

August 9, 2011

Virginia:

AT A REGULAR SCHEDULED MEETING of the Nelson County Board of Supervisors at 2:00 p.m. in the Board of Supervisors Room located in the Nelson County Courthouse.

Present: Thomas H. Bruguire, Jr. West District Supervisor - Vice Chair
Allen M. Hale, East District Supervisor
Constance Brennan, Central District Supervisor
Joe Dan Johnson, South District Supervisor – Chair
Thomas D. Harvey, North District Supervisor
Stephen A. Carter, County Administrator
Candice W. McGarry, Administrative Assistant/Deputy Clerk
Fred Boger, Director of Planning and Zoning
Debra K. McCann, Director of Finance and Human Resources

Absent: None

I. Call to Order

Mr. Johnson called the meeting to order at 2:08 pm, with four (4) Supervisors present to establish a quorum and Mr. Bruguire joining the meeting at 2:37 pm.

- A. Moment of Silence
- B. Pledge of Allegiance – Mr. Harvey led the Pledge of Allegiance

II. Consent Agenda

Mr. Hale asked to remove items E. and G. and the second set of minutes for approval dated June 23, 2011 since he was not in attendance at that meeting. He noted that he wanted to consider item E. separately.

Ms. Brennan inquired as to item C. and if the County had made the decision on how to deal with this problem and Mr. Carter stated that the resolution did this and has been an annual Board practice since implementation.

Mr. Hale then moved to approve the consent agenda less the second set of minutes (6/23) and items E and G. Ms. Brennan seconded the motion and Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following resolutions were adopted:

- A. Resolution – **R2011-61** Minutes for Approval

**RESOLUTION-R2011-61
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF MEETING MINUTES
(June 14, 2011 and June 23, 2011)**

August 9, 2011

RESOLVED, by the Nelson County Board of Supervisors that the minutes of said Board's meetings conducted on **June 14, 2011 and June 23, 2011** be and hereby are approved and authorized for entry into the official record of the Board of Supervisors meetings.

B. Resolution – **R2011-62** COR Refunds

**RESOLUTION-R2011-62
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF COMMISSIONER OF REVENUE REFUNDS**

RESOLVED, by the Nelson County Board of Supervisors that the following refunds, as certified by the Nelson County Commissioner of Revenue and County Attorney pursuant to §58.1-3981 of the Code of Virginia, be and hereby are approved for payment.

<u>Amount</u>	<u>Category</u>	<u>Payee</u>
\$ 630.57	Real Estate Taxes –Disabled Veteran Relief Act	George Orme 1176 Jones Overlook, Howardsville, VA 24562
\$ 648.73	Real Estate Taxes –Disabled Veteran Relief Act	Edward Ely P.O. Box 250 Roseland, VA 22967
\$876.43	Real Estate Taxes –Disabled Veteran Relief Act	Richard Davis P.O. Box 46 Nellysford, VA 22958

C. Resolution – **R2011-63** Approval of Allocation of Local Reduction in State Aid

**RESOLUTION R2011-63
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF ALLOCATION OF THE REDUCTION IN
STATE AID FOR NELSON COUNTY**

WHEREAS, the County of Nelson is required to elect an allocation of the reduction in state aid to localities pursuant to the 2012 Appropriation Act (Item 473.10, Chapter 890); and

WHEREAS, the Nelson County Board of Supervisors has allocated the reductions within the Fiscal Year 2011-2012 general fund budget in accordance with the 2011-12 Fiscal Year Aid to Localities Reduction report as calculated and prepared by the State Department of Planning and Budget;

NOW THEREFORE, BE IT RESOLVED, that the Nelson County Board of Supervisors hereby authorizes county staff to make submission to the Department of Planning and Budget electing to

August 9, 2011

allocate state revenue reductions pursuant to the Fiscal Year 2012 calculated reduction as prepared by the Department of Planning and Budget and as denoted below:

Registrar/Electoral Board	\$1,930
Constitutional Offices	\$50,653
Library	\$1,436
Rolling Stock Taxes	\$5,059
Recordation Taxes	\$3,167
Comprehensive Services (CSA)	\$31,485
VJCCCA Alternative Treatment	<u>\$577</u>
	\$94,307

D. Resolution – **R2011-64** Support of Restoration of State Funding for Aid to Localities

RESOLUTION R2011-64
NELSON COUNTY BOARD OF SUPERVISORS
RESOLUTION IN SUPPORT OF RESTORATION OF STATE FUNDING FOR AID TO LOCALITIES

WHEREAS, state financial assistance for mandated and high priority programs, including public education, health and human services, public safety and constitutional officers, is \$800 million less in FY12 than in FY09; and

WHEREAS, cities and counties must balance their budgets during a time in which future state assistance is unreliable, federal stimulus dollars are dwindling, and real estate assessments are declining; and

WHEREAS, the Appropriation Act contains \$60 million in across-the-board cuts to cities and counties for both FY11 and FY12, under which localities are required to either elect to take reductions in particular state aid programs, or to send the State a check for the amounts determined by the Department of Planning and Budget (“Local Aid to the State”); and

WHEREAS, the reductions are applied to essential services, including law enforcement, jail administration, foster care and child protection services, election administration and social services; and

WHEREAS, the County of Nelson does not have the authority to unilaterally decide to discontinue providing services such as election administration or to refuse to house and care for State prisoners in local and regional jails; and

WHEREAS, the state budget cuts are not accompanied by any reductions in state-imposed mandates, standards and service requirements, nor do they provide any administrative flexibility for local agencies; and

WHEREAS, the County of Nelson remitted \$93,059 in FY11 and will be required to remit another \$94,307 in FY12; and

August 9, 2011

WHEREAS, cities and counties will have provided the State with \$220 million by the close of FY12 for this “Local Aid to the State” program; and

WHEREAS, these reductions shift State costs to local taxpayers and artificially increases the amount of state surplus revenue; and

WHEREAS, State revenues have begun to recover and the State is expecting to have a revenue surplus for the second year in a row; and

WHEREAS, revenue collections for the County of Nelson continue to reflect the struggling housing market; and

WHEREAS, the State should not shift its share of the costs for mandates and responsibilities to local governments; now, therefore, be it

RESOLVED, that the Nelson County Board of Supervisors asks Governor Bob McDonnell to submit a budget amendment to the 2012 session of the General Assembly to reverse the \$60 million-a-year reduction for the current year, FY12, and to eliminate the aid to localities reduction in the budget submitted for FY13 and FY14; and

BE IT FURTHER RESOLVED, that the members of the General Assembly support a budget amendment to the 2012 session of the General Assembly to reverse the \$60 million-a-year reduction for the current year, FY12, and to eliminate the aid to localities reduction in the budget submitted for FY13 and FY14.

