

CLARKE COUNTY BOARD OF SUPERVISORS  
November 16, 2010                      Regular Meeting                      1:00 p.m.  
Main Meeting Room

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held in the Main Meeting Room, 2<sup>nd</sup> Floor Berryville Clarke County Joint Government Center, 101 Chalmers Court, 2<sup>nd</sup> Floor, Berryville, Virginia on Tuesday, November 16, 2010.

**Board Members Present**

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

**Staff Present**

David Ash, Chuck Johnston, Tom Judge, Lora B. Walburn

**Others Present**

Robina Rich Bouffault, Mike Murphy, Keith Dalton, Gem Bingol, Katrina Bush, Ed Leonard, Becky Layne and other citizens

**Call to Order**

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

**Adoption of Agenda**

- Introduction: Dr. Charles Devine – Director Lord Fairfax Health District
- Add to Consent Agenda: Follow up letter to Delegate Joe May Re Alternate On-site Sewage Systems
- Add to Consent Agenda: Status Update and Discussion of Response to Delegate May for VDOT Projects
- Remove Closed Session

**Supervisor Byrd moved to adopt the agenda as modified. The motion was approved by the following vote:**

J. Michael Hobert, Chair                      -    Aye

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

#### Introduction Dr. Charles Devine Director for Lord Fairfax Health District

Dr. Charles Devine, newly appointed Director of Lord Fairfax Health District, appeared in person before the Supervisors to introduce himself and to offer his services.

Supervisor Dunning joined the meeting at 1:12 pm.

#### Dominion Power Line Upgrade Presentation: Mount Storm to Doubs Route

Dominion Power representatives Emmett Toms, Manager – State & Local Affairs VA/NC Local Affairs; Wade Briggs, Electric Transmission Projects Manager III; Courtney R. Fisher Senior Siting and Permitting Specialist Electric Transmission, appeared before the Supervisors to make a presentation and provide an opportunity to address questions on the power line upgrade. Highlights include:

- 500kv rebuild project from Mt. Storm to Doubs.
- This is one of the critical lines in the west to east transmission line in Mid-Atlantic area;
- The Mt. Storm to Doubs lines was constructed in 1966 as part of the original 500 kV loop.
  - It is heavily loaded
  - Aging infrastructure wires, insulators, and other equipment on this 44-year-old line are nearing the end of their useful life, and must be replaced
  - Inherent corrosion problems have led to continuous deterioration of all components of the Corten steel structures, raising the risk of an in-service failure.
  - Conductor splices and porcelain insulators are also at the end of their service lives.
- There are two types of structures
  - 100 feet height on average.
  - Proposed structures will be 130 feet – additional height is proposed to address line sag.
  - Using galvanized steel that will be shiny at first.
- Dominion has all the necessary easements in place.
- Federal guidelines and state codes require working within existing corridors.
- Two parcels will be crossed in Clarke County
  - Per Alison Teetor, no conservation easements on any of the parcels.
  - One parcel is in the agricultural district.
- Letters and Factsheets were mailed to all property owners along the line.

- Website launched: www.dom.com, keyword “MSD”.
- Two Open Houses are scheduled
  - Tuesday, Nov. 16, 5 p.m. - 7:30 p.m., James Wood High School (cafeteria); 161 Apple Pie Ridge Road, Winchester, VA 22603
  - Wednesday, Nov. 17, 5 p.m. - 7:30 p.m., Lovettsville Community Center; 57 East Broad Way Lovettsville, VA 20180
- Have gotten approximately 15 general inquiries since sending out notice and none have shown particular concerns about height.
- Proposed Timeline
  - Very rough schedule still scheduling outages with PGM – no disruption intended for local homes and businesses
  - Fall 2010 — Outreach to stakeholders and regulatory entities for necessary approvals
  - January 2011 — Submit Application with Virginia SCC
  - Spring 2011 — Initiate construction activities in West Virginia
  - Fall 2011 — Initiate construction activities in Virginia
  - Summer 2015 — Energize rebuilt line
- PATH is a separate project.

Supervisor Staelin expressed his objection to the project stating that since the PATH line and the Mt. Storm to Doubs line are both going through PGM they should be better coordinated and more structured. He opined that these transmission lines caused a blight upon the land.

Mrs. Fisher responded that if these projects were combined the towers would be even taller.

Mrs. Fisher, responding to Supervisor Byrd’s query about buried power lines, stated that the cost was eight to ten times higher. Also, it is a different type line that can be environmentally invasive. She put forward that there was legislation that allows localities, if they absorb cost, to bury power lines; however, she was not certain that it was possible with 500kV.

Supervisor Dunning expressed his support of Supervisor Staelin’s objections and asked that the projects be combined to minimize the fracture of the countryside.

Supervisor Byrd queried Dominion as to whether the proposed line would provide power locally. Mrs. Fisher explained that these were transmission lines and it would be very difficult to determine where the actual power to an individual home was generated.

Chairman Hobert asked the Dominion representatives to follow up and provide response to the Supervisors’ comments.

Dr. Murphy appeared before the Supervisors to provide the monthly update from the Clarke County public schools. Highlights include:

- Kids
  - Sports looked good this weekend playing Bull Run and the team did well.
  - Looking good for Wachovia academic cup.
  - Fewer students than last year. Kindergarten down approximately 30 students than projected. About 80 children down – 2043 ADM.
  - In January, the Schools will have a better perspective on the reduced enrollment.
- Staff
  - Healthy balance in problem solving FTE
  - Hired four assistants for Special Ed program.
- Programs
  - Master schedule for next year is anticipated to be complete by February. This pushes the process about six months forward.
  - Looking at a Scheduling Consultant to analyze the system for efficiencies.
  - Working on Alert Now System moving to stage 2 that allows parents to sign in to select the alerts they want or block ones they don't.
- Budget
  - ARRA Funds reimbursed to offset revenue loss from declining enrollment.
  - Staffing contingency is healthy.
  - Jobs funds are in reserve.
  - Operating carryover is in reserve.
  - \$151,000 in carryover will be used for capital expenditures, technology, school bus chains, radios, etc.
- New High School
  - Dr. Murphy put forth that enrollment projections for next ten years are fairly flat and the new high school is adequately sized for the projections over the next two decades.
  - Supervisor Byrd asked Dr. Murphy to provide regular updates on facts and figures. Dr. Murphy responded that Mrs. Byrd's constituent newsletter was very good and he had received requests for the Schools to provide the same type of information.
  - Supervisor Dunning praised Dr. Murphy for his attempts to communicate with citizens and providing a steady course.
  
  - Robina Rich Bouffault provided the following construction update.
    - Construction going beautifully and ahead of schedule.
    - Soft spots in the parking lot are being remediated.
    - Proceeding well with the stormwater pond.
    - Working with VDOT on Mosby issues; and toward that end, on Monday evening, the School Board voted to have all easements put to the north not the south and to get fair / just compensation for any easements.

- A meeting was held this morning with VDOT regarding easements.
- The School Board has already spent a good deal of money on plats; and if the have to redo these plats, there will be additional expense in engineering fees, legal fees, etc. If the easements go to the south, it will have various negative impact including playing fields and the proposed green house. After receiving approval in June, what is being requested now, must be reviewed to determine impact and whether it will hurt education and students to provide a road that serves only the Battlefield Estates subdivision.
- The Town of Berryville needs to provide VDOT with as-builts for water and gas lines going under the planned roundabouts.
- There was discussion on Cooley entrance and they are looking at an alternate layout for traffic pattern for the two-building Cooley campus.
- Chairman Hobert expressed his hope that all parties work together the goals can be accomplished.
- School Board Chair Bouffault advised that the School Board was waiting for the new plan; and if it did not hurt the students and education, they would be willing to negotiate.
- Supervisor Dunning commented that negotiation was good and he would willingly back the Schools in this matter. He also requested to see the reasons behind the requested change and willingness to compromise from VDOT.

School Board Chair Robina Rich Bouffault concluded her update by reminding the Supervisors that the only money the Schools could use for these latest demands for transportation needs came from the high school construction project budget that was now to be used for other school construction projects. She also reminded that the Schools' budgets had been cut for the past four years. She stated that the School Board was trying to accommodate all the demands but asked everyone to be reasonable. Mrs. Bouffault reiterated that VDOT had funds for this project and transportation has its own budget. She stated that the School Construction Project was for the students, for education, not to give it away to the Town or the County for road projects.

