CLARKE COUNTY BOARD OF SUPERVISORS

February 25, 2003 Continued Regular Meeting 4:30 pm

Board of Supervisors' Meeting Room

At a meeting of the Board of Supervisors of Clarke County, Virginia, held in the Board of Supervisors' Meeting Room, Second Floor of the Circuit Courthouse, 102 N. Church Street, Berryville, Virginia continued from Friday, February 21, 2003, and reconvened on Tuesday, February 25, 2003.

Present:

Chairman Staelin, Vice Chairman Philip Shenk, Supervisor A.R. Dunning, Jr., and Supervisor J. Michael Hobert

Also Present:

Bob Mitchell, Charles Johnston, William Jones, Alison Teetor, Chuck Maddox, Ben Butler, David Carter, John Marsh, Val VanMeter, and other citizens and members of the press.

Call To Order:

Chairman Staelin called the meeting to order at 4:30 pm in the Board of Supervisors' Meeting Room of the Circuit Courthouse.

Adoption of Agenda:

The following amendments were made to the agenda:
(a) Add to Miscellaneous: Discussion on setting a public hearing on the acquisition of the Allen Properties.

Supervisor Hobert moved for approval of the agenda with the above-referenced change. The motion was approved as follows:

Chairman Staelin	-	Aye
Vice Chairman Shenk	-	Aye
Supervisor Byrd	-	Absent
Supervisor Dunning	-	Aye
Supervisor Hobert	-	Aye

Closed Session:

Supervisor Hobert moved to convene into closed session pursuant to Section §2.2.3711-A7 of the Code of Virginia, as amended, to consult with legal counsel.

The motion was approved as follows:

Chairman Staelin	-	Aye
Vice Chairman Shenk	-	Aye
Supervisor Byrd	-	Absent
Supervisor Dunning	-	Aye
Supervisor Hobert	-	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 Dunning moved to reconvene in open session. The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Shenk	-	Aye
Supervisor Byrd	-	Absent
Supervisor Dunning	-	Aye
Supervisor Hobert	-	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:

Chairman Staelin	-	Aye
Vice Chairman Shenk	-	Aye
Supervisor Byrd	-	Absent
Supervisor Dunning	-	Aye
Supervisor Hobert	-	Aye

Public Hearing – Prospect Hills Spring
- Charles Johnston

The Clarke County Planning Administrator, Charles Johnston, provided a brief overview of the proposed ordinance below.

The Board of Supervisors proposes to amend the Clarke County Code by adding thereto a new section providing for the prohibition of the use of explosives in a defined area surrounding Prospect Hills Spring.

Proposed Ordinance

The use of explosives, as defined in §59.1-137, Code of Virginia, shall be prohibited in the area surrounding Prospect Hill Spring bounded as follows: Beginning at the intersection of Virginia Route 620 and the railroad right of way near the intersection of Virginia Route 620 with US Route 340; thence southwest along the south boundary of the railroad right of way to Virginia Route 723; thence southeast along the northeast boundary of Virginia Route 723 to the intersection of Route 723 with the southeast boundary of present Tax Parcel 29-A-16A; thence northeast along the southeast boundary of Tax Parcel 29-A-16A to its eastern corner; thence in a straight line from the east corner of Parcel 29-A-16A to the corner of the intersection of the boundaries of present Tax parcel 30-A-1B and present Tax Parcel 30-A-7; thence northeast along the common boundary of Parcels 30-A-1B and 30-A-7 to Virginia Route 620; thence north along the west boundary of Virginia Route 620 to the point of beginning.

Alison Teetor, Clarke County Natural Resources Planner, presented an overview of the County's efforts to protect the groundwater resources at considerable expense. She referred to several studies performed over the past two decades. She referred to the recent approval of Llama Subdivision where citizens expressed concern regarding possible contamination of wells due to blasting. While approval was given, it was passed with a no blasting ordinance. Ordinances of these types do not prohibit development; however, they do not allow blasting to help development. Ms. Teetor provided a memorandum dated February 24, 2003, which provides an historical overview of efforts to protect the Prospect Hills Spring, as well as other County-wide groundwater protection efforts. This memorandum is included in the record and may be viewed in the February 2003 Board of Supervisors file.