E. Resolution – **R2011-65** Emergency Services Volunteer Appreciation – Considered Separately

F. Resolution – **R2011-66** Adoption of the National Incident Management System (NIMS)

RESOLUTION R2011-66
NELSON COUNTY BOARD OF SUPERVISORS
ADOPTION OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM

WHEREAS, the President in Homeland Security Directive (HSPD)-5, directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS), which would provide a consistent nationwide approach for Federal, State, and local governments to work more effectively and efficiently to prevent, prepare for, respond to and recover from domestic incidents, regardless of cause, size or complexity; and

WHEREAS, the collective input and guidance from all Federal, State, and local homeland security partners has been, and will continue to be, vital to the development, effective implementation and utilization of a comprehensive NIMS; and

August 9, 2011

WHEREAS, it is necessary and desirable that all Federal, State, and local emergency agencies and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management; and

WHEREAS, to facilitate the most efficient and effective incident management it is critical that Federal, State, and local organizations utilize standardized terminology, standardized organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident facilities during emergencies or disasters; and

WHEREAS, the NIMS standardized procedures for managing personnel, communications, facilities and resources will improve county's ability to utilize federal funding to enhance local agency readiness, maintain first responder safety, and streamline incident management processes; and

WHEREAS, the Incident Command System components of NIMS are already an integral part of various city/county incident management activities, including current emergency management training programs; and

WHEREAS, the National Commission on Terrorist Attacks (9-11 Commission) recommended adoption of a standardized Incident Command System,

NOW THEREFORE BE IT RESOLVED, by the Nelson County Board of Supervisors that Nelson County, Virginia hereby adopts The National Incident Management System.

G. Resolution – **R2011-67** Support for Permanent Residency Status, Avagyan Family – Considered Separately

June 23, 2011 Meeting Minutes:

The Board then considered the June 23, 2011 meeting minutes and Mr. Harvey moved to approve the June 23, 2011 minutes and Ms. Brennan seconded the motion. There being no further discussion, Supervisors voted unanimously (3-0-1) to approve the motion with Mr. Hale abstaining from the vote.

*Note – approval of these minutes are included in **R2011-61** for documentation purposes.

Item E. Resolution – **R2011-65** Emergency Services Volunteer Appreciation

Mr. Hale referred to resolution **R2011-65** and moved to approve **R2011-65** a Resolution Honoring the Surviving Founders of Local Volunteer Fire and Rescue Agencies and Declaring September 11, 2011 to be Emergency Services Volunteer Appreciation Day and Ms. Brennan seconded the motion.

Members noted that the volunteer appreciation day was to be held on September 11, 2011 at Lake Monacan. Mr. Hale noted that it was nice to see a resolution such as this and Mr. Harvey questioned there being no one listed for Lovingson Fire Department. Ms. McGarry noted that she had spoken with

August 9, 2011

Eddie Embrey, the EMS Council President who had verified all of the names and Mr. Harvey noted that he would like to defer consideration of the resolution to be sure it was correct.

Mr. Hale then withdrew his motion to approve the resolution and its consideration was tabled until the next meeting to be sure its content was correct.

Item G. Resolution – R2011-67 Support for Permanent Residency Status, Avagyan Family

Mr. Johnson noted that staff would now report on a discussion had with Senator Warner's Office regarding this matter. Mr. Carter stated that staff had discussed this matter generally with an immigration specialist in Senator Warner's office who could not be specific due to privacy requirements. She advised that the request for a private law was highly unusual and would require submittals by Congressman Hurt who said he would not do it and one of the Senators. He advised the Board that the connotation was that a negative outcome could result if this were pursued. He noted that she had strongly suggested that we get the family's release that would enable County staff to speak specifically with the Senator's office and continue to work within the system. Mr. Carter added that she indicated that if the Board acted on the resolution, it would certainly get attention.

Mr. Johnson suggested that the Board hold action for the moment and proceed with getting the release form signed by the family. The Board agreed by consensus to defer action on the resolution and pursue obtaining the release form.

Ms. Brennan inquired as to the actions of Senator Webb's office and Mr. Carter noted that they have followed up and acknowledged receipt of staff's request for guidance. He added that Senator Warner's office was the only one to respond noting that the immigration specialist that staff spoke with has nineteen (19) years experience.

Mr. Johnson noted that they could still address Congressman Hurt with this tomorrow.

Mr. Hale noted that he wanted it to be clear that the Board wants to help the family and noted that it was clear that a private bill did not seem promising. Ms. Brennan noted that they certainly did not want to do anything to hurt the situation.

III. Public Comments and Presentations

A. Public Comments

1. Kenneth White, Roseland and VTA President

Mr. White distributed and read aloud the following prepared statement:

Mr. Chairman and members of the Board, my name is Kenneth White, 93 Shields Gap Road, Roseland, and I am President of the Virginia Taxpayers Association. New polls from both Gallup and Rasmussen and a collapsing stock market conclusively indicate that a majority of Americans on both sides of the political spectrum are steadfastly opposed to the actions taken by Congressional leaders last week in agreeing to raise the debt ceiling limit.

August 9, 2011

These trends have generally been forecast by the Virginia Taxpayers Association for years, because we know many of the organizations and individuals who are back of them, in contrast to the Board of Supervisors, who as elected officials ought to know these things and ought to do something about them, but who have violated their oaths of office and have deliberately chosen to do nothing to mitigate the situation. The overwhelming rejection by Americans to decisions made in Washington has direct application to decisions made by your Board of Supervisors, as I will demonstrate shortly.

Even after studies have conclusively proved that full body scanners are clearly carcinogenic and seriously damaging both to individuals who go through the scanners and to the official personnel who man them --- as VTA compelled former Nelson Board Chairman Constance Brennan to officially admit, when she announced full body scanners will not be used in the newly enlarged Nelson County Courthouse ---- the Transportation Security Agency announced July 27,2011 that TSA will "install new software on some full-body scanners in use in U. S. airports", providing images that "will no longer be passenger-specific," but will instead use "a generic outline of a person for all passengers."

This even after studies have shown that passengers' perspiring armpits can set off alarms on these machines. And after TSA unlawfully confiscated insulin from a pregnant woman with diabetes at Denver International Airport, contrary to TSA's own regulations. In other words, TSA has refused to switch to devices already in use that do not emit dangerous radiation. This is after all the widely publicized humiliating groping of underwear of 85-year-old women who refuse to go through the carcinogenic scanners, and announcements that TSA is going to expand use of these scanners in municipal and county courthouses.

So how has the Nelson County Board of Supervisors reacted to actions by this thoroughly discredited TSA agency? Unbelievably, you have said: "We have to protect national security just as TSA wants us to do, even though we are making some changes locally by using only a metal detector machine to screen everyone who enters the courthouse, in case they might be 'terrorists'."

You know as well as I do that, because of massive existing unlawful government surveillance of all individuals, there are no terrorists in Nelson County unknown to the State Police, FBI, CIA or National Security Agency, which can certainly prevent any explosive incidents in the courthouse. This specifically relates to your Board's unlawful, unconstitutional decision, January 27, 2011, without a required publicly announced public hearing, to place a walk through metal detector at the main entrance to the new enlarged Nelson County Courthouse, to be manned full time during office hours Monday to Friday by three deputy sheriffs, all at extra and unnecessary costs.

