19]
 - b. *Closed-loop ground source heat pump system (GSHP) shall:*
 - i)** *be installed by a contractor who has current International Ground Source Heat Pump Association (IGSHPA) certification, having completed an IGSHPA training course in the fundamentals of design, installation, and operation of ground source systems, and having passed the IGSHPA certification examination and pipe fusion tests.*
 - ii)** *The installation specifications for the GSHP system shall conform to the IGSHPA installation standards.*
 - iii)** *Only biodegradable mixtures such as food grade propylene glycol may be used as the circulating fluid for GSHP systems.*

Appendix I Tables

Table I Minimum Safe Distances

Location of Wells

Sources of Contamination	Minimum Distance (feet)
Chemical storage tanks	100
Feedlots, hog lots, poultry houses	100
(Petroleum) storage tanks	100
Roads surface (public)	25
Septic tanks	100
Absorption field	100
Cesspools, pit privies, etc.	150

Intermittent streams, <i>active mill races (even if sporadic use)</i>	50
Other sewers	35
Perennial streams, <i>surface water bodies such as ponds, lakes</i>	100
Property lines	10
Foundation of buildings of solid masonry	50
Foundation of buildings of wood framing or exterior	50
Sinkholes and cave entrances	100
<i>Chemically</i> termite treated foundations	100
Cemetery	100

Chapter 143 Septic Systems

143-9. System siting.[Adopted 99-08-17; Amended 04-06-15; 05-03-15; 05-07-19]

H. Subsurface Investigations [Added 7/19/05]

This section is to establish review procedures and performance standards for non-invasive subsurface investigations designed to identify the potential for voids beneath primary and reserve drainfield sites so as to avoid locating drain fields in areas where subsidence may occur.

Site Review

Whenever an application is filed for a onsite sewage disposal permit *or certification letter* with the Health Department, *except for emergency repair applications, as determined by the Health Department* after [adoption date of ordinance], in any region underlain with limestone, dolomite, calcareous shale, or marble, specifically described as areas containing soils derived from these materials, which include soil types (4, 5B, 5C, 10, 15B, 15C, 17B, 18, 23, 24, 30B, 31B, 32B, 33B, 35B, 35C, 36B, 36C, 37B, 38B, 38C, 38D2, 39B, 39C, 39D2, 43C, 44B, 45B, 46B, 47B, 47C, 48B, 51B, 55D, 56, 57C2, and 57D2) (as identified in the Clarke County Soil Survey, 1982), the applicant will hire a Geotechnical Engineer (GE) to conduct Electrical Resistivity tests to determine if voids or other anomalies are located beneath the proposed drainfield trenches.

143-10. Design and installation.

[Amended 00-04-17, 02-02-19; 05-03-15; 06-05-16]

- F. Reserve area. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided in accordance with the provisions of this article. This requirement shall not apply to any lot or parcel recorded prior to May 1, 1995, if such lot or parcel is not sufficient capacity to accommodate a reserve sewage disposal site, as determined by the Clarke County Health Department. However, the maximum amount of reserve area shall be provided and may not be less than 50% of the primary disposal site. *If existing lots must be merged to create a buildable lot, regardless of recordation date, then a 100% reserve area is required.*

ARTICLE III Recordation of Onsite Sewage Disposal Permit Limitations
143-16 Recordation of Certification Letter

Any owner(s) of an existing lot that is issued a VDH Certification Letter shall record said Certification Letter in the Circuit Court land records, within ~~40~~ **90** days of issuance.

Prior to Health Department approval of a subdivision plat, the owner(s) of the property to be subdivided must apply for a VDH Certification Letter, at the Clarke County Health Department, for each lot to be created by the subdivision, and record said Certification Letters in the Circuit Court land records within ~~40~~ **90** days after approval of the subdivision.

PH 08-21

County Code Text Amendment CC-08-04: The Clarke County Board of Supervisors will consider the amendment of Clarke County Code, Chapter 148, Soil Erosion and Sedimentation Control, so as to update this section and bring it into conformance with the Code of Virginia.

Chuck Johnston reviewed the proposed code amendment advising this was an entire deletion and adoption of the ordinance. Mr. Johnston advised that review with DEQ was scheduled for January 15, 2009.

Chairman Staelin asked for clarification on terraces and land disturbance permits.

Supervisor Dunning expressed concern about the manner in which the ordinance was written.