### Approval of Minutes

Supervisor Byrd requested the following change:

- Book 20 Page 388 last paragraph under set public hearings change hearing to hearings.

**Supervisor Staelin moved to approve the minutes of October 19, 2010 Regular Meeting as modified. The motion was approved by the following vote:**

J. Michael Hobert, Chair	-	Aye
David S. Weiss, Vice Chair	-	Aye

Barbara J. Byrd - Aye  
A.R. Dunning, Jr. - Aye  
John R. Staelin - Aye

## Consent Agenda

### 2010 Abstract of Votes

### Confirm Participation in the Inebriate Center

### Letter to Delegate Joe May Following Up on Legislative Luncheon Alternate On-Site Sewage Systems.

Honorable Joe May  
P.O. Box 4104  
Leesburg, Virginia 20177-8259

Dear Joe,

One of the topics of our luncheon meeting was Alternative Onsite Sewage Systems. We expressed our concerns about the proposed regulations for these systems and you reminded us how things would have been much worse if you had not worked for compromise. Obviously we appreciate that we are better off than we would have been but we still have concerns around the issue of the ongoing maintenance of these system. After all, history shows that many of the alternative systems that were installed in the past ended up polluting the groundwater because they were not properly maintained. We fear this problem will only get worse as more of these systems will be installed and the new regulations do not appear to be nearly strong enough to ensure that maintenance practices will get appreciably better.

You seemed to question our concern about this issue and suggested we could do something about it if we wanted due to your belief that localities had oversight over this area. We have reviewed the regulations and we do not come to the same conclusion. We do not see how localities have any oversight over the ongoing maintenance of alternative systems. Annual inspections are to be made by a licensed operator but that operator is only required to submit a report to the State Health Department upon request. Sampling results are required to be submitted to the Health Department every five years but there is no requirement to submit the annual inspection reports.

The regulations do not give localities any power or oversight over the inspections and the law states that localities cannot create stricter rules or requirements. Local officials will not receive copies of the reports submitted by the licensed operator and Clarke cannot have its own personnel make any inspections. Our local Health Department tells us that they will probably summarize and file the inspection reports. Their goal will be limited to making some random inspections on their own. However, their time is limited and they cannot promise what they will be able to do.

Clarke would recommend that all AOSS be inspected and sampled annually and that the licensed operator be required to submit a written report of both the inspection and the test results to the local Health Department. This would provide at least a minimal amount of oversight to ensure these systems were being maintained and inspected as required. Then if problems were identified, the local environmental health specialists could inspect as needed. If annual testing is seen as unacceptable we request that, at a minimum, the licensed operator be required to submit the results of the inspection to the Health Department and that the Health Department be required to create an annual summary of the inspection reports, complete on-site inspections of at least 10% of the systems each year and forward all the information gathered about all AOSS to the locality.

We will be submitting our comments on the proposed regulations to the Health Department in Richmond but wanted you to understand our concerns. Much of Clarke lies over Karst terrain. Our groundwater is easily polluted and yet we can do nothing to ensure it is protected from problems with alternative systems. We have become totally dependent upon the State Health Department for ensuring the safety of our groundwater.

To date we have had a good relationship with our local Health Department but we have no control over their priorities or staffing levels. We are concerned that problems with a few systems will slip through the cracks and pollute our groundwater.

We appreciate your work and continued interest and commitment to water quality. If there is more we can do, or a more direct or better way to address our concerns, we would appreciate hearing your suggestions. We look forward to working with you to strengthen these regulations.

Regards,  
J. Michael Hobert, Chair

**Supervisor Byrd moved to approve the items, as modified, on the Consent Agenda.**

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

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

Supervisor Dunning inquired as to the line of duty cost shift from the Commonwealth and asked staff to research the matter and make a presentation. Chairman Hobert instructed staff to place this matter on the December agenda.

Citizens Comment Period

Supervisor Dunning, White Post District Supervisor: informed the Board of a request made to him from representatives of the Barns of Rose Hill Board of Directors asking to use the Government Center meeting rooms until construction on their facility is complete.

Vice Chairman Weiss responded that the Berryville Clarke County Government Center Joint Building Committee was actively reviewing facility use policies but there had been delays. He did note that some local jurisdictions do not allow general public use of government buildings; and while the Committee would be recommending external use, there were many issues to be resolved such as establishing guidelines, fee schedules, building security, etc. He remarked that the Government Center was not intended to replace use of other buildings with meeting rooms in the County. Mr. Weiss emphasized that fair and reasonable policies must be created and maintained for the Government Center.

Robina Rich Bouffault, Clarke County School Board Chair, added that the Schools have established rules and regulations regarding facility use that include fee structure and legal liability insurance requirements for specific types of use.

Supervisor Byrd, as the Supervisors' liaison to The Barns of Rose Hill, spoke in support of the facility use request. She reminded that the Town of Berryville owned The Barns of Rose Hill and that the County had paid \$150,000 toward The Barns restoration project.

## VDOT

Jerry Copp – Maintenance and Operations Items and Residency Administrator; and Ed Carter – Six-Year Plan Programs and Enhancement, Recreational Access; with Charlie Monroe – Area Maintenance Superintendent; appeared before the Supervisors to provide the monthly update.

- Maintenance work completed in October:
  - Completed bridge replacement on Route 606;
  - Completed secondary mowing operations;
  - Began grading operations on non-hard surfaced roads;
  - Conducted dead animal pickup;
  - Responded to brush complaints on various routes;
  - Started boom axe operations on Route 655; and
  - Began patching operations on various secondary routes.
  
- Maintenance work planned for the upcoming month:

- Complete Boom Axe operations begin patching on Route 655.
  - Begin grading of non-hard surfaced roads.
  - Conduct pipe-flushing operations on Route 601.
  - Remove dangerous trees and brush cutting at various locations.
- Other Projects of interest:
- Rt.604 Ebenezer Road - Began Rural Rustic construction.
  - Route 636 Mosby Boulevard – Meeting to review preliminary plans was held on November 1st with VDOT, Clarke County School Board, Town of Berryville, Site contractor and the Project consultant. Comments are currently being evaluated.
  - Route 723 Town of Boyce - VDOT met with Chuck Johnston to scope existing revenue sharing project in town for sidewalk addition/repairs.
- Supervisor Comments and Requests:
- Supervisor Byrd thanked VDOT for there response to the double chevrons on Triple J Road.
  - Supervisor Byrd relayed constituent concerns about the traffic lights at Route 340 and Route 7 opining that it seemed to be a seasonal problem. Jerry Copp agreed to follow up.
  - Supervisor Dunning noted the tremendous amount of patching on 723 from Boyce to the Frederick County line.
  - Supervisor Dunning noted rough patches on Salem Church Road. Charlie Monroe advised that these spots were where mud was coming though the pavement. He aid that they had tried to level up these areas and would be back to dress up.
  - Supervisor Byrd noted rough patches on Summit Point Road.
- Suggestions for use of recently-found VDOT funds:

Chairman Hobert told the Board that during a recent VDOT audit additional funds had been discovered. He said that Delegate Joe May was requesting localities in his district to identify potential projects for the estimated \$5MM for his district and provide him lists with estimated project costs. Mr. Hobert distributed a list of potential road projects for review.