Since you already know that widespread public knowledge will compel you sooner or later to change your position --- just as 90 percent of Americans now know the Warren Commission report was a total fraud --- we expect you to stop playing childish games on this important issue, and instead serve the true interest and respect of all Nelsonians.

We again, therefore, demand that your Board withdraw and repeal the aforesaid unlawful decision, and provide that metal detectors shall be used only at entrances to district and circuit courts when the courts are actually in session, to properly protect judges of these courts. We are aware that these metal detectors will not detect plastic guns, but are making this demand anyway, because metal guns today are far more numerous than plastic guns. That concludes my Statement.

August 9, 2011

B. Presentation – Nelson County Stewardship Guide (Karen Firehock)

This was considered after Item C. VDOT Report

Mr. Carter introduced Ms. Karen Firehock, Professor of Environmental Planning at UVA and Director of nonprofit organization, the Green Infrastructure Center.

Ms. Firehock noted that the brochure was the draft report and advised the Board that if anything was incorrect or they wanted to highlight anything, she could still make changes before printing next week. She added that the target audience of the brochure was the general public, conservation groups etc.

Ms. Firehock then gave some background information on the project, noting that in the spring of 2010, her graduate class adopted Nelson County for a student project at no cost to the County. She noted that the project, a green infrastructure study, was completed in the fall and then a more public document was created using additional funding from the Green Infrastructure Center. She added that these documents could be used in everyday planning and the County would be able to use the GIS data that was compiled at the end of August.

Ms. Firehock then reviewed several maps included in the brochure and noted that the one related to major rivers and forests showed that the County was 80% forested, which was important for watershed health by helping to recharge groundwater and maintain well health. She added that the Forestry industry generates \$3Million per year in Nelson County, with 249,000 acres being ranked as outstanding in quality. She added that the Agriculture industry generates \$12.5 Million per year in revenue for the County and noted that the county had not so great soils for crops but rather good soils for orchards and wineries.

Ms. Firehock then explained that they took information from the Tourism Director and now they would be able to manipulate data from the GIS system to create brochures etc. She added that Heritage tourists spend 2.5 times more than any other visitors to the county. She noted that in terms of tourism, the more that can be shown to visitors, the longer people might stay making this another planning tool to be used for marketing the county.

Ms. Firehock noted that the county had specific intact blocks of forests present, which were the largest in the Central Piedmont Region. She noted that in the GIS system, a user can click the "i" and get all kinds of data that can be used.

She then noted how this information might be used, stating that it would be helpful in updating the Comprehensive Plan and that new maps could be made by overlaying information. She added that she would be providing an accompanying guide with maps to the Planning Department for its use. She then reiterated that the brochure was geared towards public use, however a lot of the land is privately owned and the brochure aims to show owners how to best take care of their land.

Ms. Firehock then concluded her presentation by noting that the ten (10) member Focus Group appointed from the county was very helpful in creating the maps and reports.

August 9, 2011

Ms. Firehock then took questions and comments from the Board noting her email address for use in sending her any comments regarding the brochure. She then noted that the timeline for publication was after next week and then several hundred would be printed and the digital data would be made available by the end of August.

Mr. Hale noted that the birding and wildlife trail sites at Wintergreen should be noted on the map and he suggested that the Wintergreen Resort label be removed from the valley area and be added to the top of the mountain. He also suggested that the community of Massies Mill be added in the West District, the communities of Gladstone, Arrington and, Wingina in the South District, and the community of Afton in the North District.

There being no other questions or comments from the Board, Ms. Firehock concluded her presentation.

C. VDOT Report

This item was considered before Item B. Presentation – Nelson County Stewardship Guide (Karen Firehock)

Mr. Randy Hamilton of VDOT was present and reported the following:

MAINTENANCE

Over the next month, VDOT will focus on the following:

Customer Service Requests.

Preparing roads for Surface Treatment and Plant Mix Schedules.

Mowing operations proceeding on the primary system.

Placing calcium chloride on unpaved roads.

CONSTRUCTION

UPC 76552 Tye River – Build Bridge Rehabilitation, Project 0029-005-C501,B645 :

Northbound and southbound traffic will use the southbound lanes of Route 29 during the bridge rehabilitation. The work zone will be in place through late 2012. From 8 pm, Monday August 22 to 5 am, Tuesday August 23 – delays for girder erection. Lanes will be closed for short periods of time for safety reasons during use of cranes. At some point during these operations, both north- and southbound 29 will be closed. Contractor coordinating with Amherst and Nelson County Police; message boards will be in place 10 days in advance of work and a news release will be submitted to local media.

TRAFFIC STUDIES/SPECIAL REQUESTS

Route 655 – Variety Mills Road, Traffic Engineering Review recommends a Curve Warning sign with 35 MPH advisory speed in advance of Route 654, Winding Road signs with 30 MPH advisory speed in advance of Route 722 for westbound traffic and in advance of Route 661 for eastbound traffic.

Route 619 – Twin Poplar Road, School Bus Stop Ahead sign to be installed in advance of 146 Twin Poplar Road.

August 9, 2011

Route 29, new Narrow Bridge signs installed for structure in vicinity of Route 776.

PROJECT STATUS

No updates this month.

Mr. Hamilton noted that he has spoken to Don Austin about paving in September after Labor Day. He added that mowing was proceeding on the primary system and then they would move to the secondary system.

Ms. Brennan noted the following VDOT issues:

1. Called about the intersection south of the stoplight heading south where the speed limit changes quickly from 45mph to 60mph. She also noted that there is an awkward crossover down from Vito's, and she was concerned about the speed limit there. She added that at the Custard shop there were safety concerns with turns and asked them to look at it.
2. Was at the Transfer Station and the stop sign there at Morse Lane (Rt. 748) and Rt. 29 was completely blocked by foliage.
3. On Old Roberts Mountain Road, trees and shrubs are hanging over into the road making it difficult to see there, specifically the section between Twin Poplars and Hickory Creek Rd.

Mr. Harvey noted the following VDOT issues:

1. At the intersection of Buck Creek Lane (Rt. 617) and Rt. 29- cars are constantly going the wrong way on Rt. 29 and signage is needed there badly.
2. Rt.680 Cub Creek Rd. from Rt. 664 is also overgrown and there is poor visibility.

Mr. Johnson noted the following VDOT issues:

1. Driving south into Colleen before the BP station, trees have grown up to the guardrail and are making visibility poor; need to keep these cut back.

Mr. Bruguere then joined the meeting at 2:37 pm and noted that he had no VDOT issues for Mr. Hamilton.

Mr. Hamilton then introduced Jeff Kessler, who was replacing Sharon White who was promoted. Mr. Carter noted that staff has worked with Mr. Kessler before and was happy to continue to work with him.

In conclusion, Mr. Hamilton noted that he would begin to schedule ride alongs with Supervisors in the near future.