At 7:32 pm, Chairman Staelin opened the public comment portion of the public hearing. There being no persons desiring to address the Supervisors regarding this matter the public comment portion of the public hearing was closed.

Supervisor Weiss moved to adopt code amendment CC-08-04.

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.	- Nay
David S. Weiss	- Aye

ORDINANCE (Approved 12/16/08)

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held at the Circuit Courthouse of said County on 2008 December 16 at 6:30 p.m. On motion by Supervisor Weiss the Board of Supervisors voted 4-1 (Yes: Weiss, Byrd, Hobert, and Staelin; No: Dunning) to approve the following amendment of the Clarke County Code as described below.

WHEREAS, it is the duty of the County of Clarke to protect the health, safety, and welfare of the community;

WHEREAS, the State of Virginia requires localities to adopt an Erosion and Sediment Control Ordinance and amend such to meet current State standards;

WHEREAS, the County of Clarke desires to protect the lands and waterways of the County and State in regard to erosion and sediment; and

NOW THEREFORE BE IT ORDAINED THAT the amendment of the Clarke County Code, Chapter 148, Soil Erosion and Sedimentation Control, be amended so as to update this section and bring it into conformance with the Code of Virginia.

Chapter 148 Soil Erosion and Sedimentation Control

Text shown as *bold italics* is not is DCR Model Ordinance

Section 148-1. TITLE, PURPOSE, AND AUTHORITY

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of Clarke County." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the Clarke County by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.

Section 148-2. DEFINITIONS: As used in the ordinance, unless the context requires a different meaning:

- A. **Agreement in lieu of a plan** means a contract between the Zoning/Code Enforcement Officer and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the Zoning/Code Enforcement Officer in lieu of a formal site plan.
- B. **Applicant** means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.
- C. **Board** means the Virginia Soil and Water Conservation Board.
- D. **Certified inspector** means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.
- E. **Certified plan reviewer** means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- F. **Certified program administrator** means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the

Board's training program for program administration and successfully completes such program within one year after enrollment.

- G. **Clearing** means any activity that removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal.
- H. **County** means the Clarke County.
- I. **Department** means the Department of Conservation and Recreation.
- J. **Development** means a tract of land developed or to be developed as a single unit under single ownership or unified control, which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.
- K. **Director** means the Director of the Department of Conservation and Recreation.
- L. **District or Soil and Water Conservation District** refers to the Lord Fairfax Soil and Water Conservation District.
- M. **Erosion and Sediment Control Plan or Plan** means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.
- N. ***Erosion and Sediment Control Sketch Plan** means a plat or drawing of the property indicating the elevation contours and detailing the proposed areas of disturbance, including but not limited to the driveway, house site, and clearing that identifies the location and type of proposed erosion and sediment control practices to be installed prior to any land disturbing activity.*
- O. **Erosion Impact Area** means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes [or to shorelines where the erosion results from wave action or other coastal processes.]
- P. **Excavating** means any digging, scooping or other methods of removing earth materials.
- Q. **Filling** means any depositing or stockpiling of earth materials.
- R. **Grading** means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.
- S. ***Grading Permit** means a permit issued by the Zoning/Code Enforcement Officer for the purpose of excavating and filling of earth materials or any combination thereof, including the land in its excavated or filled conditions.*
- T. **Land-disturbing Activity** means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:
 - 1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
 - 2) Individual service connections;

- 3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
 - 4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
 - 5) Surface or deep mining;
 - 6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;
 - 7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ~~ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6 of the Code of Virginia~~, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Sec. 10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;
 - 8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
 - 9) ***Disturbed land areas of less than 10,000 square feet in size including water wells. However, the Clarke County reserves the right to require all persons to obtain a Minor Land Disturbance permit for land disturbing activities less than 10,000 square feet in area.***
 - 10) Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;
 - 11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and
 - 12) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the Zoning/Code Enforcement Officer.
- U. **Land-disturbing Permit** means a permit issued by the Code/Zoning Code Enforcement Officer or their designee for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.
- V. **Local erosion and sediment control program** or **local control program** means an outline of the various methods employed by the Clarke County to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.
- W. ***Minor Land Disturbance Permit means a permit issued by the Code/Zoning Code Enforcement Officer for any land disturbing activity less than 10,000 square feet in area.***
- X. **Natural channel design concepts** means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bank full storm event within its banks and allows larger flows to access its bank full bench and its floodplain.
- Y. ***Notice to Comply means a written notice sent to the responsible land disturber or owner, or appropriate agent that stops all land disturbing activity on the project for a specified time period.***