Harry Jones, Clarke County Sanitary Authority, stated the County had recently invested a great deal of money to protect the Spring. The Authority does not wish to have this valuable resource damaged or lost due to fractures caused by blasting in the area.

Brian Chrisman, Clarke County Health Department, expressed concerns regarding the possibility of groundwater contamination, sink hole creation and/or expansion as a result of blasting in karst topography. He further stated there were already restrictions in place in the Spring Conservation Overlay District regarding nearby development and land use activities. Mr. Chrisman provided a copy of his prepared statement, which is included in the record and can be viewed in the February 2003 Board of Supervisors file.

William K. Jones, a consulting hydrologist for the County, was introduced by Chairman Staelin. A copy of Mr. Jones biography is available for viewing in the February 2003 Board of Supervisors file. Mr. Jones provided a slide presentation featuring the characteristics of karst topography. Mr. Jones has been involved in local groundwater studies and has traced water flows involving Prospect Hill, Saratoga and Carter Hill springs. He opined that blasting in a karst setting such as Prospect Hill may disrupt the existing fracture network that transmits water to the spring. He provided a written report titled *Possible Effects On Prospect Hill Spring From Blasting Within The Recharge Area*. This report is included with the record and may be viewed in the February 25, 2003 Board of Supervisors file

At 5:35 pm, Chairman Staelin opened the public hearing for public comment.

Chuck Maddox, Gilbert W. Clifford, firm designer of record for the spring and engineer of record for the Boyce sewer system. Mr. Maddox stated blasting was essential in establishing these systems. He recalled that Perry Engineering performed the blasting. He provided a map of the area, which has been included in the record and can be viewed in the County Administrator's office at 102 North Church Street, 2nd Floor, Berryville, VA 22611. Mr. Maddox questioned the extent of the proposed restricted area and noted portions of the town of Boyce are within the that area. Currently, he represents developers who have plans to develop a 48-lot subdivision within the proposed restricted area that does require blasting. Mr. Maddox, when queried by Supervisor Hobert, stated that approximately 30% of the sewer trench in Boyce required blasting. The sewer lines went through the streets and some of the trenches were deep. Supervisor Dunning put forth the sewer line from Waterloo used little or no blasting using instead a diamond-tipped digger.

Mr. Maddox recalled when Prospect Hill was developed water lines placed all the way up to the Spring using normal blasting methods. The blasting was performed by RJ Ryder back in the '70's. Supervisor Dunning stated that the recent grout curtain was put in place to repair cracks some of which may have been opened by that blasting.

Ben Butler, attorney at law, appeared before the Board as a representative of Greystone Properties. Greystone feels the development in the Town of Boyce and their proposed blasting for sewer lines will not affect the spring. Let me just say first of all that I have listened with interest to what the two Mr. Jones have said. Mr. William Jones has raised the point that the real danger, if there is one, has to do with a northeast and southwest direction and that is completely opposite as I understand sitting back here and listening to what the problem is as it relates to the development by Greystone. Greystone has as many questions about how the Board came up with the areas, which you are proposing to be in this no blasting zone. It