IV. New Business/ Unfinished Business

August 9, 2011

A. Virginia Cooperative Extension – Request to Share ANR Agent Funding and Services
(Antwan Rose, NC Extension Office)

Mr. Carter introduced Antwan Rose of VCE and noted that Mr. Rose and he met to discuss the previous funding allocation which was allocated throughout the District for multiple employees. Mr. Rose had advised him that the formula had changed and that VCE positions were now primarily funded with local dollars; which had created local savings of around \$5,500. He noted that the VCE's proposal was to use \$3,500 of this savings to share an Agricultural Agent position with Amherst County; which would be funded with 15% local funding from Nelson County and 85% funding from Amherst County. He added that in this scenario, the County would realize savings and gain a resource.

Mr. Antwan Rose echoed Mr. Carter's sentiment that the County would realize savings and noted that Bill Seay had been the previous Agricultural Agent in Amherst County. He added that this agent would work with youth and cattlemen in the counties. He noted that Nelson has approximately 10,000 to 15,000 head of cattle in the county. He noted that they have been working to do the most with what they have.

In response to questions, Mr. Rose stated that the new agent would be located in Amherst and would split time; however if Nelson did not buy in, the Agent would only serve Amherst and not be obligated to provide Nelson with services. He noted that now, Michael Lachance's obligation was 100% Nelson County instead of having an obligation to other shared counties. He added that Amherst has more animal livestock than Nelson.

Mr. Bruguere noted that it would be nice to have this specialty available and that Bill Seay did spend time in Nelson.

Mr. Carter then noted that the County would retain the reduction that would not be allocated out to VCE and would be subject to annual appropriation by the Board and that if it did not work, the Board could opt not to do it next year.

Mr. Johnson stated that the County would be coming out ahead financially and gaining better service and Mr. Bruguere agreed that it was a good opportunity.

Mr. Bruguere then moved to approve allocating funding towards the shared ANR Agent position with Amherst County and Ms. Brennan seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Mr. Rose then reported that there were over 100 Nelson County youth presently at 4H Camp.

Mr. Harvey then inquired about a Nelson County youth, Alexandria Johnson who had been accepted to the Virginia 4H All Stars. Mr. Rose confirmed this and noted that it was equivalent to earning the Eagle Scout honor, and that Miss Johnson had participated in the program since age 9. He noted that she was the first 4H All Star in Nelson County in ten (10) years. He added that her cousin Whitney DeBilzan would likely receive the honor next year.

August 9, 2011

The Board then agreed by consensus to have staff prepare a resolution honoring Alexandria's accomplishment for the next Board meeting on August 25, 2011.

B. Authorization to Award and Execute Outside Plant Construction Contract (Fiber Optic Cable) – Broadband Project (**R2011-68**)

Mr. Carter noted that while the contract itself was still being finalized between county staff, Icon and MasTec, that staff was requesting that the Board authorize the contract to be awarded, negotiated and executed. He noted that an RFP had been issued, MasTec was the selected firm, and they have provided updated pricing on an all underground solution which was within budget. He added that the contract should be ready by the end of the week, with construction to begin at the end of the month or in early September. He noted that the County still had to get approval from VDOT to use their Right of Way. He noted that while staff was doing things that have already been approved by the Board budgetarily, he was trying to bring them before the Board for approval, if possible.

Mr. Carter then relayed that the Advisory Sub-Committee was still in process with securing a Network Operator and there was a meeting with the subcommittee again on the 11th. He noted that they would be having a final discussion with FiberLight and otherwise the sub-committee had reservations about the local company. He noted that Icon had noted that the County may receive an unsolicited proposal. He added that from the Subcommittee's and Icon's perspective this was not as crucial as getting construction underway. Mr. Johnson indicated that he wanted to see this go to the full committee soon.

Ms. Brennan inquired as to how long construction would take and Mr. Carter noted that it would take approximately six (6) months. He then relayed that Icon was finishing up the rework of environmental assessments for the towers, the applications for three of the towers were in process, and the Massies Mill tower site was still to be determined. He noted he was not sure if they would all be built by the same company or bid separately. Mr. Johnson commented that they were dealing with technical terms and were now using less than the built in contingency.

Mr. Carter then noted that MasTec's concerns pertained to indemnification, and he noted that the County cannot legally do this so they were working to massage the language on this.

Mr. Carter then noted that the Massies Mill tower site was not at the forefront right now and things were being broken out into separate phases to get things accomplished. He noted the difficulty in sighting the tower in order to be able to get electricity to the site at a reasonable cost. Ms. Brennan inquired as to the opportunity to use solar power there and Mr. Carter noted that perhaps there was. He added that the Massies Mill school property did not give line of site to the towers in Colleen or at High Top.

Mr. Carter then reported that at High Top, the Nature Conservancy had advised that they were willing to lease the tower to WCVE and in turn if amenable, they might lease or sell it to the County and it would pass through to the County that way. He noted that staff was looking at acquiring the site for possibly \$6,000. He noted that they may do a structural analysis of the tower and it would be worth it.

Mr. Johnson noted that they could get wireless services up and running there and the site was an immediate need to provide services in the county.

August 9, 2011

Mr. Carter then noted that ICON's focus has been on meeting Federal deadlines etc. and that the County would not sign the contract with MasTec if something fell through, but that it would get close scrutiny by Mr. Payne and staff.

Mr. Harvey then moved to approve Resolution R2011-68 and Mr. Bruguire seconded the motion.

Mr. Hale then pointed out that this was an obligation from the County for \$689,897 in additional funding and that every citizen was paying \$50.00 for this project and he was concerned as to how this money would come back.

Mr. Carter then noted that the members of the subcommittee who were business owners have clamored for service because they cannot run their businesses the way they would like to and Mr. Harvey noted that the contingency may or may not be spent. Mr. Hale then stated that he would like to see the system pay for itself and Mr. Johnson stated that it should bring in revenue. He explained that \$12,000 was currently paid by the schools for their Internet connection; which 72% of the total cost was paid by e-rate funds, so they were paying a total of \$34,000. He noted that they may see a reduction in the costs of private lines between schools.

Mr. Carter noted that the concern is that when operational, the backbone would serve businesses first and then residences would be served as the providers build out and that the County could not guarantee that residences would be served immediately by the backbone system. Mr. Johnson then emphasized that they needed to be planning for the roll out.

There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion and the following resolution was adopted:

RESOLUTION-R2011-68
NELSON COUNTY BOARD OF SUPERVISORS
RESOLUTION AUTHORIZING THE AWARD AND EXECUTION OF AN AGREEMENT
WITH MASTEC FOR THE INSTALLATION OF FIBER OPTIC CABLE FOR THE
BROADBAND INFRASTRUCTURE PROJECT

RESOLVED, by the Nelson County Board of Supervisors, the County Administrator, Stephen A. Carter, be and is hereby authorized to award and execute an agreement on behalf of Nelson County with MasTec for the installation of fiber optic cable as a component of the Broadband Infrastructure Project. Said contract award and execution is recommended by Icon Engineering, the Broadband Infrastructure Project consultants, and is within the project budget previously authorized by the Board.

In conclusion, Mr. Bruguire expressed the same concerns as those of Mr. Hale but that he was hoping the cost/benefit would be a good thing.