*Subject: Future Projects Clarke County*

*Per your request, the following is a list of potential projects and estimated costs for Clarke County. Please keep in mind that due to the short time frame the estimates are ball park and would need more in-depth analysis/research before finalizing. They are listed in order of priority for value of dollars spent as we at VDOT view them, taking into*

*consideration safety, community benefit, traffic needs and reasonable effort to move the project forward. Please review and feel free to make any additions, deletions or comments you see fit.*

- 1) *Intersection Rt. 657 Senseny Rd and Rt. 340 - \$500K - Construct turning lanes on Rt. 340, Northbound left and Southbound right.*
- 2) *RT. 636 Westwood Road - \$600K - Extend Westwood Rd. south from Mosby Rd. project providing turning lanes and addressing Cooley/ Old High School entrance ways and school traffic flow. We suggest this be done as one project to increase its value for approval.*
- 3) *Intersection Rt. 723 Main St. and Rt. 340 - \$350K - Signalize intersection - Because of significant cost, community disruption and possible historic conflicts we are not recommending additional turning lanes on Rt. 723.*
- 4) *Intersection Rt. 7 and Rt. 340 - \$1million - Purchase property and construct Park/Ride facility in general vicinity to promote pooling and mass transit relieving traffic on Rt. 7.*
- 5) *Secondary Road funds - \$1million - Provide funds for secondary road improvements to address safety issues ie. sight distances, geometrics, alignment and drainage. Also gives the Board some flexibility to address citizen request for Rural Rustic concepts on non- hard surfaced roads.*
- 6) *Rt. 636 Mosby Rd. - \$300K - To address current funding shortfall in existing project for the construction of Mosby Road by new County High School.*

*Total for recommended projects - \$3,750,000*

*The following projects were considered but passed on at the present time for various reasons.*

- 7) *Bus Entrance at new High School - Current traffic analysis/projections does not want turning lanes at this time. Additional R/W, as well as involvement by the Department of Historical Resources would be required. We recommend this not be pursued at this time.*
- 8) *Three lane Rt. 7 Business east - It is doubtful that traffic analysis would support this project as it would carry a substantial price tag. Additional R/W would be needed, street parking would be compromised and the community would be significantly impacted. We recommend this not be pursued at this time.*
- 9) *Intersection Rt. 17/50 and Rt. 340 Waterloo - Currently this intersection is functioning properly. In addition a developer has approached VDOT with expansion plans that could result in proffers for improvements. We recommend waiting until these issues are resolved to decide on necessity of this.*

10) *Intersection of Rt. 277, Rt. 522, and Rt. 340 Double Tollgate - Currently there are turning lanes in all directions and the delays are minimal considering the traffic volume. This may change if major development picks back up along one or more of the corridors. We suggest that we wait until we see signs of that beginning to happen.*

11) *Rt. 7 between Rt. 635 and Rt. 660 - \$225K - To close some existing xovers and make turning lane improvements at remaining xovers and intersections. We currently have this project funded and feel there are sufficient funds to do the work. We suggest that we continue as planned.*

*Edwin Z. Carte, Program Manager VDOT-Edinburg Residency*

Following review, Supervisor Staelin moved to propose to accept:

**Item No. 1, improvements to the Intersection of Rt. 657 Senseny Road and Rt. 340; \$500K to construct turning lanes on Rt. 340, Northbound left and Southbound right.;**

**Item No. 2: RT. 636 Westwood Road; \$600K; Extend Westwood Rd. south from Mosby Rd. project providing turning lanes and addressing D.G. Cooley Elementary School / Renovated High School to Elementary School entrance ways and school traffic flow; and**

**Item No. 6: Rt. 636 Mosby Road; \$300K; To address current funding shortfall in existing project for the construction of Mosby Road by new County High School.**

With a friendly amendment offered by Supervisor Dunning, Supervisor Staelin revised his motion to clarify that Item No. 1 was the highest priority; and Item No. 2 and Item No. 6 were also important if there were sufficient funds. The motion was approved by the following vote:

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

November 16, 2010

Honorable Joe May  
P.O. Box 4104  
Leesburg, Virginia 20177-8259

Dear Joe,

At a meeting of the Clarke County Board of Supervisors held on Tuesday, November 16, 2010, priority transportation projects for Clarke County were discussed by our Board.

Heeding your advice to prioritize projects with special consideration of safety, community benefit, and traffic needs, the Board agreed to the following recommendations:

1. The highest priority is given to improvements to the Intersection of Rt. 657 Senseny Road and Rt. 340; \$500K to construct turning lanes on Rt. 340, Northbound left and Southbound right.

Additional important projects for consideration in order of priority should there be sufficient funding:

2. RT. 636 Westwood Road; \$600K; Extend Westwood Rd. south from Mosby Rd. project providing turning lanes and addressing D.G. Cooley Elementary School / Renovated High School to Elementary School entrance ways and school traffic flow.
3. Rt. 636 Mosby Road; \$300K; To address current funding shortfall in existing project for the construction of Mosby Road by new County High School.

The Clarke County Board of Supervisors appreciates your efforts on our behalf in consideration of these recommendations.

Regards,  
J. Michael Hobert, Chair

Supervisor Byrd, as the Supervisors' liaison to the Schools, restated that the County was responsible for payment of the \$300,000 funding shortfall for the Mosby build out project.

### Proposed Dominion Power Plant - Warren County

Alison Teetor, Natural Resources Planner, appeared before the Supervisors to review research on the construction of the Dominion Power Plant in Warren County. She stated that while she did not necessarily oppose the project she had drafted a letter to the Department of Environmental Quality voicing concerns that was read into the record.

*Anita Riggleman  
Valley Regional Office  
P.O. Box 3000  
4411 Early Road  
Harrisonburg, VA 22801*

*Dear Ms. Riggleman,*

*Thank you for the opportunity to comment on the draft permit from the Department of Environmental Quality to limit air pollution from a facility in Warren County, Virginia. It is our understanding that Dominion Power has applied for a permit to construct the Warren County Power Station, a natural gas-fired combined-cycle combustion turbine electric*

*power generating facility having an electric output capacity of approximately 1,280 megawatts.*

*The Clarke County Board of Supervisors has several concerns regarding this application. Of primary concern is the addition of a major air polluter in our region that will reduce our visibility and increase acidity in our waterways. Another important concern is the impact of the plant emissions on Shenandoah National Park. As you know, the Clean Air Act administered by the Environmental Protection Agency sets the air quality standards for the nation. Restrictions on emissions are strictest in Class I areas. Shenandoah National Park is a designated Class I area. The Park and Skyline Drive represent a significant tourist attraction for our area bringing tens of thousands of visitors each year. These tourists spend money in the surrounding counties including Clarke.*

*If approved this will be one of the largest electric power production plant permitted in Virginia. Based on testimony at the Public Hearing (11/9/10) the National Park Service is opposed to the project unless certain reductions in emissions are made to the proposed facility. Clarke County is not opposed to the concept of new power generators and recognizes the need for such in order to provide power to an ever-increasing human population, however the design as submitted seems too large considering the proximity to the Park. If the plant was reduced in size and therefore emissions could be reduced that maybe seen as an improvement.*

*Based on the current draft permit we would respectfully request at a minimum:*

- 1) That DEQ staff request a public hearing and review by the State Air Pollution Control Board due to the potential significant negative impact to air quality in the northern Shenandoah Valley and the National Park;*
- 2) If the plant is to be located at the proposed site, that the standards regarding emissions and emission controls be the Lowest Achievable Emissions Rate (LAER) given the plant's proximity to the Park, DEQ and the Air Board should require a LAER-type analysis for all pollutants;*
- 3) Clarify how particulate matter is addressed in the draft permit. It appears as though PM-2.5 is being included in the emissions for PM-10 (211.5 tons per year) however in information obtained directly from DEQ the PM levels were split out (PM-10 – 216.1 tpy, PM-2.5 – 215.6 tpy). Since the Clean Air Act requires that each be treated independently in the permit it appears as though the draft permit should be amended to show the accurate numbers; and,*
- 4) With regards to the offsets for emissions of nitrogen oxides, the ratios should be strengthened from 1.15 to 1 to 2 to 1 for sources close to the Park; and if Dominion is not able to get sufficient offsets close to the park, they should be required to find offsets at a 3 to 1 ratio if the facilities are farther away. This should not be considered unreasonable given the significant risk the Plant poses to the National Park and the tourism and natural environment of Clarke County.*

*The Clarke County Board of Supervisors appreciates your consideration with regards to these requests.*

Emmett Toms, Dominion Power, was on hand to provide clarification and answer concerns. He put forth that Virginia is second only to California in purchased power during peak demands relying on lines to carry that power. He further stated that the site of this intermediate plant has been approved with both gas and transmissions lines. He explained that an intermediate power plant runs on approximately 40% of the time on average unless another power plant goes down. Mr. Toms assured that due to technology improvements the plant would not add to area pollution.

Alison Teetor commented that DEQ has called it a base-load plant. Also, at their public hearing, DEQ had advised that they would look at regional energy credits.

Supervisor Staelin and Alison Teetor both spoke to pollution and the importance of protecting air quality in the Valley, as well as the National Park.

**Supervisor Staelin moved to approve the letter prepared by Alison Teetor and to authorize the Chair to sign.**

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

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

#### Planning Commission Fee Adjustment

Chuck Johnston summarized the proposed fee reductions.