appears the concern is the prospect of doing some damage, which they certainly would not want to do to the environment or to the Spring. It seems that blasting, if I understand Mr. Jones correctly, will not respect property lines and there is no way it can be contained by some property line. So, is it going to be contained by some road? It would seem what has happened here, and Greystone feels it wasn't just coincidence, is that Greystone submitted their plans for development and this Board is taking up an ordinance which will prevent them from developing the property. It is the taking of property. You have something here since 1987 called the Schnabel Report. I think if you are going to pass this it is very logical that you follow the Spring Conservation Overlay District. That seems to me to be a logical basis; that has been in place for several years and apparently worked. It does not seem logical, frankly, that you would say we are going to go 1,500 yards or put another way 4,500 feet because it targets certain properties that you have without any basis that I can hear of any engineering data. There's none. I understand what Mr. William Jones is saying; but I've got to believe, just from my experience as a human being here for 61 years that it sounds much like throwing a pebble into a pond. You get a sort of rippling effect. It doesn't all ripple out in one direction I don't believe. The second point is going to be it does dissipate over a certain distance and I think that it must also be important about how deep the blasting takes place. Because, if I blast at three feet as opposed to twenty feet, it seems to me there would be quite a bit of difference in how that reacts. Now, I didn't hear Mr. Jones address that question and maybe I should have taken geology in college. But, nevertheless, our point is that we feel at Greystone Properties that this ordinance is aimed directly at us. We don't think that what we propose to do is going to be outrageous. We would propose that you have a seismograph machine to indicate any level of vibration that might appear over what Mr. Maddox says is the 3,400 feet that it would have to travel. We don't believe that it is going to be. The second thing is, if I understand the situation, we would really be creating a better situation, because we aren't having drain fields. This project will have public water and sewer. I think Mr. Jones said one of the worries he had with drain fields is that you get this infiltration from the surface. You get contamination and you are avoiding that with what is being proposed. I would ask this Board to think seriously before it passes a flawed ordinance that appears on its face to be arbitrary just for the boundaries they have set out. David Carter is here, who works with blasting all the time and works for GeoDrill and I'd like to think he can answer some of the questions that you all might have that regard the technical side of this. Something I certainly can't answer. I'm just here today from the law side and I think it is flawed. Thank you for your attention.

David Carter, from Boyce and owner of GeoDrill, opined experts can control blast effects and the movement is felt for only a short distance. He, too, questioned the boundaries of the proposed restricted area.

George Ohrstrom, County resident, put forth his preference to "err" on the side of over protecting these valuable resources for Prospect Hill, as well as other groundwater resources throughout the County. He recalled the loss of Dry Marsh Run following blasting in that area.

There being no additional persons desiring to speak Chairman Staelin closed the public hearing at 6:09 pm.

For clarification, Supervisor Dunning briefly explained how the boundary was decided stating that a radial boundary is difficult to enforce, also noting the boundaries closely followed those used in the Schnabel Report.

Vice Chairman Shenk moved for a continuation of the Board's discussion until Thursday, February 27, 2003, at 4:30 pm in the Board of Supervisors Meeting Room.

The motion was approved by the following vote:

Chairman Staelin	-	Aye
Vice Chairman Shenk	-	Aye
Supervisor Byrd	-	Absent
Supervisor Dunning	-	Aye
Supervisor Hobert	-	Aye

Miscellaneous

Set Public Meeting for Acquisition of Allen Property

Supervisor Hobert stated that it had been agreed to extend us the 45-day study period on the contract. He proposed that a public hearing be held regarding the proposal prior to the end of 45-day study period in order to get community input prior to the point a decision is made by the Board. We have to have a public hearing on the issue of the budget due to the amounts involved.

Chairman Staelin indicated that the appropriation would eventually require a formal public hearing. He would like to have a public meeting to present the figures, as well as the logic behind the action and allow public comments. The public hearing could come later.

Supervisor Hobert moved to set a public meeting for public comment regarding the acquisition of the Allen Property for March 18, 2003 at 10:00 am, or as soon thereafter as the matter may be heard, in the Board of Supervisors' Meeting Room of the Circuit Courthouse.

The motion was approved by the following vote:

Chairman Staelin	-	Aye
Vice Chairman Shenk	-	Aye
Supervisor Byrd	-	Absent
Supervisor Dunning	-	Aye
Supervisor Hobert	-	Aye

There being no further business to be brought before the Board, the Chairman adjourned the meeting at 6:16 pm to reconvene on Thursday, February 27, 2003 at 11:00 am.

ATTEST:

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John Staelin, Chairman

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David L. Ash, County Administrator