C. Health Department Building

Mr. Carter noted that the information provided to the Board on this subject was the same as what was provide at the July 12, 2011 meeting. He stated that the Board had asked staff to bring back demolition costs and costs associated with a three (3) story building.

August 9, 2011

Mr. Carter noted that he had put together four (4) funding scenarios and that budgetarily if they shifted prepayment of the new Courts building, those monies coupled with the contingency funds, gave sufficient funding based on the Wiley Wilson estimates, to do the three (3) story building for financing terms of 25, 30, and 40 years but that the funding would be short for a 20 year term. He added that Rural Development requires a 10% set aside to establish 1 years worth of principal and interest. Mr. Carter noted that he had not updated the interest costs because it was a moving target right now.

In response to questions, Mr. Carter reported that the amount escrowed for the Health Department over the years was \$117,000 however; \$89,000 may be used for their temporary relocation. He then noted that \$42,000 was the amount that they would get every year from them for debt service. Ms. McCann added that \$63,257 would be the total lease payment and the difference would be the local match.

Mr. Carter reported being contacted by Martha Jefferson Hospital to lease the old Afton Medical Center and they would be providing additional information to evaluate this. Mr. Harvey reported that they would be in their new building by October 1st.

Mr. Carter then noted to the Board the issues with Lovingson Health Care Center and the application for a Certificate of Public Need with the Health Department from the owners of the Lovingson Health Care Center; who has proposed to move sixty (60) beds to a new ninety (90) bed facility to be built in Southern Albemarle County. He added that originally there had been two (2) applications for the sixty beds, now there were two applications for 30 beds each from MFA and Fluvanna being reviewed by VDH. He reported that the County had been advised at the 12th hour that staff had 4 hours to submit a petition to be included in an IIFC and another hearing. He added that staff has been in discussion with the application reviewer. He stated that he was in the process of evaluating what to do given that the owners of the LHC building approached him to say that if there was no opposition to their application, they would give the County the building. He noted that this was a new twist to the discussion of the health department building. He noted that the owners of the LHC were working to identify a reuse of the building now and that they had notified the County prior to the County receiving any notice of the COPN applications.

Mr. Johnson stated that Mr. Payne's notes indicated that they would have a good chance of prevailing and he had noted all of the reasons why the County should oppose this. He stated that there would be no mechanism to have a facility of beds in the county if they prevailed.

Mr. Bruguere clarified that only if the County played ball with them, that they would give the County the building, and Mr. Carter confirmed that this was strongly inferred by the company. He agreed with Mr. Johnson that he would hate for the county to lose this facility.

Mr. Johnson stated that it would be a job loss of approximately 80 jobs at approximately \$25,000 each.

Mr. Carter noted that this was pointed out in the County's initial response to VDH and that they took the position that the Board would likely fight this. Mr. Harvey stated that he did not want to see the County fight this and lose and then lose the building anyway.

August 9, 2011

Mr. Carter noted that the Board may want to defer any decision and confer with M. Payne. He stated that it was quite a conundrum, that he was not their side, has done everything to date to prevent this from happening, but was providing the Board with additional pieces of information.

Mr. Hale stated that he has given a lot of thought to this and thought from the moment he first heard of this, he was alarmed at the prospect of losing the facility and while they may not be able to prevent it, it did seem there was a fair shot at prevailing in the matter and they needed to think about this in terms of the best choice for the citizens of the county. He noted that he thought that it would be a hardship for a majority of those in the facility to be moved to southern Albemarle County on Avon St. Extended. He added that from the point of view of the people using the facility, it would be a serious loss to the county. He noted that it employs locals and folks who would have difficulty in finding other types of jobs and that the County would take a hit on employment and those using the facility. He noted that the carrot had been extended, however it would remove it off of the tax rolls and it would be many years before the County could occupy the building. He stated that he would be happier if the building went to another company. In conclusion, he stated that the Board/County should fight this and Mr. Bruguere agreed. Ms Brennan then expressed her agreement with these arguments.

Mr. Harvey noted that he thought that the impact of losing the facility would not be as great as thought. Mr. Carter then noted that the first thing staff asked of the COPN application reviewer was did they do an economic impact study on Nelson County and they stated that they did not as it was not part of their evaluation criteria.

Mr. Hale stated that it was preferable to him to have Mr. Payne give his opinion on this and that he thought that MFA indicated that they felt threatened by making the offer that they did.

Mr. Carter noted that the VDH perspective was from a Regional Service level not a local level and they agreed that the new facility location served Planning District Ten well.

Mr. Johnson suggested that Phil Payne meet with the Board to discuss this and come to an agreement.

Mr. Payne then entered the meeting to advise the Board and he noted that any of the details on the legal portion of this would be legal advice and would be privy to the enemy if done in open session.

Introduced: Closed Session:

Ms. Brennan then moved that the Nelson County Board of Supervisors convene in closed session to discuss the following as permitted by Virginia Code § 2.2-3711(A) (7): Consultation with legal counsel employed or retained by a public body regarding the Lovingston Healthcare Center/Medical Facilities of America requiring the provision of legal advice by such counsel. Mr. Hale seconded the motion and there being no further discussion, Supervisors voted (4-1) by roll call vote to approve the motion, with Mr. Harvey voting No.

The Board then conducted the closed session and upon its conclusion, Mr. Hale moved to reconvene in public session and Mr. Bruguere seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

August 9, 2011

Upon reconvening in public session, Mr. Hale moved that the Nelson County Board of Supervisors certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed under the provisions of the Virginia Freedom of Information act cited in that motion. Mr. Bruguere seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Mr. Hale then moved that Board action on the building be postponed until the next meeting in order to get direction on the Lovingson Healthcare Center and to authorize staff to continue to study the matter. Ms. Brennan seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

V. Reports, Appointments, Directives, and Correspondence

A. Reports

1. County Administrator's Report

Mr. Carter reported the following:

Mr. Carter noted that Wanda Staton had submitted her resignation as the Planning and Zoning Secretary as of last week. He noted that her letter noted her appreciation of the Board and Staff and noted that she had an opportunity to spend more time with her daughter. He noted that staff has begun the recruitment process and there would be an employment ad in this week's paper. He added that staff has discussed bringing Betty Fortune back temporarily if possible.

A. Courthouse/Government Center Project: County staff is planning for an October 12th "cut over" to the new addition. The planned sequence is: E911 on Wednesday 10-12, Sheriff's Department by Monday 10-17, Courts and all other by Friday 10-21. This time line is staff's best estimate for construction completion and the significant amount of coordination remaining to be completed to provide for the full operation of the new facility. A meeting of the Courthouse Committee (Ms. Brennan and Mr. Hale) is proposed to discuss AV equipment for the Gen. District Court, plans for a ribbon cutting ceremony, etc.

Mr. Carter added that the parking lot was ready to go when Blair was ready; hopefully by the end of the month. He added that the Committee would meet on A/V equipment and furniture.

B. Broadband Project: Construction of the fiber optic backbone (Outside Plant Construction) is progressing towards an end of August or early September start up. An all underground construction is planned. The balance of project responsibilities (tower construction, network operation, service provision) continues to be in process.

