

CLARKE COUNTY BOARD OF SUPERVISORS  
February 19, 2008                      Regular Meeting                      1:00 p.m.  
Board of Supervisors Meeting Room

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held in the Board of Supervisors' Meeting Room, 2<sup>nd</sup> Floor Circuit Courthouse, 102 N. Church Street, Berryville, Virginia on Tuesday, February 19, 2008.

**Board Members Present**

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

**Staff Present**

David Ash, Chuck Johnston, Tom Judge, Alison Teetor

**Others Present**

Board of Zoning Appeals: Alain Borel, Anne Caldwell, Charlie Kackley, Richard Thuss

Robina Rich Bouffault, Suni Perka, Clesta Rhodes, Tony Roper, Mike McWilliams, Tom Nolan, Bob Mitchell, Stephanie Mangino, Ruth Marlow and other citizens and members of the press

**Call to Order**

Chairman Staelin called the meeting to order at 1:01 p.m.

**Adoption of Agenda**

**Supervisor Dunning moved to approve the agenda as modified:**

- **Add to Miscellaneous:**
  - o **Add a separate closed session for other matters**
  - o **Drought Update by Alison Teetor**
  - o **Set Public Hearing: Service Easement to Shenandoah Gas**

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

John R. Staelin, Chair                      -    Aye

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

David Weiss joined the meeting at 1:03 pm.

### Approval of Minutes

Supervisor Dunning requested the minutes reflect The Potomac Edison Company dba Allegheny Power under the public hearing granting the right of way.

**Supervisor Dunning moved to approve the minutes for the January 15, 2008 Regular Meeting as revised.**

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

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

### Consent Agenda

#### Resolution of Appreciation of Service 08-01R

WHEREAS, Bonnie Dodson was first employed as a van driver for the Clarke County Senior Center through the Shenandoah Area Agency on Aging, Inc. on February 23, 1983; and,

WHEREAS, Mrs. Dodson has served in the capacity of Senior Center Director of Clarke County since December 1992;

WHEREAS, throughout the years, Mrs. Dodson has consistently demonstrated her love, care and concern for senior citizens and has worked tirelessly on their behalf;

NOW THEREFORE BE IT RESOLVED, by the Clarke County Board of Supervisors that Bonnie Dodson be recognized and congratulated on achieving twenty-five years continued service to the senior citizens of Clarke County and that she be congratulated on her successful career in Clarke County, and on the positive influence she has had on Clarke County;

BE IT FURTHER RESOLVED, that her dedication, loyalty, and service to the Citizens of Clarke County be hereby memorialized and that a suitable copy of this resolution be presented to Mrs. Dodson as a token of the respect and high esteem in which she is held by the Clarke County Board of Supervisors, Constitutional Officers, and the staff of Clarke County.

APPROVED AND ORDERED ENTERED in the official records by the unanimous vote of the members of the Clarke County Board of Supervisors assembled in regular session on the 19th day of February 2008.

Attest:

\_\_\_\_\_  
John R. Staelin, Chairman

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

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

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

#### Citizens Comment Period

Eugene Folk, Wadesville Road: spoke against further pursuit by the Board of Supervisors on the flagpole issue.

#### VDOT

Jeff Lineberry, with Bob Childress, Dean Gustafson and Matt Shiley – traffic engineers, and Charlie Monroe, provided the monthly update from the Virginia Department of Transportation.

#### Maintenance, Construction Updates and Supervisor Concerns.

- Performing snow and ice removal operations throughout the County as weather dictates.
- Continuing shoulder work on Route 340.
- Grading of unpaved roads on the mountain continues and should be complete this week/
- Repaired hole in right of way on Route 658.
- Brush clean up due to icing conditions is in progress.
- A two-man crew is working on replacing signs taken down during the high-winds and winter storm events.
- Process start up for traffic signalization in the Town of Boyce is scheduled for spring 2009 with an anticipated start by fall 2009. It was noted that the cost of signalization was now

- approximately two hundred and fifty thousand dollars. Vice Chairman Hobert asked what prompted VDOT to change their mind on signalization in the Town of Boyce. Jeff Lineberry stated that VDOT had reclassified lanes analyzed in the study.
- Jeff Lineberry said that they would be looking closely at agreements with developers to cover the cost of signalization on Hermitage Boulevard.
  - Supervisor Dunning asked VDOT to look at the timing of the signal coming east on Triple J Road at Route 7.
  - Supervisor Byrd asked for a progress update on culverts on Russell Road. Mr. Monroe advised they were in the process of review for permit.

### Speed Zones Presentation

Mr. Gustafson provided an introduction followed by a presentation by Matt Shiley titled, "Virginia's Speed Zones: How Speed Limits Are Determined."

Chairman Staelin commented that it appeared that the 85<sup>th</sup> percentile method used by VDOT basically allows excess speeds on roadways where speeding is already occurring.

Supervisor Byrd asked for more protection for her constituents noting that there were children playing, bicycling, walking and deer on these roads. She stated that Russell Road, Pierce Road, and Withers LaRue Road were used by commuters. She further noted that speed reduction enacted by VDOT on Summit Point Road had helped.

Supervisor Weiss asked VDOT to review Route 612 to change speeds to 45 MPH in the middle with 25 MPH on the ends. Supervisor Dunning concurred. Mr. Dunning complimented VDOT for speed reductions on roads in his district.