Supervisor Dunning spoke in opposition to reducing fees noting that current fees are not as high as imposed by other jurisdictions.

Supervisor Staelin opined that reduced fees might encourage citizens to pursue different ventures.

Following discussion, **Supervisor Staelin moved to approve Option 2 to reduce the Special Use fees by 67% and leave the Site Plan fee unchanged: Special Use \$825 + Site Plan \$2,500 with \$250/required parking space = \$3,575.**

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

J. Michael Hobert, Chair	- Nay
David S. Weiss, Vice Chair	- Aye

Barbara J. Byrd - Nay  
A.R. Dunning, Jr. - Nay  
John R. Staelin - Aye

Supervisor Byrd stated that she wished to further study the matter.

#### Set Public Hearing TA-10-09

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance:

- Section 4-I-2, Signs Prohibited, so as to prohibit signs that change displays frequently and that move, revolve, twirl, rotate, or flash and to state that no prohibited sign may be illuminated;
- Section 4-I-5, Nonconforming Signs and Removal, so as to state that no nonconforming sign shall be replaced; and
- Section 4-I-9, Sign Definitions, so as to establish definitions for the terms: 'Animated Signs', 'Changeable Message Signs', 'Electronic Display Signs', and 'Time & Temperature Signs'.

Chuck Johnston appeared before the Supervisors to review the proposed text amendment TA-10-09. He opined that the proposed text amendment would fill a gap in current regulations. He also advised that the Planning Commission would be holding public hearing on the proposed text amendment at their December meeting.

**Supervisor Dunning moved to set for public hearing on December 21, 2010 at 6:30 pm or as soon thereafter as the matter might be heard the following matters:**

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

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

#### Board of Supervisors Personnel Matters

##### Expiration of Term for appointments expiring through January 2011

No action was required at the November meeting. Chairman Hobert advised that a report would be provided at the December meeting.

#### Board of Supervisors Finance Matters

FY11 Budget Supplemental.

Action: *“Be it resolved that FY11 budgeted expenditure in the general government capital projects fund be increased \$12,794; and the same appropriated, and that revenue in the same amount from donations be recognized, all for the purpose of purchasing new swim blocks for the Clarke County pool.”*

Tom Judge stated that since no Finance Committee meeting had been conducted in November he was submitting to the full Board the FY11 Budget Supplemental appropriation for review and approval.

**Supervisor Byrd moved to approve FY11 Budget Supplemental “Be it resolved that FY11 budgeted expenditure in the general government capital projects fund be increased \$12,794; and the same appropriated, and that revenue in the same amount from donations be recognized, all for the purpose of purchasing new swim blocks for the Clarke County pool.”**

The motion carried by the following vote:

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

Standing Reports

- Expenditure Summary and Voucher Transaction
  - o Included for review Expenditure Summary and Voucher Transaction reports the periods of July, August, September and October 2010.
- Included for review: 1st Qtr General Fund Revenue Estimate; 1st Qtr Capital Projects Report; and Reconciliation of Appropriations.
  - o There was discussion about the elapsed time between property assessments and the issuance of the real estate tax supplemental billing from the office of the Commissioner of the Revenue. Chairman Hobert instructed Mr. Judge to add real estate valuation to the January Finance Committee agenda.

**Government Projects Update**

David Ash provided the following highlights:

- Berryville Clarke County Government Center
  - o Next meeting of Joint Building Committee is December 1.

- Circuit Courthouse
  - o Work continues next project meeting is set for Wednesday, November 24.
- Citizen Convenience Center
  - o Have received tentative cost on convenience center – need to review more closely.

#### Clarification of December Meeting Dates

Chairman Hobert provided clarification for the December meeting dates:

- December 13, 2010: Personnel Committee 9:30 am; Work Session 10:00 am; Finance Committee Immediately Follows the Work Session
- December 21, 2010 1 pm: Regular Meeting Afternoon Session; 6:30 pm Regular Meeting Evening Session with public hearing.

Supervisor Staelin left the meeting at 4:15 p

#### Miscellaneous

##### Regional Transportation 2035 Plan

Chuck Johnston advised that the Regional Transportation 2035 Plan would be presented by VDOT in Front Royal. Chairman Hobert asked that Chuck Johnston poll the entire Board for feedback prior to the presentation.

#### Summary Of Required Action

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Correct and process 10/19/2010 minutes.	Lora B. Walburn
2.	Provide notice of confirmation of participation in the Inebriate Center.	David Ash
3.	Forward alternate on-site sewage systems to Delegate Joe May	Lora B. Walburn
4.	Forward priority transportation projects letter to Delegate Joe May.	Lora B. Walburn
5.	Forward letter of concern regarding Dominion Power Plant in Warren County.	Alison Teetor
6.	Process public hearing notice for TA-10-09	Lora B. Walburn

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
7.	Add real estate valuation to the January Finance Committee agenda.	Tom Judge
8.	Update website with December meetings.	Lora B. Walburn
9.	Process Resolution 10-22R.	Lora B. Walburn
10.	Process ordinance for RZ-10-01	Chuck Johnston Lora B. Walburn
11.	Process ordinance for TA-10-07	Chuck Johnston Lora B. Walburn
12.	Process ordinance for TA-10-08	Chuck Johnston Lora B. Walburn
13.	Process ordinance for TA-10-10	Chuck Johnston Lora B. Walburn
14.	Process Code update CC-10-06.	Lora B. Walburn
15.	Add line of duty presentation to December agenda.	David Ash

#### Board Member Committee Status Reports

##### Clarke County Library Advisory Council by Barbara Byrd

- In the matter of additional road signage, David Weiss suggested that the Library Board contact Allen Kitselman.

At 4:15 pm Chairman Hobert recessed the meeting until 6:30 pm.

At 6:32 pm Chairman Hobert reconvened the meeting.

#### Citizens Comment Period

Jean Abigail Custis Marcy, Berryville, asked the Supervisors to consider allowing citizens to split payment of special use permit fees.

#### PH 10-25 Amend 2006 VPSA Bond Resolution to Authorize Use of Funds on Additional School Projects

"Be it resolved that public hearing be set for Tuesday November 16, 2010, at 6:30 pm or as soon as the matter may be heard, to consider whether funds borrowed from the Virginia Public School Authority for the purpose of constructing a new high school, which are over and above the amount

needed to construct the new high school, may instead be used in the renovation of other school buildings."

Tom Judge reviewed the action before the Board for consideration.

At 6:34 pm Chairman Hobert opened the public hearing for public comment. There being no persons present desiring to address the Board the public comment portion of the public hearing was closed.

**John Staelin moved to approve Resolution Authorizing And Consenting To The Use Of Bond Proceeds For Additional School Purposes No. 10-22R as presented. The motion was approved by the following vote:**

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

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held on the 16<sup>th</sup> day of November, 2010, at the time and place established by such Board for its regular meetings, at which the following members were present and absent during the voting on the resolution referred to below:

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

ABSENT: None

The following resolution was adopted by the affirmative roll call vote of a majority of all members of the Board, the ayes and nays being recorded in the minutes of the meeting as shown below:

<u>MEMBER</u>		<u>VOTE</u>
J. Michael Hobert, Chair	-	Aye
David S. Weiss, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
John R. Staelin	-	Aye

**RESOLUTION AUTHORIZING AND CONSENTING TO THE USE OF BOND PROCEEDS FOR  
ADDITIONAL SCHOOL PURPOSES  
10-22R**

**WHEREAS**, the School Board of Clarke, Virginia (the "School Board"), adopted a resolution on May 15, 2006, requesting and consenting to the issuance by Clarke County, Virginia (the

"County"), of school bonds in a maximum principal amount of \$29,835,000, to finance the capital costs associated with the design, construction and equipping of a new high school (the "High School Project");

**WHEREAS**, the County Board of Supervisors (the "Board of Supervisors") adopted a resolution on September 27, 2006, authorizing the issuance of general obligation school bonds in a principal amount not to exceed \$29,835,000, to finance the High School Project;

**WHEREAS**, the County issued on November 9, 2006, its \$29,200,000 General Obligation School Bonds, Series 2006B (the "2006 Bonds"), to finance the High School Project;

**WHEREAS**, the School Board adopted a resolution on February 22, 2010, requesting and consenting to the issuance by the County of school bonds in a maximum principal amount of \$9,790,000, to finance various capital improvements for its public school system, including additional costs related to the High School Project;