C. Blue Ridge Medical Center - CDBG Project: BRMC is now planning for the demolition of its existing facility and construction of a new building to house its planned dental clinic. This planning is in process and requires coordination with and approval from VA-DHCD.

Mr. Carter noted that this did not impact staff except to work through the DHCD and grant parameters. He noted that they were discussing how to address funding associated with this.

August 9, 2011

D. Radio Communications (Devils Knob Tower) - A project contractor has been selected (Shenandoah Tower) and final planning for the reconstruction of the tower is in process. Staff is coordinating with AT&T representatives on the company's co-location on the tower.

Mr. Carter noted that staff was fast tracking this with AT&T and that Susan Rorrer was working with them on this. He added that the County was not trying to prevent them from being on the tower and Mr. Harvey stated that the County needed to get the tower built ASAP regardless.

E. Nelson Memorial Library HVAC Project: The project is in process. The contract stipulates a completion date of 8-26 but staff is endeavoring to expedite the completion schedule.

Mr. Carter noted that Mr. Truslow had stated that this could be done by 8/14.

F. Board Retreat (Initial Follow Up): The draft minutes to the Board's July 9th retreat will be submitted for review by August 1th. In the interim, a position the Board agreed upon on 7-9 was increasing the hourly compensation of all convenience center attendants by \$1.00 per hour. To effect this change on 8-9, staff proposes consideration of a motion - "to increase the hourly compensation of all convenience center attendants from the present level of \$7.90 per hour (Grade 1, Step 2 of the County's classification and compensation plan) to \$8.94 per hour (Grade 1, Step 7)". If so approved, staff will present a budget amendment to address this decision at such time as may be required prior to the close of Fiscal Year 2011-12.

Mr. Hale moved to increase the hourly compensation of all convenience center attendants from the present level of \$7.90 per hour (Grade 1, Step 2 of the County's classification and compensation plan) to \$8.94 per hour (Grade 1, Step 7) retroactively to July 1st and Mr. Harvey seconded the motion.

Mr. Bruguere noted that he was against this and that the Board had others to be done before these noting that the amount of work being done in these positions did not justify this.

There being no further discussion, Supervisors voted (4-1) by roll call vote to approve the motion, with Mr. Bruguere voting No.

G. Lovingston Health & Rehabilitation Center: Staff (Payne, McGarry and Carter) is working towards the County's participation in an Informal Fact Finding Conference with the VA Department of Health - Division of Certificate of Public Need on the application for of Medical Facilities of America, Inc. for a Certificate of Public Need to construct a new 90 bed nursing home in Albemarle County that would result in MFA's closing of its Lovingston Health & Rehabilitation Center, as MFA's application to VDH proposes to transfer LHRC's 60 beds to the facility it is proposing to build in Albemarle County. Considerations associated with this subject include VDH- Division of COPN's recommendation of the approval of a COPN for MFA's proposed facility, MFA's offer to convey the LHRC property to the County vis a vis the loss of the facility and, therefore, services within Nelson County.

H. Staff Reports: (Submitted by email on 8-8).

2. Board Reports

August 9, 2011

Mr. Hale noted that a Board member was aspiring to the House of Delegates and was to have had an assembled caucus, which has been cancelled due to the other candidate's withdrawal from the race. He then commended Ms. Brennan for stepping into the fray; noting that it was a very challenging job to run and he wished her the best of luck.

Mr. Hale then inquired as to the work to be done on the Jefferson Building and Mr. Carter noted that it would undergo a roof replacement, having the outside fixed up, and the inside brought back to the original walls. Mr. Hale then noted that Guy Wilson, a professor of Architecture, had offered to have his students look at it and give their recommendations. Mr. Carter noted that there was not a final plan and that the interior partitions were to be removed and its reconfiguration was to be determined.

The Board agreed by consensus to have Mr. Wilson's students take a look at the Jefferson Building and give their recommendations.

Mr. Hale then reported that relative to the Blue Ridge Tunnel he went through a 2.3 mile long tunnel in Washington that had no lights inside. He noted that he and his wife had walked through and it was a great experience. He added that there were bicycles in there, it was dark and people were using head lamps. He noted that the same tunnel company did this one as was doing ours. He added that Mr. Tyler had laid forth a series of reasons as to why he was to be compensated at an amount far higher than the assessment and he proposed to meet with him.

Ms. Brennan reported the following:

1. Attended the Health Fair at NCHS
2. She, Mr. Johnson and Mr. Boger were working on the cell tower ordinance.
3. Attended Planning Commission meeting where they approved a wildlife rehabilitation definition with a few changes, approved the Bold Rock Cidery site plan contingent on VDOT etc., and were considering the request by the Board on septic/ soils etc.
4. Attended TPDC meeting and reported that the PDC has applied for a Brownfield assessment grant. She added that they would do one per member locality. She reported the conduct of a Legislative Forum to be held on 9/15 to discuss devolution (transportation)

Mr. Harvey had no report.

Mr. Johnson reported that the DSS Board was training themselves and that Joe Williamson was now on board. He reported that there would be a meeting on the 12th for VACO Board steering committees and that grades 4, 5, 6 and maybe 7th would be taking home laptops by the end of the year.

Ms. Brennan then exited the meeting at 5:10 pm and noted that she would not be back for the evening session.

B. Appointments

August 9, 2011

Ms. McGarry noted having received the resignation of Weston Matthews from the Region Ten Community Services Board due to the fact that Mr. Matthews was moving out of the County to Northern Virginia.

She then noted the existing vacancies on the JAUNT Board, the Ag Forestal District Committee, and the EDA.

C. Correspondence

1. Millennium Group

Mr. Carter noted having received letters from the Millennium Group regarding their interest in having the Heritage Center conveyed to them. He reported that he had written back to them and noted that their correspondence would be reported today. He then noted that he had included the same information used to convey RVCC. Mr. Carter noted that their request in the most recent letter was to be included on the September 22nd agenda and he inquired as to the Board wanting to appoint a committee on this. The Board agreed by consensus that Mr. Johnson and Mr. Bruguiere would be the committee and were charged with deciding what to recommend to the full Board after meeting with them to work out the details.

D. Directives

Mr. Johnson noted that Mr. Boger was putting together information on towers approved, turned down and existing etc. in the County.

Mr. Hale then inquired as to the procedure if the Planning Commission says they do not recommend a change to the Subdivision Ordinance regarding exceptions to the individual well and septic requirements and the Board has ideas. Mr. Carter advised that the Board could send its recommendations back to the Planning Commission, which would come back to the Board. He noted that the Board has the final say. Mr. Hale noted that the Section 4-4-3d Exceptions of the current subdivision ordinance is not in line with other areas in terms of not considering the size of the parcel subdivided and this was not reasonable to him. He suggested that the Board could ask staff to get some of the other ordinances around, such as Albemarle and Rockingham and solicit the local surveyors' opinions as this needed changing.