### Revenue Sharing Resolution – Town of Berryville [Page Street Sidewalks]

Christie Dunkle, Town Planner, addressed the Supervisors regarding the Town of Berryville's request for revenue sharing funding to construct a sidewalk on Page Street to Fairfax Street. She advised that action by the Supervisors was needed to initiate the application and the Town would be providing the matching funds.

**Vice Chairman Hobert moved to adopt the resolution as modified to remove the need for a second.**

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

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

David S. Weiss - Aye

**Revenue Sharing Resolution – Town of Berryville  
[Page Street Sidewalks]  
08-02R**

At a regularly scheduled meeting of the Board of Supervisors of the County of Clarke held on Tuesday, February 19, 2008, on a motion by Vice Chairman J. Michael Hobert the following resolution was adopted by unanimous vote.

**WHEREAS**, the Board of Supervisors of the County of Clarke desires to submit an application for an allocation of funds of up to \$37,850 through the Virginia Department of Transportation Fiscal Year 2008-2009 Revenue Sharing Program; and

**WHEREAS**, \$37,850 of these funds are requested to fund sidewalk connections on the east side of Page Street (T-1014) from just north of Liberty Street to Fairfax Street.

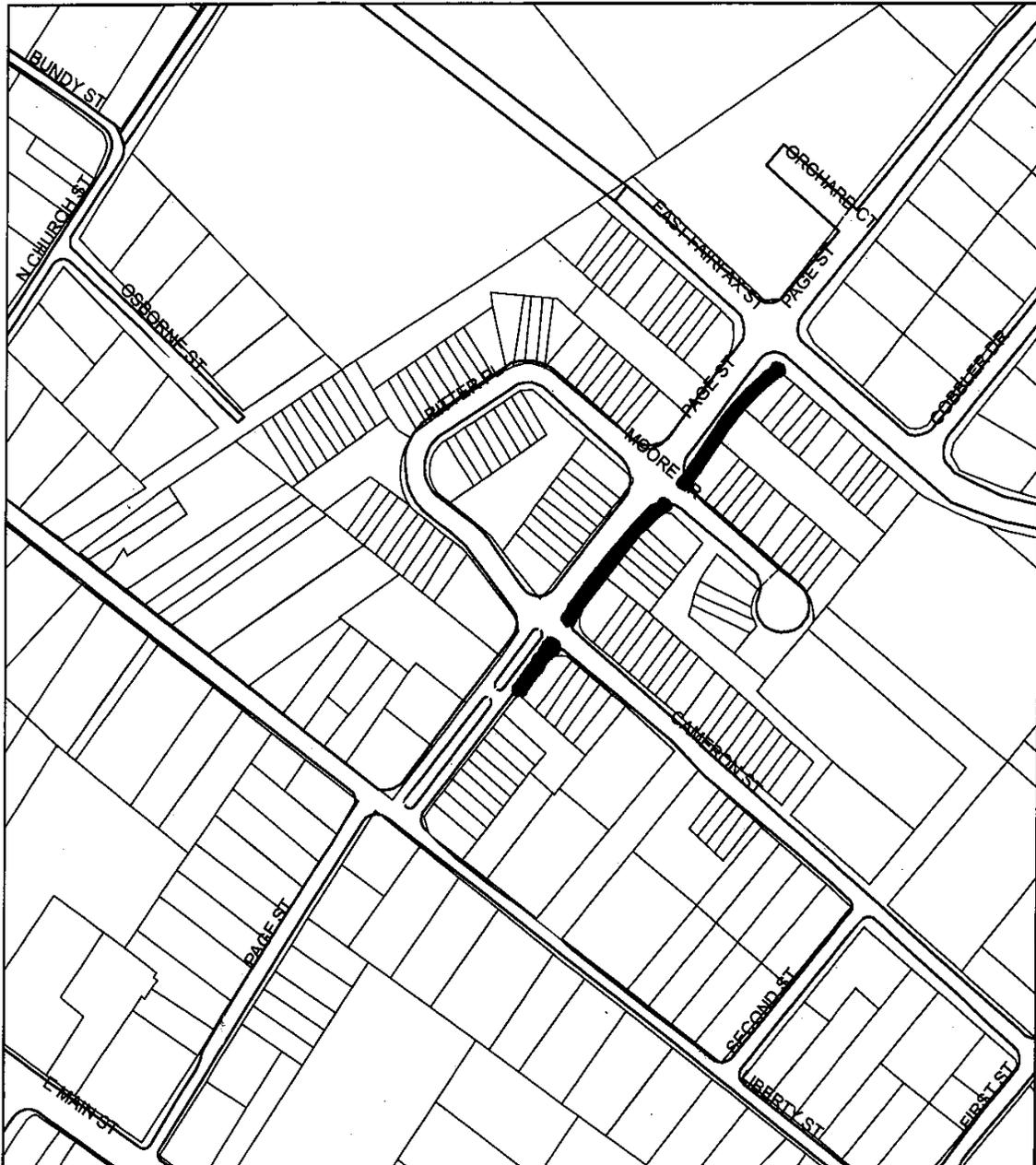
**NOW THEREFORE, BE IT RESOLVED THAT**, the Board of Supervisors of the County of Clarke hereby support this application for an allocation of \$37,850 through the Virginia Department of Transportation Revenue Sharing Program.