**WHEREAS**, the Board of Supervisors adopted a resolution on March 16, 2010, as supplemented by a resolution adopted on April 8, 2010, authorizing the issuance of general obligation school bonds in a principal amount not to exceed \$9,790,000, to finance various capital improvements for its public school system, including additional costs related to the High School Project;

**WHEREAS**, the County issued on May 13, 2010, its \$2,230,000 General Obligation School Bonds, Series 2010A, and its \$7,395,000 General Obligation School Bonds, Series 2010B (Federally Taxable - Build America Bonds) (the "2010 Bonds" and, collectively with the 2006 Bonds, the "Bonds"), to finance various capital improvements for school purposes, including additional costs related to the High School Project;

**WHEREAS**, the School Board has reported to the Board of Supervisors that the construction contracts for the High School Project have come in at reduced prices and the total cost of the High School Project is expected to be less than originally anticipated;

**WHEREAS**, the Board of Supervisors has received a copy of a resolution adopted by the School Board on October 18th, 2010, (a) expressing its desire to use Bond proceeds not anticipated to be needed for the High School Project (approximately \$2.9 million) to pay the costs of capital improvements to renovate the existing high school and to renovate Cooley Elementary School and (b) requesting the Board of Supervisors to authorize the same additional school projects for the use of such proceeds;

**BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF CLARKE COUNTY, VIRGINIA:**

1. Bond proceeds not needed for the High School Project are hereby authorized to be applied to pay the costs of capital improvements to renovate the existing high school and to renovate Cooley Elementary School. The County Administrator and such other officers of the County as requested, in collaboration with the officers of the School Board, are hereby authorized to amend, as necessary, the documents authorizing the issuance of the Bonds to reflect such additional school projects. The County Administrator and such other officers of the County as requested, are hereby authorized to take such further action as any one of them may consider necessary or desirable in connection with the purposes expressed by this resolution.

2. The appropriate officers or agents of the County are hereby authorized and directed to cause a certified copy of this resolution to be filed with the Clerk of the Circuit Court of Clarke County, Virginia.
3. This resolution shall take effect immediately.

The undersigned Clerk of the Board of Supervisors of Clarke County, Virginia, certifies that the foregoing constitutes a true and correct extract from the minutes of a regular meeting of the Board of Supervisors held on the 16<sup>th</sup> day of November, 2010, and of the whole thereof so far as applicable to the matters referred to in such extract.

**WITNESS** my signature and the seal of the Board of Supervisors of Clarke County, Virginia, this 16<sup>th</sup> day of November, 2010.

\_\_\_\_\_  
Clerk, Board of Supervisors of Clarke County, Virginia

#### PH 10-26 Zoning Map Amendment (Rezoning) RZ-10-01

E. Alexander Lee and Monica Villegas request an amendment of the County Zoning Map of 0.0868 acres so as to rezone from Neighborhood Commercial (CN) to Rural Residential (RR) on a portion of Tax Map Parcel 30A-((A))-33, located at 24 Tannery Lane, Greenway Magisterial District. RZ-10-01

Chuck Johnston reviewed zoning map amendment RZ-10-01.

At 6:36 pm Chairman Hobert opened the public hearing for public comment. There being no persons present desiring to address the Board the public comment portion of the public hearing was closed.

**Supervisor Dunning moved to approve Zoning Map Amendment RZ-10-01 - amendment of the County Zoning Map of 0.0868 acres so as to rezone from Neighborhood Commercial (CN) to Rural Residential (RR) on a portion of Tax Map Parcel 30A-((A))-33, located at 24 Tannery Lane, Greenway Magisterial District as presented.**

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

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

**ORDINANCE  
10-11ORD  
(Approved 2010 November 16)**

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held at the Town/County Government Center on 2010 November 16 at 6:30 p.m. On motion by Supervisor Dunning, the Board of Supervisors (Byrd-Aye; Dunning-Aye; Hobert-Abstain; Staelin-Aye; Weiss-Aye) approved the proposed Text Amendment of the Clarke County Zoning Map.

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

**WHEREAS**, Alexander Lee and Monica Villegas, owners of Tax Map Parcel 30A-((A))-33, located at 24 Tannery Lane, requested a down zoning of 0.0868 acres (3,781 sq ft) of their property from Neighborhood Commercial (CN) to Rural Residential so as to allow for a boundary line adjustment between the applicant's property and property owned by Prudence Squier.

**WHEREAS**, Ms. Squier's property, located at 1954 Millwood Road, is zoned Rural Residential (RR).

**WHEREAS**, Boundary line adjustments between properties with conflicting zoning designations are not permitted unless a rezoning is approved for that portion to be adjusted.

**WHEREAS**, The minimum lot size for RR zoned properties in a sewer service area is 30,000 sq. ft. and after adjustment, Ms. Squier's RR zoned lot would be approximately 10,000 sq. ft. in area and therefore would not qualify for any future subdivision.

**WHEREAS**, the proposed rezoning is not inconsistent with the Comprehensive Plan and is consistent with the 19 criteria established in the Zoning Ordinance to evaluate such requests.

**NOW THEREFORE BE IT ORDAINED THAT**, the following sections of the County Zoning Map be amended:

- so as to rezone from Neighborhood Commercial (CN) to Rural Residential (RR) on a 0.0868 acres portion of Tax Map Parcel 30A-((A))-33, located at 24 Tannery Lane, Greenway Magisterial District.

Attest:  
RZ-10-01

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

## PH 10-27 Text Amendment TA-10-07

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

- Sections 3-A-1-a-1, 3-A-2-a-1, 3-A-3-a-1, Special Uses in the AOC, FOC, and Rural Residential Zoning Districts so as to delete 'Assisted Living Facilities',
- Sections 3-A-1-a-2, 3-A-1-a-2, 3-A-1-a-2 Accessory Uses and Structures in the AOC, FOC, and Rural Residential Zoning Districts so as to allow a 'Temporary Family Health Care Structure',

- Section 3-C-2, Supplementary Regulations for uses in Various Districts so as to establish regulations for a 'Temporary Family Health Care Structure' and to delete the reference to Assisted Living Facilities in the supplemental regulations for Home Occupations,
- Sections 9-B-13, definition of the term 'Assisted Living Facility' so as to delete this term,
- Section 9-B-60, definition of the term 'Single Family Dwelling' so as to include the term 'Assisted Living Facility' as defined in Virginia Code Section 15.2-2291 so that Assisted Living Facilities (for up to eight individuals with mental illness, mental retardation, or developmental disabilities or no more than eight aged, infirm or disabled persons, and with one or more resident counselors or other staff persons) to be considered residential occupancy by a single family and to not have conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption. TA-10-07

Chuck Johnston reviewed text amendment TA-10-07 proposed to bring local ordinances into compliance with recent changes to State Code.

At 6:45 pm Chairman Hobert opened the public hearing for public comment. There being no persons present desiring to address the Board the public comment portion of the public hearing was closed.

**Vice Chairman Weiss moved to approve text amendment TA-10-07. The motion was approved by the following vote:**

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

**ORDINANCE**  
**10-12ORD**  
(Approved 2010 November 16)

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held at the Town/County Government Center on 2010 November 16 at 6:30 p.m. On motion by Supervisor Weiss, the Board of Supervisors (Byrd-Aye; Dunning – Nay; Hobert-Aye; Staelin-Aye; Weiss-Aye) approved the proposed Text Amendment of the Clarke County Zoning Ordinance.

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

**WHEREAS**, in its 2010 session, the Virginia General Assembly changed state code to require localities to allow Assisted Living Facilities that provide care for up to eight individuals (plus resident 'counselors') with mental illness, mental retardation, or developmental disabilities or for being aged, infirm or disabled, to be considered residential occupancy by a single family and to not have conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption;

**WHEREAS**, currently Assisted Living Facilities are allowed as a Special Use in the AOC, FOC, and Rural Residential Zoning Districts and therefore the Zoning Ordinance needs to be amended to delete references to Assisted Living Facilities as a Special Use and to change the definition of Single Family Dwelling so as to add in Assisted Living Facilities;

**WHEREAS**, the Virginia General Assembly also amended the Virginia Code to require localities to provide for Temporary Family Health Care Structures as Accessory Structures to single family residences so as to allow an on-site option for the medical care of family members of property owners; and

**WHEREAS**, this new Virginia Code sections provide for limits on the location, occupancy, size, and time period of such structures and therefore the Zoning Ordinance needs to be amended to incorporate these regulations into the Zoning Ordinance.