Mr. Bruguiere suggested that the Board should look at Dispatch pay for implementation of an increase and he noted that he and Mr. Harvey were to meet on this and that he had the draft agreement from Mr. Payne to share with the committee.

VI. Adjournment

AT 5:25 pm, Mr. Harvey moved to adjourn and reconvene at 7:00 pm and Mr. Hale seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.

EVENING SESSION

7:00 P.M. – NELSON COUNTY COURTHOUSE

I. Call to Order

Mr. Johnson called the meeting to order at 7:00 pm, with four (4) Supervisors present to establish a quorum and Ms. Brennan being absent.

II. Public Hearings

Mr. Johnson suggested and the Board agreed by consensus to consider Item C. before Item B. to accommodate members of the public in attendance.

A. Subdivision Ordinance Exception #11 –Lawrence R. Dewey, Jr.

Consideration of a request by Mr. Dewey for an exception to Section 7-1 of the Subdivision Ordinance, *Exception*, regarding requirement for a 50 ft. wide right-of-way to establish a sub-division road, for property located off Lobbans Lane, Rt. 840, Afton, Virginia, Tax Map #6-A-1A.

Mr. Boger overviewed the exception request made by Mr. Dewey. He noted that when a new street is built, it is supposed to have a 50 ft. wide Right of Way (ROW) as is shown on the plat by Shumate. He then explained that the latest survey done in 1998 by Mr. Foster shows a 35 ft. ROW. Mr. Boger noted that Mr. Shumate may have made an error in surveying and Mr. Dewey is now requesting the exception and does not want to disturb the neighboring property if he were to subdivide it in the future. Mr. Boger noted that he had received letters of opposition to this request. He added that the Planning Commission felt that the County should not be correcting surveyors' errors and recommend that Mr. Dewey try to work with the adjoining property owners to obtain the footage needed to have a 50 ft ROW.

The Applicant, Mr. Lawrence Dewey, of Roseland, noted that he understood the rationale of the Planning Commission and Mr. Boger and that the problem was between him and the Kirby's. He noted that the property line of Boshers had been used for reference and he would accept it if the Board feels this is not right. He noted that he was trying to avoid issues for the Kirby's.

Mr. Johnson then opened the public hearing and the following persons were recognized:

1. Tami Hahn, Wilmington NC and Lobbans Lane property owner

Ms. Hahn noted that she was a recent property owner on Lobbans lane, owning two adjacent parcels. She noted the location of the relocated property line that abuts Boshers' land and is across from the Kirby's where the dogleg enters. She stated that the widening of new parcel 2, did affect her property. She stated that the rebar bisects existing roads and granted easements for neighbors. She stated that she was opposed to widening of the ROW because it would affect traffic and environmental concerns, including a stream crossing, if there were to be a subdivision put in back there in the future.

Mr. Boger then showed on the plat, where the foot of the L shaped ROW is 50ft or greater, and noted that it was the top of the L that is 35 ft wide.

2. Denise Tusseau, Lobbans Lane

Ms. Tusseau stated that she lives on the road and questioned how they could approve of the exception when possibly forty (40) acres could be divided into 10, 2 acre lots. She asked how they could approve

August 9, 2011

this when the potential was there for a whole lot of traffic. She stated that she was opposed to this and there was the potential for a lot of traffic.

3. Peggy Nunnery, Lobbans Lane

Ms. Nunnery noted that her property comes up to the corner of the Dewey property. She stated that she shared Ms. Tusseau's concerns about the traffic and was concerned that it may be developed in the future. She asked if this was an appropriate question and would the Board take it into consideration.

Mr. Harvey replied that yes they would and a person cannot subdivide property into parcels of less than 2 acres. They could have as many as 9, 2 acre lots and a residue parcel.

Ms. Nunnery then stated that she was opposed to further development.

4. George Staton, Lobbans Lane

Mr. Staton noted that his property abuts the Dewey property and that he was opposed to the development of this property because runoff runs towards his property and house now during heavy rains and snow melt. He noted it to be not so bad during summer because of the vegetation but that he was concerned that if some of it was paved over, the runoff would increase. He stated that he was opposed to development there and was not as concerned about what was done with the road.

Mr. Bruguere stated that development was not the issue before the Board and Mr. Harvey suggested that he should not ask for a bigger road before it was known what he was going to do with it. He added that if he has a 50 ft right of way, then he can subdivide this by right and there would be no public hearing.

Mr. Boger reiterated that the variance was for the right of way to be 35 ft instead of 50 ft.

5. James Kirby, Lobbans Lane

Mr. Kirby noted that he borders the Dewey property and stated that there is a pond where the ROW is and it is wet and soft there.

6. Tami Hahn, Wilmington NC and Lobbans Lane property owner

Ms. Hahn noted that along with the stream and pond, there is a steep slope and a lot of water runoff there. She then quoted the Comprehensive Plan regarding the protection of scenic vistas. She added that the slope was significant and any runoff would have an impact along the road bed. She added that Mr. Dewey has stated his intent to have a subdivision there.

There being no other persons wishing to be recognized, the public hearing was closed.

Mr. Boger noted that Mr. Dewey had stated that the variance to the code would allow him to achieve the highest value of his property and not disturb the Kirbys.

Mr. Bruguere stated that this did not preclude him from selling the property.

Mr. Hale then moved that the Board not grant this exception and follow the Planning Commission's recommendation and Mr. Harvey seconded the motion.

August 9, 2011

Mr. Hale then commented that it is not the job of the Board to correct errors of survey and that boundary lines can only be finally determined in court and not by surveyors.

There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion denying the Subdivision Ordinance exception request.

B. Proposed Amendment to the Code of Nelson County, Virginia Chapter 4, Buildings Section 4-33 to 4-42 Establishment of Local Board of Building Code Appeals. (O2011-05)

Mr. Carter noted that this amendment to the Code establishes the Local Board of Building Code Appeals (LBBCA), providing for its composition, terms etc. He noted that one question lingering was the application fee that was currently left blank. He suggested that there be a minimal fee associated with this and noted that the County rarely has building code appeals. He added that the members were compensated \$75 per meeting by resolution of the Board and that the purpose of this amendment was formalizing the establishment of the Board.

There being no questions from the Board, Mr. Johnson opened the public hearing. There being no persons wishing to be recognized, the public hearing was closed.

Mr. Harvey stated that the appeals process should pay for itself and agreed that it rarely happened and was highly unusual. He added that one could not appeal the code but rather the interpretation of the code could be appealed and he thought that that the Board should make the fee a deterrent. The Board briefly discussed this and agreed by consensus to insert \$250.00 for the application fee.

Mr. Bruguire then moved to approve Ordinance O2011-05 and Mr. Harvey seconded the motion.

Mr. Hale then clarified that members earned \$75 per meeting not per month and that the application fee of \$250.00 did not cover the administrative costs but was okay.