**ADOPTED** by the Clarke County Board of Supervisors this 19<sup>th</sup> day of February, 2008.

Attest:

\_\_\_\_\_  
David L. Ash, Clerk  
Clarke County Board of Supervisors

Proposed Page Street Improvements



## Proposed Page Street Improvements

## Special Entertainment Permits

### 2008 Dog Show at Historic Long Branch

Joe Pistolesi appeared before the Supervisors to request a special entertainment permit for the 2008 Dog Show at Historic Long Branch on September 26, 27 and 28, 2008. Responding to queries by Barbara Byrd, Mr. Pistolesi advised that approximately 2,400 persons attended the 2007 event. Mr. Pistolesi provided a partially executed copy of the contract with Long Branch for the upcoming event.

**Supervisor Dunning moved for approval of the Special Entertainment Permit Application for the 2008 Dog Show at Historic Long Branch contingent upon all the requirements being present, signed and fulfilled.**

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

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

### 2008 Balloon Festival at Historic Long Branch

In her absence, Mary Rodriguez, Executive Director Historic Long Branch, supplied a memorandum dated February 19, 2008, listing previously outlined conditions and a statement of their intent to comply with those same conditions for the 2008 Shenandoah Valley Hot Air Balloon and Wine Festival October 17, 18 and 19, 2008. Chairman Staelin said he was concerned about the use of the word "intent" in the letter and asked for verbal confirmation of Long Branch's commitment to comply to which Jennifer Seo, Director of Events, Long Branch, replied in the affirmative.

Jim Edwards stated that he believed that they could get 100% coverage for chase crews and GPS on the balloons.

**Supervisor Dunning moved for approval contingent upon the conditions being met, a letter of acknowledgement from Chief Conrad and general cooperation with the Building Department regarding event set up.**

**List of Conditions:**

- **A local Clarke County person with each chase crew, no speeding or trespassing and the chase crew must be in constant contact with the Balloon Pilot;**
- **Hot Air Balloons and vehicles must be equipped with updated GIS maps;**
- **Festival limited to no more than 20 balloons;**

- Sheriff Tony Roper participating with *No Trespassing* letter for all balloonists and the members of the chase crews; and
- Long Branch will report back to the Clarke County Board of Supervisors at the regular meeting in November 2008 to ensure all requirements remained in compliance with mandate.

The motion was approved by the following vote:

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

#### Clarke County Public Schools Update

Robina Rich Bouffault, Chair - Clarke County School Board, appeared before the Supervisors to provide an update on Clarke County Public Schools.

The following are highlights of Ms. Bouffault's update and the Supervisor's discussions:

- The FY09 School Board budget public hearing is scheduled for February 19, 2008. Electronic copies of the budget will be provided to the Board of Supervisors.
- The Governor has announced more budget cuts of K12 education funding.
- Anticipate adopting the budget on Monday, March 10.
- The schools presentation was moved to March 11 since the figures will not be available until after March 10. The meeting set for March 4 originally for presentation by the Schools to the Board of Supervisors may be used for other budget discussions.
- The location for the public hearing will be set on March 18 during the regular meeting.
- Public hearing will be held April 8 at 7:30 pm.
- Adoption of the budget will set for April 15 at 5:30 pm.
- Letters have been sent regarding the 71-acre Salvation Army site to Simms Showers, Salvation Army, VMDO, Brailsford and Dunlevy, PHR+A and others.
- Reed Smith has inquired as to the conflict in the easements. Brailsford and Dunlevy responded they provided this information to VMDO for whom they worked.
- VMDO has not yet provided CAD files to the School Board Office; the initial request was made in October 2007. One hard copy of the construction drawings for the design have been in the School offices since September 2007. Ed Breslauer has been told that VMDO will not release the CAD files until they are paid however there are unresolved issues with the VMDO billing.
- Site feasibility studies are being initiated and copies of the results will be provided to the Supervisors. The tests will include resistivity and should allow the Schools to determine which are the less costly sites to develop.

- Mr. Echols is being very helpful and cooperative and has provided the Schools with all studies done on his property.

### Composite Index Presentation

Tom Nolan, Clarke County resident, appeared before the Supervisors to speak on the Composite Index. He stated that he had copied the Supervisors on emails sent to State Senator Vogel on this issue. He put forth that reforms could have a significant impact on localities. There followed discussion on fees. David Weiss wished to note that the Commonwealth of Virginia did not allow localities to assess developer impact fees or real estate transfer fees.

Mr. Nolen showed how the current system for calculating the composite index was unfair and penalized Clarke County. He commented on the impact of rising real estate taxes opining that it could result in loss of open space or agricultural land. Mr. Nolen put forward various solutions. He detailed the concept of revenue capacity. He opined that separating rural and suburban, as well as cities and counties, would have a tremendous impact.

Chairman Staelin thanked Mr. Nolan for the time and effort taken on this issue. Supervisor Byrd suggested that Mr. Nolan speak with the Piedmont Environmental Council. Supervisor Weiss stated that the majority of the land in the county was owned by working people that could not afford higher taxes.