**NOW THEREFORE BE IT ORDAINED THAT**, the following sections of the County Zoning Ordinance be amended:

- Sections 3-A-1-a-1, 3-A-2-a-1, 3-A-3-a-1, Special Uses in the AOC, FOC, and Rural Residential Zoning Districts so as to delete 'Assisted Living Facilities',
- Sections 3-A-1-a-2, 3-A-1-a-2, 3-A-1-a-2 Accessory Uses and Structures in the AOC, FOC, and Rural Residential Zoning Districts so as to allow a 'Temporary Family Health Care Structure',
- Section 3-C-2, Supplementary Regulations for uses in Various Districts so as to establish regulations for a 'Temporary Family Health Care Structure' and to delete the reference to Assisted Living Facilities in the supplemental regulations for Home Occupations,
- Sections 9-B-13, definition of the term 'Assisted Living Facility' so as to delete this term,
- Section 9-B-60, definition of the term 'Single Family Dwelling' so as to include the term 'Assisted Living Facility' as defined in Virginia Code Section 15.2-2291 so that Assisted Living Facilities (for up to eight individuals with mental illness, mental retardation, or developmental disabilities or no more than eight aged, infirm or disabled persons, and with one or more resident counselors or other staff persons) to be considered residential occupancy by a single family and to not have conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption.

Attest:  
TA-10-07

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

*See the following for specific change.*

#### ZONING ORDINANCE TEXT AMENDMENT

Text to added showed *in bold Italics*

Text to be deleted showed ~~struck through~~

- 3 DISTRICT REGULATIONS
- 3-A SCHEDULE OF DISTRICT REGULATIONS
- 3-A-1 Agricultural-Open Space-Conservation District – AOC
- 3-A-1-a Permitted Uses and Structures
- 2. Accessory Uses and Structures
- \*. *Temporary Family Health Care Structure*
- 3. Special Uses and Structures

~~Assisted Living Facility for four to eight adults~~

3-A-2 Forestal-Open Space-Conservation District – FOC

3-A-2-a Permitted Uses and Structures

2. Accessory Uses and Structures

\*. ***Temporary Family Health Care Structure***

3. Special Uses and Structures

~~Assisted Living Facility for four to eight adults~~

3-A-3 Rural Residential District (RR)

3-A-3-a Permitted Uses and Structures

2. Accessory Uses and Structures

\*. ***Temporary Family Health Care Structure***

3. Special Uses and Structures

~~b. Assisted Living Facility for four to eight adults~~

### 3-C SUPPLEMENTARY REGULATIONS

3-C-2 Uses in Various Districts

3-C-2-I Home Occupations

13. The following uses are not allowed as home occupations:

~~1. Assisted living facilities for three or fewer adults,~~

2. boarding and rooming houses, tourist homes, private educational institutions,

3. private educational institutions, and

4. vehicle repair or vehicle towing.

3-C-2-\* ***Temporary Family Health Care Structure***

A. *A Temporary Family Health Care Structure shall be (i) for use by a caregiver in providing care for a mentally or physically impaired person and (ii) on property owned or occupied by the caregiver as his residence as a permitted accessory use. Such a structure shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. Only one family health care structure shall be allowed on a lot or parcel of land.*

B. *For purposes of this section:*

1. *"Caregiver" means an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.*

2. *"Mentally or physically impaired person" means a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in Virginia Code § 63.2-2200, as certified in a writing provided by a physician licensed by the Commonwealth.*

3. *"Temporary family health care structure" means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300*

*gross square feet, and (iv) complies with applicable provisions of the Industrialized Building Safety Law (§ 36-70 et seq.) and the Uniform Statewide Building Code (§ 36-97 et seq.). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.*

- C. Any person proposing to install a temporary family health care structure shall first obtain a Zoning Permit. To obtain Zoning Permit approval, the applicant shall provide sufficient proof of compliance with this section. The applicant shall provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. Such evidence may involve the inspection by the locality of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation.*
- D. Any temporary family health care structure installed pursuant to this section may be required to connect to any water, sewer, and electric utilities that are serving the primary residence on the property and shall comply with all applicable requirements of the Virginia Department of Health.*
- E. No signage advertising or otherwise promoting the existence of the structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.*
- F. Any temporary family health care structure installed pursuant to this section shall be removed within 30 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section.*
- G. The Zoning Administrator may revoke the permit granted pursuant to subsection C if the permit holder violates any provision of this section. Additionally, the Board of Supervisors may seek injunctive relief or other appropriate actions or proceedings in Circuit Court to ensure compliance with this section. The Zoning Administrator is vested with all necessary authority to ensure compliance with this section.*

## 9 DEFINITIONS

### 9-A GENERAL USAGE

### 9-B DEFINITIONS

9-B-13 ~~ASSISTED LIVING FACILITY: Any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four to eight adults who are aged, infirm or disabled and who are cared for in a primarily residential setting. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual. As Assisted Living Facility shall be allowed only as an accessory use to a Single Family Detached Dwelling, and such a facility shall be located in, or in a structure not more than 50 feet from such a dwelling.~~

9-B-60 DWELLING, SINGLE FAMILY: A residential dwelling unit, other than a portable dwelling, designed for and occupied by one (1) family only. This term shall include Group Homes *or Assisted Living Facility* (as defined in Section 15.2-2291 Code of Virginia, 1950, as amended). In the AOC and FOC zoning districts only, this term shall include manufactured homes of 19 feet or greater in width, on a permanent foundation.

Planning Department Application Fee Schedule

Chuck Johnston summarized proposed amendments to the Planning Department Application Fees Schedule.

**Supervisor Dunning moved to approve amendments to the fee schedule as presented. The motion was approved by the following vote:**

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

CLARKE COUNTY  
PLANNING DEPARTMENT APPLICATION FEES  
2010 November 16 SEE AMENDMENTS BELOW& NEXT PAGE

<u>Zoning Map Amendment</u>	\$ 4000 per acre or portion of
Amendment to less intense district	½ Zoning Map Amendment Fee
<u>Amendment to Rezoning Proffers</u>	½ Zoning Map Amendment Fee
<u>Text Amendment</u>	\$ 6000
(Comprehensive Plan; Zng Ord; Subd Ord)	
<u>Appeals to Board of Supervisors</u>	\$ 2500
 Special Use Permit	
<b>for property zoned commercial/indus.</b>	<b>\$ 2500 for each disturbed acre or portion thereof +</b>
<b>Site Plan Fees</b>	
<b>for property zoned AOC, FOC, resid.</b>	<b>\$ 2500 + Site Plan Fees</b>
Amendment	½ Regular Fee
 <u>Site Development Plan</u>	
for property zoned commercial/indus.	\$ 5000 + \$ 250 /required parking space
for property zoned AOC, FOC, or residential or for non-profit uses	\$ 2500 + \$ 250 /required parking space
Amendment by Planning Commission	½ Regular Fee
by Planning Administrator	¼ Regular Fee
 <u>Major Subdivision</u> (3 or more new lots) needed	\$ 4000/lot, plus \$ 300 for each road sign & pole set as needed
<u>Minor Subdivision</u> (one or two new lots)	\$ 4000 plus \$ 300 for each road sign & pole set as needed
<u>Boundary Line Adjustment</u>	\$ 500 plus \$ 2750 for each DUR transferred
<u>Maximum Lot Size Exception</u>	\$ 1500
requiring Planning Commission approval	
<u>Subdivision Ordinance Waiver</u>	\$ 1250
<u>Vacation of Plat</u>	\$ 1825
Land Disturbance Permits	
Erosion & Sediment Control Plan	\$ 500 per plan + \$ 100/acre of disturbed area

for site plans, major subdivisions, or non-residential land disturbances of 10,000 sq ft or more (not including agricultural activities)  
 Agreement in lieu of Erosion & Sediment Control Plan \$ 250 per plan  
 for residential land disturbances of 10,000 sq ft or more  
 E&S compliance inspection of either of above plans 1<sup>st</sup> visit: \$125; 2<sup>nd</sup>: \$250; 3<sup>rd</sup>: \$500; 4<sup>th</sup>: \$1000; etc.  
 Minor Land Disturbance Permit \$ 50 for any disturbance of less than 10,000 sq ft