- Z. **Owner** means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.
- AA. **Peak flow rate** means the maximum instantaneous flow from a given storm condition at a particular location.
- BB. **Permittee** means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.
- CC. **Person** means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.
- DD. **Plan Approving Authority** means the Zoning/Code Enforcement Officer or their designee as having the responsibility for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.
- EE. **Program authority** means the Clarke County which has adopted a soil erosion and sediment control program that has been approved by the Board.
- FF. **Responsible Land Disturber** means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- GG. **Runoff volume** means the volume of water that runs off the land development project from a prescribed storm event.
- HH. **Single-family residence** means a noncommercial dwelling that is occupied exclusively by one family.
- II. **State erosion and sediment Control program** or **state program** means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.
- JJ. **State waters** means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.
- KK. **Stop Work Order** means *a written notice sent to the responsible land disturber or owner or appropriate agent that stops all land disturbing activity on the project for a specified time period.*
- LL. **Town** means the incorporated town of Boyce.
- MM. **Transporting** means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.
- NN. **Water Quality Volume** means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

00. *Zoning/Code Enforcement Officer means the person who is responsible for implementing and enforcing the County Erosion and Sediment Control Ordinance.*

Section 148-3. LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

- A. Pursuant to section 10.1-562 of the Code of Virginia, Clarke County hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.
- B. Before adopting or revising regulations, Clarke County shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when Clarke County is amending its program to conform to revisions in the state program. However, a public hearing shall be held if Clarke County proposes or revises regulations that are more stringent than the state program.
- C. In addition, in accordance with §10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.
- D. In accordance with §10.1-561 of the Code of Virginia, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.
- E. Pursuant to Sec. 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until a certified plan reviewer reviews it. A certified inspector shall conduct inspections of land-disturbing activities. The Erosion Control Program of Clarke County shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.
- F. Clarke County designates the County Zoning/Code Enforcement Officer or their designee as the plan-approving authority.
- G. The program and regulations provided for in this ordinance shall be made available for public inspection at the offices of the Clarke County Planning Department.

Section 148-4. SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS

- A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Zoning/Code Enforcement Officer an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the Zoning/Code Enforcement Officer. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the

construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the Zoning/Code Enforcement Officer.

- B. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook as amended and the Clarke County Erosion and Sediment Control Ordinance are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The Zoning/Code Enforcement Officer, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.
- C. *Any person whose land disturbing activity involves building, dumping or otherwise trespassing upon or over or encroaching upon or taking or using any materials from the beds or rivers, streams or creeks which are the property of the commonwealth shall be required to obtain a permit from the Virginia Marine Resources Commission, unless such act is pursuant to statutory authority.*
- D. *Any person whose land disturbing activity involves lands that are within 100 feet from a perennial stream or perennial spring, or 50 feet from an intermittent stream shall have an approved erosion and sediment control plan.*
- E. *Any person whose land disturbing activity involves construction of a pond that exceeds 10,000 square feet shall have an approved erosion and sediment control plan. Construction of ponds less than 10,000 square feet shall have an approved Minor Land Disturbance Permit and shall include a plan regarding erosion and sediment controls, emergency overflow and stormwater management. Ponds specifically related to agricultural activities where the owner has a Conservation Farm Management Plan approved by the Clarke County Zoning Administrator and by either the regional Soil and Water conservation District or the federal Natural Resources conservation Service and qualifies for use-value taxation for agriculture shall be exempt from the requirement.*
- F. *A person engaging in land disturbing activities must obtain either an Erosion and Sediment Control Plan, Land Disturbance Permit, Minor Land Disturbance Permit, or an Agreement in Lieu of an Erosion and Sediment Control Plan as such is warranted and be approved by the Zoning/Code Enforcement Officer. A Minor Land Disturbance Permit is required for disturbance activities less than 10,000 square feet in area. An Erosion and Sediment Control Plan is required for land disturbing activities of 10,000 square feet or greater in area, although land disturbing activities of 10,000 square feet or greater when involving the construction of a single family residence shall require an Agreement in Lieu of an Erosion and Sediment Control Plan. An Erosion and Sediment Control Sketch Plan shall be required for all Agreements in Lieu of an Erosion and Sediment Control Plan and be approved by the Zoning/Code Enforcement Officer. All persons required to provide an Erosion and Sediment Control Plan shall obtain a Land Disturbance Permit prior to any land disturbing activity. In addition to the applicant obtaining either a Land Disturbance Permit or an Agreement in Lieu of an Erosion and Sediment Control Plan. The owner or applicant may be required to also obtain a Grading Permit before commencing any land disturbing activity. A grading permit shall be limited to the elements that have been reviewed and approved by the County consultant engineer in an Erosion and Sediment Control Plan as was submitted by the applicant. An Erosion and Sediment Control Sketch Plan shall be required for all land disturbing activities of 10,000 square feet or greater in area, including Agreements in Lieu of an Erosion and Sediment Control Plan. An Erosion and Sediment Control Sketch Plan may be required for all land disturbing activities less than 10,000 square feet as determined by the Zoning/Code Enforcement Officer based on site specific conditions.*
- G. *Any person requiring an Erosion and Sediment Control Plan shall submit to the Zoning/Code Enforcement Officer three copies of a Conservation Plan in conformity with the current edition of the Virginia Erosion and Sediment Control Handbook. One such copy shall be referred to the County*