### Committee Action

#### Personnel

#### *Appointment to Authorities, Boards and Commissions*

<i>Committee/Board</i>	<i>Appointee</i>	<i>Expiration Date</i>
Berryville Area Development Authority	Robina Rich Bouffault	3/31/11
<i>Ms. Bouffault is re-appointed to serve an additional three-year term.</i>		

**Supervisor Dunning moved to approve the appointment as presented.**

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

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

A.R. Dunning, Jr. - Aye  
David S. Weiss - Aye

### *Applications for Appointment*

An advertisement seeking interest was placed and one letter of interest in appointment to the Planning Commission was received. Vice Chairman Hobert will consider applicants from the Berryville Voting District to fill the Planning Commission seat from that district.

### Work Session

#### *VDOT Secondary Highway Six Year Plan*

Representatives from VDOT were present to discuss the proposed Secondary Six Year Plan and are asking that, pending the results of the discussion, the Board consider acting at the February Board meeting to set public hearing on the matter for March. VDOT will provide additional information to the BOS at the February 19<sup>th</sup> meeting prior to requesting action to set public hearing.

**Supervisor Dunning moved to set public hearing on the 2008 Secondary Six Year Plan for Tuesday, March 18, 2008 at 2:00 pm or as soon thereafter as the matter may be heard.**

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

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

### *Goal Setting Discussion*

A draft of the Board of Supervisors Priority List was discussed and a copy of the draft was distributed with the material for the February 19, 2008 regular meeting.

Chairman Staelin put forth that these items constitute a work plan and asked that they be viewed as an action plan and that written materials identify them as such. It was agreed that each Supervisor take on one issue and create an action plant.

1. Recycling: David Weiss and David Ash

2. Park and Ride: David Weiss, Barbara Byrd and Chuck Johnston
3. Speeding on Roads / Water Issues: Pete Dunning and Chuck Johnston
4. Energy Efficiencies: Mike Hobert and Alison Teetor
5. Broadband/Wireless Internet: John Staelin and Gordon Russell
6. Improved Communications: Barbara Byrd and David Ash
7. Septage Plan: Pete Dunning and Jesse Russell
8. Affordable / Senior Housing: David Weiss and Chuck Johnston
9. Tax Base Expansion: John Staelin and David Ash
10. Town/County Merger: Struck from list

By consensus, the Board agreed to prepare a written work plan for each item that is to be provided a week in advance of the distribution of the March 2008 regular meeting packet.

#### *Budget Discussion*

Although the Budget process is still in early stages, the Board may have time to discuss direction or share any newly developed information or questions. There was a brief discussion of the pending 2009 capital budget.

#### Finance

##### *Senior Center Status Update*

The results of the Senior Center Status meeting scheduled for Friday February 8th will be reviewed. The Finance Committee recommends the Senior Center/Recreation Center project be moved to the 2010 Capital Budget pending verification of revenues and project costs.

##### *Request to provide financial assistance to oppose Allegheny Power Rate Increase Application*

A memo from Frederick County solicits financial assistance to oppose Allegheny Power's Rate increase request. The Finance Committee recommends that this request for financial assistance matter be forwarded to the Clarke County Industrial Development Authority for consideration.

*Suggestion on Qualifying and Identifying Farm Use Vehicles*

The Farm Bureau recommends a method for qualifying and identifying farm use vehicles. Does the Committee desire to pass this along to the Commissioner along with a recommendation? The Finance Committee recommends that this matter be referred to the County Attorney to review the request and to meet with the Commissioner of the Revenue and the Sheriff to propose an appropriate ordinance should it be determined that such a proposal is authorized.

*Discussion—Proposed Agreement regarding real estate*

A closed meeting to discuss two matters regarding real estate is anticipated during the February 11, 2008 Finance Committee meeting.

**Bills And Claims**

Supervisor Dunning reviewed the bills and claims for January 2008 for general government and December for Clarke County Public Schools. He expressed concern regarding spending on professional services, travel, fuel and, specific to Schools, lease costs. He advised that he would discuss these further with Tom Judge.

**Supervisor Dunning moved to accept bills and claims for general government for January 2008.**

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

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

Supervisor Dunning noted that \$5,000 had been removed from the FY09 Budget for the Regional Airport and requested that it be put back. Chairman Staelin countered that the Regional Airport had not made a request for funding.

**Berryville Clarke County Government Center Update**

David Ash told the Supervisors that all the steel supports were to be started this week, all the foundations were completed, and the necessary building material was on site.

Chairman Staelin asked for an update on the Planning Department's change requests for their proposed area in the new facility. Mr. Ash stated that he had only had an opportunity to speak with three of five Board members and those polled were not receptive.

### Springsted Personnel Compensation and Job Reclassification Study Update

John Anzivino, Senior Vice President Springsted, Inc. Richmond Office, provided the Supervisors with copies of the final results of the personnel compensation and job reclassification study. He noted that Clarke County runs a very lean organization.

Mr. Anzivino put forth that their study had found that Clarke County employees were somewhat under compensated with the heaviest concentrations of under-compensated people in Animal Control, Sheriff's Department, Parks and Recreation, and some others scattered throughout the County offices. He noted that 15 of 22 positions found to be below average were in the public safety sector.

Several options were reviewed for action by the Board of Supervisors, which they were urged to enact, as well as continuing their monitoring efforts.

Mr. Anzivino said that they found the County's benefits to be similar with those offered by responding jurisdictions with health benefits at a higher cost but with more insurance options offered than Clarke. Overall, their study deemed the employee benefits competitive.

Mr. Anzivino, responding to Supervisor Dunning, stated that he would provide him with the number of positions in the County requiring degrees.

The Supervisors took no action on this matter.