**Stormwater Constructions Permits**

***Large Construction Activity (five acres or more of land clearing) \$ 360\****  
***Small Construction Activity (one acre up to five acres of land clearing) \$ 216\****  
***Minor Construction Activity (2,500 sq ft up to one acre of land clearing) \$ 144\****

Board of Zoning Appeals \$ 750 (fee refunded if appeal upheld)

Board of Septic & Well Appeals \$ 750  
 Review of blasting plans \$1250  
 Septic and Well Applications  
 Sewage Disposal (all forms) \$ 270 (plus VDH fee: \$ ~~355~~ **425 [letter & permit]**) =  
 \$ ~~485~~ **695**, all paid to VDH  
 Well Water Supply \$ 185 (plus VDH fee: \$ ~~205~~ **300**) = \$ ~~390~~ **485**, all paid to VDH  
 Walkover Fee \$ 80 paid to VDH

Sign Permit \$ 20 per sq/ft

Certificate of Appropriateness  
 for property zoned commercial or industrial \$ 100  
 for property zoned AOC/FOC/Residential or for non-profit uses \$ 50

Zoning Determination Letter \$ 150  
 (identification of property zoning and permitted uses requiring interpretation of county regulations)

Zoning Certification Letter \$ 100  
 (identification of property zoning and permitted uses)

**Zoning Permit**

Structure not requiring a building permit \$ 100  
***Temporary Family Health Care Structure \$ 100\****  
 Residential Structure  
 New principal structure \$ 300  
 Accessory structure or heated addition \$ 200  
 Unheated additions (porches/decks) \$ 100  
 Initial review of Home Occupation / Business License \$ 100

**Commercial Structure**

***New principal structure or any addition with sq ft increase of 15% or more \$ 750***  
***Accessory structure or any addition with sq ft increase of less than 15% \$ 500***

Stream Buffer Mitigation Plan \$ 150

Land Evaluation & Site Assessment (LESA) \$ 250

New Structure Addresses \$ 130

Acreeage, square foot, or parking space numbers are rounded to next whole number for determination of fee.

Collection and Expense Reimbursement Payment of all applicant fees and charges shall be made to the Treasurer of Clarke County at the time of application for actions pertaining to zoning and subdivision matters. Fees and expenses for professional review of application materials by county consultants shall be reimbursed to the County at cost. An administrative fee of \$30\* shall be charged for reimbursements not received within 30 days of first payment notice (VA Code §58.1-3958). The County may require a deposit for professional consulting service fees to be paid at application submittal.

Fee Discount The Planning Application Fees shall be 25% of the stated fees for a Retail Business in the AOC and FOC Zoning Districts that is limited to the sale of: (1) fresh fruit and vegetables, (2) apiary products, (3) food items that are processed or baked, (4) dairy products, (5) egg, fish, and meat items, (6) cut plants and flowers, and/or (7) gallon size or smaller container plants, where all such products are raised, grown, processed, and/or baked in Clarke County or counties adjoining Clarke County.

Fee Waiver The Board of Supervisors may waive fees in whole or in part for hardship or other unique reasons justifying relief. The Board of Supervisors or Planning Commission, at no cost to the landowner, may initiate zoning Ordinance Amendments. The Board of Supervisors has granted waivers for the following circumstances:

1. Zoning Application for housing for low/moderate income elderly citizens developed by a non-profit entity;
2. Zoning Applications for volunteer emergency service provider uses;
3. Zoning Applications for municipal water storage uses;
4. Zoning Applications for County-owned recreational uses; and
5. Special Use Permit/Site Plan Applications for nursery, day care, or pre-school uses operated by a non-profit entity in an existing structure.

*Refund Withdrawal of application before Planning Commission (or other review bd.) sets public hearing on request = 50% refund*

Withdrawal of application before Board of Supervisors sets public hearing on request = 25% refund  
Republication Costs If the County has published a request in accord with public notice requirements and the applicant fails to meet their obligation for providing notice by posting signs and/or sending legal notice to adjoining property owners, the additional costs of republishing the request shall be paid by the applicant in addition to standard fees paid.

\* Fee amount determined by Code of Virginia or Virginia regulation.

## PH 10-28 Text Amendment TA-10-08

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

- Section 9-B-176, definition of the term 'Tract', so as to add a phrase to state that if a tract is divided by a public road is located totally in the ten year floodplain, then the parcel shall be considered a single tract. TA-10-08

Chuck Johnston reviewed the proposed text amendment TA-10-08. He informed the Supervisors that Bob Mitchell had been consulted; and in his legal opinion, such an action would not be considered a taking.

At 6:59 pm Chairman Hobert opened the public hearing for public comment. There being no persons present desiring to address the Board the public comment portion of the public hearing was closed.

**Supervisor Dunning moved to approve text amendment TA-10-08 as presented. The motion was approved by the following vote:**

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

**ORDINANCE  
10-14ORD  
(Approved 2010 November 16)**

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held at the Town/County Government Center on 2010 November 16 at 6:30 p.m. On motion by Supervisor Dunning, the Board of Supervisors (Byrd-Aye; Dunning-Aye; Hobert-Aye; Staelin-Aye; Weiss-Aye) approved the proposed Text Amendment of the Clarke County Zoning Map.

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

**WHEREAS**, Currently, the County Zoning Ordinance states in the definition of 'Tract' that "parcels that have been divided by a public road ... shall be considered as separate tracts, even though such tracts may be assigned one parcel designation as herein defined."; and this results in the potential for additional dwelling unit rights being assigned to each side of the public road.

**WHEREAS**, The Zoning Administrator has become aware of parcels divided by a public road where one of the halves is entirely within the 10 year flood zone, where additional dwelling unit rights would not be appropriate and it would be unlikely DURs could be used in subdivision, house construction or be transferred.

**WHEREAS**, The proposed amended adds to the definition of the term 'Tract' the following phrase: "except that if either of the parcels divided by a public road is located totally in the ten year floodplain, the parcels shall be considered a single tract." This additional text precludes the assignment of dwelling unit rights where they could not be exercised.

**NOW THEREFORE BE IT ORDAINED THAT**, the following section of the County Zoning Ordinance be amended:

- Section 9-B-176, definition of the term 'Tract', so as to add a phrase to state that if a tract is divided by a public road is located totally in the ten year floodplain, then the parcel shall be considered a single tract.

Attest:  
TA-10-08

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

*See the following for the specific changes.*

#### ZONING ORDINANCE TEXT AMENDMENT

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

### 9 DEFINITIONS 9-A GENERAL USAGE

#### 9-B DEFINITIONS

- 9-B-176 TRACT: A parcel of land for which there exists a separate parcel designation on the Clarke County Real Property Identification Map as of October 17, 1980. Parcels that have been divided by a public road, which is maintained by the Virginia Department of Transportation, shall be considered as separate tracts, even though such tracts may be assigned one parcel designation as herein defined, ***except that if either of the parcels divided by a public road is located totally in the ten year floodplain, the parcels shall be considered a single tract.***

#### PH 10-29 Text Amendment TA-10-10

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

- Section 4-G-7, so as to label this section as 'Term of Validity of Preliminary Plats' and replace the current text with language consistent with Virginia Code Section 15.2-2260-F&G and
- Section 1-C-1, Recordation of Plats, so as to shift this section to a new section 4-K, Recordation of Plats, under Section 4, Procedure for Subdivision Approval . TA-10-10

Chuck Johnston reviewed text amendment TA-10-10.

At 7:01 pm Chairman Hobert opened the public hearing for public comment. There being no persons present desiring to address the Board the public comment portion of the public hearing was closed.

**Supervisor Dunning moved to approve text amendment to County Subdivision Ordinance TA-10-08 as presented.**

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

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

**ORDINANCE**  
**10-13ORD**  
**(Approved 2010 November 16)**

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held at the Town/County Government Center on 2010 November 16 at 6:30 p.m. On motion by Supervisor Dunning, the Board of Supervisors (Byrd-Aye; Dunning-Aye; Hobert-Aye; Staelin-Aye; Weiss-Aye) approved the proposed Text Amendment of the Clarke County Zoning Map.

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

**WHEREAS**, The Clarke County Subdivision Ordinance currently states that a Record Subdivision Plan must be submitted within six months of approval of a Preliminary Plat.