consulting engineer for review. One copy shall be referred to the Zoning/Code Enforcement Officer. One copy shall be kept in the offices of the Clarke County Planning Department.

- H. *The Zoning/Code Enforcement Officer shall review conservation plans submitted to him/her and grant written approval within 45 days of the receipt of the plan the Officer determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a Certificate of Competence, to the Zoning/Code Enforcement Officer, as provided by §10.1-561, of the Virginia Erosion and Sediment Control Code, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a Certificate of Competence before engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.*
- 1) *However, the Zoning/Code Enforcement Officer may waive the Certificate of Competence requirement for an Agreement in Lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the Agreement in Lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by §10.1-561 of the Virginia Erosion and Sediment Control Code. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this ordinance.*
- I. The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When the plan is determined to be inadequate, the Zoning/Code Enforcement Officer shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- J. An approved plan may be changed by the Zoning/Code Enforcement Officer when:
- 1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
- 2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the Zoning/Code Enforcement Officer and the person responsible for carrying out the plans.
- K. The Zoning/Code Enforcement Officer may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
- 1) At the time of plan submission, an applicant may request a variance to become part of the approved Erosion and Sediment Control Plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances that are allowed by the Zoning/Code Enforcement Officer shall be documented in the plan.
- 2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the Zoning/Code Enforcement Officer. The Zoning/Code Enforcement Officer shall respond in writing either approving or disapproving such a request. If the Zoning/Code Enforcement Officer does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
- L. In order to prevent further erosion, the Zoning/Code Enforcement Officer may require approval of a plan for any land identified in the local program as an erosion impact area.

- M. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an Erosion and Sediment Control Plan shall be the responsibility of the owner.
- N. *Where fill is transported from off site to the site utilizing such, the contractor delivering the fill shall certify that the subject fill does not contain any contaminants that could be hazardous to the soils, groundwater, surface water or to human health as determined by the Virginia Department of Environmental Quality or other applicable federal, state, and/or local agencies. In addition, the contractor shall state the location or locations from which the fill has been excavated and the amount of fill to be delivered to the receiving site. All fill operations shall obtain all required permits from the Zoning/Code Enforcement Officer.*
- O. In accordance with the procedure set forth by §10.1-563 (E) of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Board for review and approval consistent with guidelines established by the Board.
- P. State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

Section 148-5. PERMITS; FEES; SECURITY FOR PERFORMANCE

- A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.
- B. No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit *and where applicable, a Virginia Stormwater Management Permit*, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.
- C. An administrative fee as set by the Board of Supervisors in the Clarke County fee schedule shall be paid to the Clarke County Treasurer at the time of submission of the erosion and sediment control plan. Fees incurred from inspections shall also be paid to Clarke County.
- D. No land-disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.
- E. All applicants for permits shall *either*:
 - 1) *shall sign a statement acknowledging that the Certificate of Occupancy may be withheld for completed portions of projects and/or Building Permits for unconstructed portions of projects should the applicant fail, after proper notice, within the time specified, to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity, or*
 - 2) provide a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Zoning/Code Enforcement Officer to ensure that measures could be taken by Clarke County at the applicant's expense should the applicant fail, after proper notice, within the time specified, to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity

- a. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the Clarke County to take such conservation action, Clarke County may collect from the applicant any costs in excess of the amount of the surety held.
- b. Within sixty (60) days of adequate stabilization, as determined by the Zoning/Code Enforcement Officer in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