### Closed Session with Board of Zoning Appeals

Supervisor Byrd left the meeting room at 5:40 pm.

In conjunction with the Clarke County Board of Zoning Appeals, who convened their meeting prior to the Supervisors motion to enter closed session, and with attorney Robert Mitchell in attendance, **Supervisor Weiss moved to convene into Closed Session pursuant to Section §2.2.3711-A7 of the Code of Virginia to consult with legal counsel. The motion was approved by the following vote:**

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

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, **Vice Chairman Hobert moved to reconvene in open session. The motion carried as follows:**

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

**Supervisor Dunning moved to execute the following Certification of Closed Session:**

#### CERTIFICATION OF CLOSED SESSION

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

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

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

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

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

Supervisor Byrd rejoined the Supervisors in the meeting room at 5:27 p.m.

The Board of Zoning Appeals enacted the same motions and issued a roll-call vote.

The County's attorney, Robert T. Mitchell, Jr., reported to the Board on the Kirk v. Clarke County Board of Zoning Appeals ("BZA") case. The final decision and order of the Court was

entered on January 8, 2008, a copy of which had previously been provided to the Board and the BZA.

Mr. Mitchell advised that a Notice of Appeal had been filed before February 8, 2008, in order to keep the appeal option open, as he was unable to meet with the Board and the BZA prior to February 8. Mr. Mitchell commented on the three bases of the Court's decision:

First, the case was an appeal of the BZA decision upholding a determination of the Zoning Administrator that a flagpole is a structure, as that term is defined in the ordinance. The Court found that the BZA erred in upholding the Zoning Administrator and found that the flagpole, under our ordinance definition, was not a structure. The Court's decision did not address the fact that there has been a consistent interpretation of this ordinance by the Zoning Administrator, the BZA, and the Board of Supervisors over a period of years that a flagpole is a structure under the ordinance. Under Virginia law, such an interpretation of an ordinance over a period of time is entitled to great weight when a Court interprets an ordinance. Since the problem can be cured by amending the definition of structure in the ordinance, Mr. Mitchell advised that he did not believe there would be any continuing problem for the County that results from this portion of the Court's decision if the definition is amended. Therefore, while he opined that there is a meritorious legal basis to appeal on this issue, he recommended that the case not be appealed solely on this issue.

Second, there are jurisdictional and procedural questions raised by the Court's decision. It was the BZA's position in this case that the plaintiffs had not requested the Court to declare the ordinance unconstitutional, and not having requested that relief in their Complaint, the Court had no jurisdiction or authority to address that issue. Further, the issue of the constitutionality or validity of an ordinance was not before the BZA or addressed by the BZA in its decision. By statute and case law in Virginia, a board of zoning appeals cannot consider the validity or constitutionality of an ordinance. The Court construed a 2006 amendment to Virginia Code §15.2-2314 to authorize the Court to consider matters of law not considered by the board of zoning appeals. Mr. Mitchell opined that this was an incorrect interpretation of the statute. However, this issue is raised by the particular pleading in this case, and since the constitutionality or validity of an ordinance can be addressed when someone appeals a BZA decision by a separate count in the complaint, he advised that this particular decision would be unlikely have any future impact on the County. Therefore, he recommended the matter not be appealed to the Supreme Court of Virginia solely on this basis.

Third, the constitutional question was addressed at some length in the Court's decision, based primarily upon a case in the 4<sup>th</sup> Circuit Court of Appeals involving the City of Durham, North Carolina. He stated that his reading of the case would indicate that regulating the height of a flagpole, and in that case actually limiting the size of flags, can be constitutional. The Court's decision in this case on the constitutionality of the ordinance as presently written would not be determinative of the constitutionality of an amended ordinance. Consequently, he recommended that the Court not appeal this case on the constitutional issues because a revision of the ordinance in accordance with the guidelines

in the Durham case could address flagpole heights in a manner permitted under the First Amendment.

In summary, Mr. Mitchell recommended that the Board of Supervisors and the Board of Zoning Appeals authorize and direct that the notice of appeals be withdrawn.

**Vice Chairman Hobert moved the Board follow the direction and advice of counsel and direct him to withdraw the appeal in this case, on the grounds described by Mr. Mitchell.**

**The motion was approved by the following roll-call vote.**

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

Anne Caldwell, seconded by Charles Kackley, moved to reiterate the words exactly as Mr. Hobert for the Board of Zoning Appeals. Following the unanimous vote, the Board of Zoning Appeals adjourned their meeting.

#### Closed Session

**Vice Chairman Hobert moved to convene into Closed Session pursuant to Section §2.2.3711- A3 and A7 of the Code of Virginia to discuss real estate matters and to consult with legal counsel. The motion was approved by the following vote:**

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

The members of the Board of Supervisors being assembled within the designated meeting place, with open doors and in the presence of members of the public and/or the media desiring to attend, **Supervisor Byrd moved to reconvene in open session. The motion carried as follows:**

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

**Vice Chairman Hobert moved to execute the following Certification of Closed Session:**

**CERTIFICATION OF CLOSED SESSION**

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

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

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

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

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

Subsequent to the Closed Session, Vice Chairman Hobert moved to adopt the Resolution Amending the Agreement Establishing the Berryville Area Development Authority 08-

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

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

**Resolution Amending the Agreement Establishing The Berryville Area Development  
Authority  
08-03R**

**WHEREAS**, the Town Of Berryville ["Town"] and the County of Clarke ["County"] have previously entered into an Amended Resolution and Agreement establishing the Berryville Area Development Authority and delegating certain authority and responsibilities to the Berryville Area Development Authority, said Amended Resolution and Agreement having been approved by the Town Council on December 8, 1992, and by the County Board of Supervisors on December 15, 1992; and

**WHEREAS**, Paragraph 2 of the aforesaid Agreement provides that the Berryville Area Development Authority, in addition to the duties delegated to it in the Agreement, shall "perform such other duties as may be delegated to it from time to time by the Town and the County"; and

**WHEREAS**, the Town and the County desire to vest in the Berryville Area Development Authority the responsibility and duty to review and make recommendations for revisions to the Berryville Area Plan in Annexation Area B.