**WHEREAS**, Virginia Code that Preliminary Plat shall be valid for up to five years, provided a Record Plat for all or a portion of the property is submitted within one year of Preliminary Plat approval, and that approval of the Record Plat is diligently pursued.

**WHEREAS**, Virginia Code Section 15.2-2260 also states that if approval of a Record Plat is not submitted and pursued, the Zoning Administrator may revoke Preliminary Plat approval as soon as three years after such approval, with a specific finding of facts that the subdivider has not diligently pursued approval of the final subdivision with 90 days written notice by certified mail to the subdivider.

**WHEREAS**, County ordinances must be in conformance with the Virginia Code, therefore the County Subdivision Ordinance should be amended.

**NOW THEREFORE BE IT ORDAINED THAT**, the following sections of the County Subdivision Ordinance be amended:

- Section 4-G-7, so as to label this section as 'Term of Validity of Preliminary Plats' and replace the current text with language consistent with Virginia Code Section 15.2-2260-F&G and
- Section 1-C-1, Recordation of Plats, so as to shift this section to a new section 4-K, Recordation of Plats, under Section 4, Procedure for Subdivision Approval.

Attest:  
TA-10-10

\_\_\_\_\_  
David L. Ash, County Administrator  
*See the following for specific changes.*

**SUBDIVISION ORDINANCE**

TEXT AMENDMENT

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

4 PROCEDURE FOR SUBDIVISION APPROVAL

4-G ACTION ON PRELIMINARY PLAT

4-G-7 ~~The Record Plat shall be filed within six months of approval or conditional approval of the Preliminary Plat; provided, however, that the Commission may extend the time for filing the Record Plat for an additional six months or less upon the written request of the subdivider. No Record Plat shall be approved which is not timely filed, as aforesaid.~~

4-G-7 *Term of Validity of Preliminary Plats*

4-G-7(a) *Once a preliminary subdivision plat is approved, it shall be valid for a period of five years, provided the subdivider (i) submits a final subdivision plat for all or a portion of the property within one year of such approval, and (ii) thereafter diligently pursues approval of the final subdivision plat. "Diligent pursuit of approval" means that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted final subdivision plat or modifications thereto. However, no sooner than three years following such preliminary subdivision plat approval, and upon 90 days' written notice by certified mail to the subdivider, the Zoning Administrator may revoke such approval upon a specific finding of facts that the subdivider has not diligently pursued approval of the final subdivision plat.*

4-G-7(b) *Once an approved final subdivision plat for all or a portion of the property is recorded, the underlying preliminary plat shall remain valid for a period of five years from the date of the latest recorded plat of subdivision for the property. The five-year period of validity shall extend from the date of the last recorded plat.*

1 PURPOSE, TITLE AND GENERAL PROVISIONS

1-C GENERAL PROVISIONS

~~1-C-1~~ *4-K* Recordation of Plats

~~1-C-1(a)~~ *4-K-1* Any owner or proprietor of any tract of land within Clarke County, Virginia, who subdivides the same as herein provided, shall cause a plat of such subdivision to be made in accordance with the regulations set forth in this Ordinance and in the Virginia Land Subdivision and Development Act, and shall further cause a copy of said plat evidencing approval as required herein and a copy of a Deed of Dedication, as may be required herein, to be recorded in the Office of the Clerk of the Circuit Court of Clarke County, Virginia.

~~1-C-1(b)~~ *4-K-2* No subdivision plat shall be recorded unless and until it shall have been submitted to and approved by the Planning Commission of Clarke County as herein provided and is in full accordance with the regulations set forth in this Ordinance.

~~1-C-1(c)~~  
**4-K-3** No subdivision plat shall be recorded unless all the monuments shown and described on the Record Plat are in place as evidenced by the certificate of a licensed surveyor endorsed on said Plat.

~~1-C-1(d)~~  
**4-K-4** A Record Plat shall become null and void if it is not submitted to the Clerk of the Circuit Court of Clarke County for recordation within six months from the date evidencing approval by the Planning Commission. The Commission may approve a longer period before recordation is required. The owner of the property being subdivided must submit a written request to the Zoning Administrator for such a longer period within six months of the date of the Commission's original approval. In any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by Planning Commission, or where the developer has furnished surety to the Planning Commission by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the surety agreement approved by the Planning Commission, which ever is greater.

~~1-C-1(e)~~  
**4-K-5** Recordation of the Record Plat of a subdivision shall not be deemed to be the acceptance by the County of any street or road or other public place shown on the plat for maintenance, repair or operation thereof.

~~4-K L~~ BURDEN OF PROOF

#### PH 10-30 CC-10-06 Chapter 175 Vehicles and Traffic 175-11 Reimbursement of Expenses Incurred in Responding to DUI and Other Traffic Incidents

The Clarke County Board of Supervisors will consider the amendment of the Code of Clarke County Chapter 175 Vehicles and Traffic 175-11 to correct content and typographical errors, to more closely track the language of the enabling legislation, and to update the flat fee amount from \$250 to \$350.

David Ash reviewed the proposed code amendment.

At 7:05 pm Chairman Hobert opened the public hearing for public comment. There being no persons present desiring to address the Board the public comment portion of the public hearing was closed.

**Supervisor Staelin moved to approve code amendment CC-10-06 Chapter 175. The motion was approved by the following vote:**

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

John R. Staelin

- Aye

Code of Clarke County, Virginia  
Chapter 175 – Vehicles and Traffic

§ 175-11.  
Reimbursement of  
Expenses Incurred In  
Responding to DUI and  
Other Traffic Incidents  
(pursuant to Va. Code  
Ann. §15.2-1716  
[Added 07-07-17]

A. ~~Any~~ person convicted of violating any of the following provisions shall, ~~be liable for restitution~~ at the time of sentencing or in a separate civil action, **be liable** to ~~Clarke the~~ County or to any responding volunteer fire or rescue squad, or both, for **restitution** of reasonable expenses incurred by the county for responding law enforcement, firefighting, rescue and emergency services, including by the **county** Sheriff's ~~Department~~ office of the county, or by any volunteer fire or rescue squad, or by any combination of the foregoing, when providing appropriate emergency response to any accident or incident related to such violation **or when issuing any related arrest warrant or summons.**

1. The provisions of ~~Va. Code Ann.~~ **Virginia Code** §§ ~~18.2-36.1; 18.2-51.4; 18.2-266; §18.2-51.41; 18.2-266.1; 29.1-738; 29.1-738.02; or 46.2-341.24;~~ or a similar **county** ordinance, when such operation of a motor vehicle, engine, train or watercraft while so impaired is the proximate cause of the accident or incident;
2. The provisions of Article 7 (~~Va. Code Ann.~~ **Virginia Code** §46.2-8.52 et seq.) of Chapter 8 of Title 46.2 of the ~~Virginia Code Code of Virginia,~~ **as amended**, relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident; **and**
3. The provisions of Article ~~1~~ **1** (~~Va. Code Ann.~~ **Virginia Code** §46.2-300 et seq.) of Chapter 3 of Title 46.2 of the ~~Virginia Code Code of Virginia,~~ **as amended**, relating to driving without a license or driving with a suspended or revoked license; and
4. The provisions of ~~Va. Code Ann.~~ **Virginia Code** §46.2-894 relating to improperly leaving the scene of an accident.

B. Personal liability under ~~this~~ **subsection A** for reasonable expenses of an appropriate emergency response shall not exceed \$1,000 in the aggregate for a particular accident or incident **occurring in the county.**

In determining the "reasonable expenses," the county may bill a flat fee of ~~\$250~~ **\$350** or a minute-by-minute accounting of the actual costs incurred.

As used in this section, "appropriate emergency response"

includes all costs of providing law-enforcement, firefighting, rescue and emergency medical services.

*The court may order as restitution the reasonable expenses incurred by the county for responding law enforcement, fire-fighting, rescue and emergency medical services.*

The provisions of this section shall not preempt or limit any remedy available to the Commonwealth, to the county or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving, operation of a vehicle or other conduct as set forth herein.

### Adjournment

There being no further business to be brought before the Board at 7:07 pm Chairman Hobert adjourned the Board of Supervisors meeting.

### Next Regular Meeting Date

The next regular meeting of the Board of Supervisors is set for Tuesday, December 21, 2010 at 1:00 p.m. in the Main Meeting Room, 101 Chalmers Court, 2<sup>nd</sup> Floor, Berryville, Virginia.

ATTEST: November 16, 2010

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

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

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