Section 148-6. MONITORING, REPORTS, AND INSPECTIONS

- A. The Zoning/Code Enforcement Officer may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- B. The Zoning/Code Enforcement Officer shall periodically inspect the land-disturbing activity in accordance with Sec 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. Professional fees incurred as a result of the inspections shall be paid by either: the permittee, owner, or person responsible for carrying out the plan. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.
 - 1) If the Zoning/Code Enforcement Officer determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.
 - 2) The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.
- C. Upon determination of a violation of this ordinance, the Zoning/Code Enforcement Officer may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.
 - 1) If land-disturbing activities have commenced without an approved plan, the Zoning/Code Enforcement Officer may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.
 - 2) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.
 - 3) The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court of Clarke County.
 - 4) If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Zoning/Code Enforcement Officer may issue an order to the owner

requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of Clarke County.

- 5) The owner may appeal the issuance of an order to the Circuit Court of Clarke County.
- 6) Any person violating or failing, neglecting or refusing to obey an order issued by the Zoning/Code Enforcement Officer may be compelled in a proceeding instituted in the Circuit Court of Clarke County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
- 7) Nothing in this section shall prevent the Zoning/Code Enforcement Officer from taking any other action authorized by this ordinance.

Section 148-7. PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

- A. Any person who violates any provision of this ordinance shall, upon a finding of the District Court of Clarke County, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of land disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000, except that a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. (Code of Virginia, Section 10.1-562 J)
- B. The Zoning/Code Enforcement Officer or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of Clarke County to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist.
 - 1) However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the Zoning/Code Enforcement Officer, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the Zoning/Code Enforcement Officer has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.
- C. In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to Clarke County in a civil action for damages.
- D. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Clarke County may bring a civil action for such violation or failure. Any civil penalties assessed by a court shall be paid to the Treasurer of Clarke County except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
- E. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, Clarke County may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty, which could be imposed under Subsection E.
- F. The Commonwealth's Attorney shall, upon request of the Zoning/Code Enforcement Officer, take legal action to enforce the provisions of this ordinance.

- G. Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

Section 148-8. APPEALS AND JUDICIAL REVIEW

- A. Any applicant under the provision of this ordinance who is aggrieved by any action of the Zoning/Code Enforcement Officer in disapproving plans submitted pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Board of Supervisors provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public hearing provided that the Board of Supervisors and other involved parties have at least 30 days prior notice. In reviewing the Zoning/Code Enforcement Officer's actions, the Board of Supervisors shall consider evidence and opinions presented by the aggrieved applicant and Zoning/Code Enforcement Officer. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse or modify the action. The Board of Supervisor's decision shall be final, subject only to review by the Circuit Court of Clarke County.
- B. Final decisions of Clarke County under this ordinance shall be subject to review by the Circuit Court of Clarke County, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities

VACo Resolution Regarding the Commonwealth's FY2009-2010 Budget Shortfall

Vice Chairman Hobert distributed a resolution proposed by VACo regarding the Commonwealth's FY2009-2010 Budget shortfall. He advised that the resolution was designed to suggest to the legislature ways to address the budgetary crisis.

At 7:35 Chairman Staelin left for the Berryville Town Council meeting.

Vice Chairman Hobert moved to adopt the resolution proposed by VACo.

The motion was approved by the following vote:

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

VACo Resolution regarding the Commonwealth's FY 2009-2010 Budget Shortfall
No. 08-29R

WHEREAS, Clarke County is committed to ensuring fiscal sustainability at the local and state levels of government because fiscal sustainability enables the Commonwealth and its local governments to provide high quality, cost effective, core public services that benefit Virginians today and for generations to come; and

WHEREAS, the current difficult economic and financial times require government, at all levels, to evaluate service delivery responsibilities and to determine the continued importance of programs meeting critical needs; and

WHEREAS, the Commonwealth must resolve an estimated 2009 and 2010 biennial revenue shortfall approaching \$3 billion that may in fact continue to escalate in the near term; and

WHEREAS, Clarke County must resolve significant local revenue shortfalls for these periods as well; and

WHEREAS, the Commonwealth's General Fund supports most critical core government services including public education, health and human resources, including the Comprehensive Services Act, public safety, natural resources and environmental services by dedicating almost 50 percent of the state's General Fund to local governments (with 74 percent of this funding supporting K-12 public education); and