**NOW THEREFORE, BE IT RESOLVED THAT**, that the Town and the County do hereby amend the aforesaid 1992 Amended Resolution and Agreement to add the following provision:

The Town and the County hereby delegate to the Authority, and the Authority is hereby vested with the authority for, the review of and recommendations for amendments to the Berryville Area Plan in Annexation Area B, pursuant to Virginia Code §§ 15.2-2229 and 15.2-2230.

The 1992 Amended Resolution and Agreement shall remain in full force and effect, as hereinabove amended.

Date Approved by Berryville  
Town Council:

\_\_\_\_\_, 2008

Town of Berryville

By: \_\_\_\_\_  
Mayor

Date Approved by Clarke  
County Board of Supervisors:

\_\_\_\_\_, 2008

County of Clarke

By: \_\_\_\_\_  
Chairman, Board of Supervisors

Miscellaneous

Drought Update

Alison Teetor provided highlights of a memo from USGS titled "Drought Update" dated February 19, 2008 advising that the area was still under a drought warning and precipitation received over the next six weeks was critical to restoring groundwater levels to normal. She distributed a draft press release and asked Supervisors to reiterate their drought warning. Chairman Staelin asked the press to disseminate the information to the public.

Set Public Hearing Washington Gas Light Company Easement Berryville Clarke County Government Center

David Ash distributed information provided by the Town of Berryville pertaining to the easement for Washington Gas Light Company to bring the service to the Berryville Clarke County Government Center.

**Supervisor Dunning moved to set public hearing on the matter at the March 18, 2008 Regular Meeting at 2:00 pm or as soon there after as the matter may be heard.**

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

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

**Summary Of Required Action**

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Modify January 15, 2008 minutes and provided copies of corrections.	Lora B. Walburn
2.	Process final approved minutes.	Lora B. Walburn
3.	Prepare Resolution of Appreciation 08-01R for presentation to Bonnie Dodson.	Lora B. Walburn
4.	Prepare and forward Resolution 08-02R to VDOT with copy to the Town of Berryville.	Lora B. Walburn
5.	Provide notice of conditional approval of Special Entertainment Permit for the 2008 Dog Show at Historic Long Branch.	Lora B. Walburn

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
6.	Provide notice of conditional approval of Special Entertainment Permit for the 2008 Shenandoah Valley Hot Air Balloon and Wine Festival October 17, 18 and 19, 2008.	Lora B. Walburn
7.	Update County calendar with revised FY09 Budget meeting dates.	Lora B. Walburn
8.	Provide copy of the CCPS proposed FY09 budget.	Robina Rich Bouffault
9.	Provide notice of appointment, update database.	Lora B. Walburn
10.	Review and consideration of applicants to the Planning Commission representing the Berryville District.	J. Michael Hobert
11.	Advertise public hearing for Secondary Six-Year Plan.	VDOT
12.	Add public hearing for Secondary Six-Year Plan to the March 18, 2008 agenda.	Lora B. Walburn
13.	Priorities Listing assignees, prepare a written work plan for each item that is to be provided a week in advance of the distribution of the March 2008 regular meeting packet	Supervisors / Staff
14.	Forward for consideration to the Clarke County Industrial Development Authority the request for financial assistance to oppose Allegheny Power rate increase.	Lora B. Walburn
15.	Refer qualifying and identifying farm use vehicles to the County Attorney to review the request and to meet with the Commissioner of the Revenue and the Sheriff to propose an appropriate ordinance should it be determined that such a proposal is authorized.	David Ash
16.	Provide number of positions in the County requiring degrees.	Sprinsted, Inc.
17.	Withdraw the notice of appeal Jerry Kirk, et al v. Board of Zoning Appeals of Clarke County.	Bob Mitchell
18.	Process and forward Resolution Amending the Agreement Establishing The Berryville Area Development Authority 08-03R.	Lora B. Walburn
19.	Advertise public hearing for Washington Gas Light Company Easement Berryville Clarke County Government Center.	Lora B. Walburn

At 6:23 pm the John Staelin recessed the meeting.

At 6:30 pm, John Staelin reconvened the meeting.

## Citizen Comment Period

No citizens appeared to address the Supervisors.

## PH 08-02: TA-07-06

The Clarke County Board of Supervisors will consider the amendment of: Zoning Ordinance Sections:

3-A-2, Forestal-Open Space-Conservation District (FOC), so as to clarify that the requirement that subdivisions contain residual parcels with a minimum area applies to parcels that existed as of the date (2005 June 21) when this requirement was established;

3-A-3, Rural Residential District (RR), so as to state that land areas covered by access easements shall not be included in maximum or minimum lot area or any density calculations, or be used to meet open space requirements;

6-B, When Site Plans Are Required, so as to state that a site plan shall be submitted when a change of use of an existing structure requires conformance to current site plan requirements such as parking, landscaping, signage, lighting, storm water control, etc.;

Subdivision Ordinance Section:

10-D, Boundary Line Adjustments, so as to state that in the Forestal-Open Space-Conservation Zoning District, no required residual parcel, established in accord with Zoning Ordinance Section 3-A-2-b, shall be reduced in area by a boundary line adjustment.

Chuck Johnston reviewed the proposed text amendments.

At 7:24 pm, Chairman Staelin opened the public comment portion of the public hearing. There being no persons desiring to speak on this matter Chairman Staelin closed the public comment portion of the public hearing.

**Supervisor Byrd moved to approve text amendment TA-07-06 as presented.**

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

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

### PROPOSED ZONING ORDINANCE TEXT AMENDMENT

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

3 DISTRICT REGULATIONS  
3-A SCHEDULE OF DISTRICT REGULATIONS

**3-A-2 Forestal-Open Space-Conservation District - FOC**  
**3-A-2-b Lot Requirements**

(7/20/93)  
(6/21/05)

3. Required Residual Parcel  
Each subdivision plat *of a parcel of record as of June 21, 2005* encompassing 40 or more acres shall have one parcel that contains a defined percentage of the total acreage in the subdivision, as shown below, left in a residual parcel with only an existing dwelling or, if no existing dwelling, not more than one dwelling unit right.

Total acreage shown on subdivision plat % in residual open space parcel

40 to 179.99	65%
180 to 329.99	50%
330 and greater	35%

**3-A-3 Rural Residential District (RR)**  
**3-A-3-X Access Easement Areas**

*Areas covered by access easements shall not be included in maximum or minimum lot area or any density calculations, or be used to meet open space requirements.*

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6 SITE DEVELOPMENT PLANS  
6-B WHEN REQUIRED

6-B-1 A site plan shall be submitted in accordance with this article for all proposed buildings, structures, or uses, except single family detached dwellings and agricultural buildings.

6-B-2 A site plan shall be submitted when a change of use of an existing structure requires additional parking or other significant external improvements.

6-B-3 *A site plan shall be submitted when a change of use of an existing structure requires conformance to current site plan requirements such as parking, landscaping, signage, lighting, storm water control, etc.*

PROPOSED SUBDIVISION ORDINANCE TEXT AMENDMENT

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

10-D BOUNDARY LINE ADJUSTMENTS

10-D-2 *In the Forestal-Open Space-Conservation Zoning District, no required residual parcel, established in accord with Zoning*

*Ordinance Section 3-A-2-b, shall be reduced in area below the requirements established in Zoning Ordinance Section 3-A-2-b.*

PH 08-03: SUP-07-06

Gerald Jones, Jr., requests approval of a Special Use and Site Plan for Limited Vehicular Repair in an existing garage on the property located at 633 Shenandoah River Lane, Tax Map #37A1-((3))-26, Greenway Magisterial District, zoned Forestal Open-Space Conservation (FOC).

**Planning Comments**

At its January 15<sup>th</sup> meeting, the Supervisors set a public hearing on this request for its next regular meeting. To address questions that have been raised, Zoning Ordinance Section 3-C-2-ff, which establishes the following specific regulations for Vehicular Repair Businesses allowed as special uses, states:

1. No more than three operable vehicles (not owned by the operator of the vehicular repair business) shall be allowed outside of a completely enclosed structure;
2. Additional operable vehicles (not owned by the operator) shall be allowed in a completely enclosed structure;
3. All operable vehicles (not owned by the operator) shall be on the premises only for the purpose of repair, not storage.
4. The minimum lot size is 4 acres.
5. The maximum gross floor area devoted to limited vehicular repair is 1800 square feet.

The existing 1200 sq ft structure, to be used for the vehicle repair business, was issued a building permit in January of 2006 with a certificate of occupancy issued in May of 2006.

RECOMMENDATION: To be determined after the public hearing.

**Comments to BOS – January 15**

After a public hearing at which one adjoining property owner spoke in opposition and two members of the public spoke in favor and receiving three written comments from the adjoining property owners in opposition, the Planning Commission considered a motion to recommend to the Board the denial of the request. The vote was 4-yes (to recommend denial) [Batterton, Dunning, McKelvy, Nelson], 4-no (against recommending denial) [Caldwell, McKay, Smart, Wade] with one member abstaining [Arnold] and two members absent [Daniel, Ohrstrom].

RECOMMENDATION: Set public hearing, for the next regular meeting of the Board on February 19, for a special use permit and site plan for a proposed vehicular repair business in an existing 30 ft. x 40 ft. metal building for the property identified as Tax Map Parcel 37A1-3-26.

Chuck Johnston briefed the Supervisors on the request by Gerald Jones, Jr. requesting a Special Use and Site Plan for Limited Vehicular Repair SUP-07-06. He advised that the matter was forwarded to the Supervisors with a split decision from the Planning Commission on the matter. He further advised that limits on hours of operation, vegetative buffers, etc. can be established.

At 6:35 pm, Chairman Staelin opened the public comment portion of the public hearing.