WHEREAS, if one level of government establishes and ensures a priority, it is then incumbent upon that level of government to adequately fund the services necessary to meet that priority; and

WHEREAS, the current economic environment threatens the sustainability of these critical core public services if the Commonwealth is required to reduce its contribution to the financial partnership between the state and its local governments including Clarke County; and

WHEREAS, specific and necessary state budget reductions may impact a wide array of core public services, including but not limited to public education, the Comprehensive Service Act, and public safety, and many local governments, including Clarke County will absorb significant state reductions in 2009 and may be compelled to increase real property taxes to help ensure the continuation of vital core public services; and

WHEREAS, Clarke County stands ready to partner with the Commonwealth to make the difficult budgetary decisions required, including thoroughly evaluating programs and working together to maintain a structural balance between revenues and expenditures that promotes the long-term viability of our Commonwealth.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Clarke County respectfully offers the following budget and revenue recommendations for the 2009 legislative session to the Governor and Virginia General Assembly including Clarke County's Delegates and Senators:

- Budget and appropriate sufficient withdrawals from the state's Revenue Stabilization Fund ("Rainy Day Fund") to help offset necessary state budget reductions. Global and national financial markets are imbalanced; consequently, Virginia is one of many states facing a significant state revenue shortfall. The Commonwealth is required to replenish the Fund when economic conditions improve, and Clarke County supports recapitalizing the Fund in better economic times.
- Before budgeting and appropriating necessary state budget reductions, revisit recent state tax exemptions. Since the late 1990s the state has enacted more than \$1.8 billion in net biennial tax reductions and specific General Fund transfers.

- Oppose the enactment of new unfunded and under-funded state mandates that will impose new costs on local governments. Additionally, consider repealing specific, unfunded and under-funded state mandates. In the area of public education, the Governor and Virginia General Assembly should consider providing localities and school districts maximum flexibility to i) suspend specific mandates and ii) manage specific public education reductions.
- Enact a law authorizing equal taxing authority for counties. Counties should be enabled, like cities and towns, to institute specific taxes, including a meals tax without a referendum. The new sources of revenue would be tailored to the needs of a jurisdiction and could help local governments protect adequate funding for the core government services including K-12 public education, and reduce county dependence on property taxes.
- Consider additional possibilities for mitigating the impact of state cuts on local governments. Local governments will have to make significant cuts in services because of flat or decreasing real estate revenues. Permit local governments, at their option, to implement a one-half percent increase in the sales tax as a way to minimize the potential burden passed on to homeowners through increased real property taxes.

FURTHERMORE, Clarke County offers these recommendations in the spirit of compromise and partnership to the Governor and Virginia General Assembly including Clarke County's Delegates and Senators.

Adopted this 16th day of December 2008

Attest:

David L. Ash, Clerk
Clarke County Board of Supervisors

Citizens Comment Period

Abby Marcy, Berryville: expressed her gratitude to the Supervisors. She asked the Supervisors if they would be interested in exploring the possibility of a community hospital reminding that she had sent the an email regarding her interest in pursuing this matter.

Vice Chairman Hobert responded that he had received a copy of Mr. Staelin's response to Mrs. Marcy's email, which he opined was accurate. He put forth that Clarke County was not a large enough community to have that sort of facility but there could be the possibility of an urgent care that might be associated with a regional hospital. Mr. Hobert advised that there was a certificate of needs process, which was a significant undertaking. He continued that he did not want to deter Mrs. Marcy if she wanted to research and present the information.

Supervisor Dunning noted that the Winchester Medical Center had entered into partnership with several doctors to build and operate the facility near the Berryville Food Lion, which has since been closed and privately sold. He opined that the Winchester Medical Center found that they did not have the use to sustain the venture.

Supervisor Weiss contributed that his wife, a health-care professional, asserts that Winchester Medical Center thrives because of its location and serves as the regional hospital for this geographic area that includes Clarke County. He opined that finances would not support that kind of activity in this small jurisdiction.

Adjournment

There being no further business to be brought before the Board at 7:45 pm Vice Chairman Hobert adjourned the meeting.

Next Meeting Date

The regular meeting of the Board of Supervisors is tentatively set for Tuesday, January 20, 2009 at 1:00 p.m. in the Main Meeting Room, 101 Chalmers Court, 2nd Floor, Berryville, Virginia.

ATTEST: December 16, 2008

John Staelin, Chair

David L. Ash, County Administrator

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