Bob Hobbs, Shenandoah River Lane and adjacent property owner: commented that from those he saw assembled at the hearing he assumed that he would be the only person speaking in opposition. He stated that he had nothing against the applicant but he did not feel that this would be an appropriate use in a residential neighborhood. He told the Supervisors that his wife collected money for road maintenance in the subdivision and he opined that the additional traffic would be detrimental to the roadway.

*Note: The following persons provided comment; however, none submit the Public Hearing Sign-in Card. Therefore names and locations, if given, may not be correct.*

Jim Tibbits, Shenandoah River Lane: spoke in support of the proposed special use permit. He said that the roads were already bad and he didn't believe that the additional wear and tear would be significant. He advised that he was a customer of Mr. Jones.

Mr. Tibbits told Mrs. Byrd that he lived approximately one mile away from the property

Joe Casmall, no location given but stated he had a business that serves citizens on Shenandoah Lane: spoke in support of the proposed special use permit. He advised that he was a customer of Mr. Jones.

Lisa Ward, Shenandoah Lane: spoke in support of the proposed special use permit. She opined that if he was good enough to run fire calls than he deserved an opportunity to run this business. She advised that she was a customer of Mr. Jones.

Joel Donnelly, Shenandoah Lane: spoke in support of the proposed special use permit. He said that he believed this business would be beneficial to everyone in the neighborhood.

Bridgett Priscella, Shenandoah Farms: spoke in support of the proposed special use permit. She said that he was on the end of the road closest to Jim's Store opining that traffic would not be an issue. She advised that she was a customer of Mr. Jones.

Cathy Moore, Howellsville Road: spoke in support of the proposed special use permit. She stated that she was the wife of the local fire chief and told the Supervisors that Mr. Jones repaired fire and rescue vehicles for their station. She advised that she was a customer of Mr. Jones, as well as a good friend.

John Woolrich, Shenandoah River Lane: spoke in support of the proposed special use permit. He stated that there were bigger problems in the neighborhood to be addressed

Sally Tibbits, Shenandoah River Lane, Berryville: spoke in support of the proposed special use permit. She stated that Mr. Jones property was well maintained. She advised that she was a customer of Mr. Jones.

Matthew Furlong, Manor Road: spoke in support of the proposed special use permit. He stated that traffic was a poor argument. He said that he felt having this man close to home would be beneficial for the fire company.

Darla Redman, Shenandoah Farms: spoke in support of the proposed special use permit. She opined that the fire in Shenandoah would have been much worse if Mr. Jones had not been home. She advised that she was a customer of Mr. Jones.

Name undecipherable, Shenandoah Farms: spoke in support of the proposed special use permit. He advised that he was a member of the fire department and spoke highly of Mr. Jones as a firefighter.

Lisa Ward, Shenandoah Lane: spoke again, stating that if those persons opposed to the special use permit were not present at the hearing then their comments should not count.

Joe Casmall, no location given: spoke again, opining that Mr. Jones' business would save lives in Shenandoah Farms.

John Woolrich, Shenandoah River Lane: spoke again, putting forth that Mr. Jones was a respected member of the community

Burt Reynolds, Fairfax County: spoke in support of the proposed special use permit. He opined that it was very important for Mr. Jones to be at home with his children.

There being no other persons desiring to speak on this matter at 6:54 pm Chairman Staelin closed the public comment portion of the public hearing.

Supervisor Byrd, who had asked each speaker how close in proximity their property was to the proposed vehicular repair business, advised that she had conducted a site visit. She commented that some of the tools used in vehicular repair were noisy and sometimes engines had to be revved. Mr. Jones assured that these things would be done inside the garage.

Supervisor Byrd asked about venting. Mr. Jones stated that he did have an exhaust system.

Supervisor Weiss asked if he would be willing to work indoors at all times. Mr. Jones said that he would do so if required.

Supervisor Weiss noted that there were many vehicles at the residence when he performed his site visit. Mr. Jones advised that the cars have been removed.

There was discussion regarding vegetative buffers.

Supervisor Dunning stated that Shenandoah Farms was in his district and that three adjacent property owners were opposed to this special use application. Mr. Dunning noted that zoning

is not determined on the number of friends a person has or how good a person they might be but on what is right. He opined that as a Supervisor he must protect everyone.

Supervisor Dunning stated that 19 criteria are used when determining these matters and read from the Planning Commission comments.

Supervisor Byrd asked Mr. Johnston if the Supervisors passed this special use application if it would set a precedent. Mr. Johnston speculated that he believed it would for similar applications in similar situations but that he did not expect to see any applications exactly like this one.

Mr. Jones stated that one of the neighbors opposed to the special use application runs a landscaping business that causes disturbance in the neighborhood.

**Supervisor Dunning moved to recommend denial of the Special Use and Site Plan for Limited Vehicular Repair in an existing garage on the property located at 633 Shenandoah River Lane, Tax Map #37A1-((3))-26, Greenway Magisterial District, zoned Forestal Open-Space Conservation (FOC).**

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

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

### Adjournment

There being no further business to be brought before the Board at 7:25 p.m. Chairman Staelin adjourned the meeting.

### Next Meeting Date

The regular meeting of the Board of Supervisors is set for Tuesday, March 18, 2008 at 1:00 p.m. in the Board of Supervisors Meeting Room.

ATTEST: February 19, 2008

\_\_\_\_\_  
John Staelin, Chairman

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David L. Ash, County Administrator

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