There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following ordinance was adopted:

**ORDINANCE O2011-05
NELSON COUNTY BOARD OF SUPERVISORS
A PROPOSED ORDINANCE TO AMEND CHAPTER 4, BUILDINGS, OF THE CODE OF
NELSON COUNTY, VIRGINIA TO ESTABLISH THE LOCAL BOARD OF BUILDING CODE
APPEALS (LBBCA) BY ORDINANCE**

BE IT HEREBY ORDAINED, that Chapter 4, Buildings, of the Code of Nelson County Virginia be hereby amended as follows:

Sec. 4-33. Establishment of appeals board.

There is hereby established within the building inspection department a local board of building code appeals (the "LBBCA") to hear and decide appeals of decisions of the building official concerning the application of the Uniform Statewide Building Code ("USBC").

Sec. 4-34. Membership of LBBCA

The LBBCA shall consist of five members who need not reside in Nelson County appointed by the Board of Supervisors for, except as provided below, four year terms. The first three initial appointees' terms shall expire on June 30, 2012. The remaining two appointees' terms shall expire June 30, 2014. Members may be re-appointed without limitation. A member appointed to fill a vacancy shall serve the unexpired term of the member being replaced. At the request of the Board of Supervisors, a serving member may sit beyond the expiration of his term until such time as his successor may be appointed; however, the successor's term shall not be extended by such delay. A member missing three consecutive meetings, or three meetings at any time within any twelve month calendar period, shall be subject to summary removal by the Board of Supervisors. The LBBCA shall meet at least once annually to assure a duly constituted board, appoint officers as necessary, and receive such training on the USBC as may be appropriate or necessary from staff of the locality.

Sec. 4-35. Officers and qualifications of Members.

The LBBCA shall annually select one of its members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The County Administrator shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Written records of current membership, including a record of the current chairman and secretary, shall be maintained in the local building official's office. Members of the LBBCA shall be selected by the Board of Supervisors on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be a licensed architect or professional engineer, and at least one member should be an experienced property manager. Employees and officials of the locality shall not serve as members of the LBBCA.

Sec. 4-36. Conduct of members.

No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (Section 2.2-3100 *et seq.* of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

Sec. 4-37. Right of appeal; filing of appeal application.

Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the

August 9, 2011

owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.

Notwithstanding the foregoing, decisions of the local building official with respect to amusement devices, as that phrase is defined in the Virginia Amusement Device Regulations, shall be appealed pursuant to such regulations.

Sec. 4-38. Meetings and postponements.

The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

Sec. 4-39. Hearings and decision.

All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be by resolution signed by the chairman and retained as part of the record of the appeal. Copies of the resolution shall be sent to all parties by certified mail. In addition, the resolution shall contain the following wording:

“Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia, 23219, (804) 371-7150.”

Sec. 4-40. Appeals to the State Review Board.

After final determination by the LBBCA in an appeal, any person who as a party to the appeal may further appeal to the State Review Board. In accordance with Section 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the building official for state-owned buildings or structures shall be made directly to the State Review

August 9, 2011

Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the building official's decision. For appeals from a LBBCA, a copy of the building official's decision and the resolution of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the building official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (Section 36-108 *et seq.*) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

Sec. 4-41. Appeal fee.

An appeal fee of \$250.00 must be tendered with the filing of each appeal to the LBBCA.

Sec. 4-42. Member Compensation, Reimbursement.

Each LBBCA member shall be compensated by the County for each meeting attended as determined by resolution of the Board of Supervisors and shall be reimbursed for actual expenses on a schedule and in accordance with procedures established by the County Administrator.

BE IT FURTHER ORDAINED, that this ordinance shall become effective upon adoption.

C. Proposed Amendment to the Code of Nelson County Appendix A – Zoning, Article 2, Definitions to add the following definition: **Wildlife Rehabilitation Center**, and Article 3, Conservation District, C-1; Section 3-1-a Uses-Permitted by Special Use Permit only, subsection 3-1-17a, Article 4, Agricultural District, A-1; Section 4-1-a Uses-Permitted by Special Use Permit only, Subsection 4-1-43a. (O2011-06)

Mr. Boger noted that the Planning Commission responded to the Board's request of June 14, 2011 to amend the Zoning Ordinance to permit Wildlife Rehabilitation Centers. He added that they reviewed a model definition and made minor changes. He then recommended adopting this Ordinance amendment and noted that the establishment of a Wildlife Rehabilitation Center requires approval of a Special Use Permit.

Mr. Bruguere stated that he thought this should be allowed by right and not require a Special Use Permit and Mr. Boger noted that one could then be established in a residential subdivision by right and that was a concern.

There being no further questions for Mr. Boger, Mr. Johnson opened the public hearing. There being no persons wishing to be recognized, the public hearing was closed.

Mr. Hale then noted that the establishment of this definition in the Zoning Ordinance was at his suggestion and it was then sent to the Planning Commission. He added that the persons wishing to do this were present and currently operated a facility at their home and now hoped to have a more

August 9, 2011

permanent facility. He added that the Board had the chance to do something that provided the opportunity for citizens to work with wildlife and it was a good proposal.

Mr. Hale then made a minor correction to the proposed definition; changing the name of the Federal Agency having oversight of these from US Dept. of Interior, Fish and Wildlife Service to U.S. Fish and Wildlife Service.

Mr. Hale then moved to approve Ordinance O2011-06, to add the following definition: Wildlife Rehabilitation Center, and Article 3, Conservation District, C-1; Section 3-1-a Uses-Permitted by Special Use Permit only, subsection 3-1-17a, Article 4, Agricultural District, A-1; Section 4-1-a Uses-Permitted by Special Use Permit only, Subsection 4-1-43a.

Mr. Bruguiere seconded the motion and there being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following Ordinance was adopted:

**ORDINANCE O2011-06
AN ORDINANCE TO AMEND APPENDIX A,
ARTICLE 2, DEFINITIONS; ARTICLE 3, CONSERVATION DISTRICT C-1; AND ARTICLE
4 AGRICULTURAL DISTRICT OF THE CODE OF NELSON COUNTY, 1989, RELATING
GENERALLY TO ZONING**

WHEREAS, from time to time it becomes necessary for good planning it becomes necessary to amend the Zoning Ordinance to include new land uses;

THEREFORE BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF NELSON, VIRGINIA, That Appendix A, Zoning, of the Code of Nelson County, Virginia, 1989, be, and the same is hereby amended as following:

1. **ARTICLE 2 DEFINITIONS:** The following definition is added to this Article:

Wildlife Rehabilitation Center: A facility whose purpose is the care, rehabilitation, and release of orphaned and injured Virginia native wildlife. Wildlife rehabilitation centers are regulated by the U.S. Fish and Wildlife Service, and the Virginia Department of Game and Inland Fisheries and must be supervised by a wildlife rehabilitator with valid permits from each of these agencies.

2. **ARTICLE 3, CONSERVATION DISTRICT,C-1;** Section 3-1-a Uses-Permitted by Special Use Permit only, subsection 3-1-17a is amended to as follows:

3-1-17a **Wildlife Rehabilitation Center.**

3. **Article 4, AGRICULTURAL DISTRICT, A-1;** Section 4-1-a Uses-Permitted by Special Use Permit only, Subsection 4-1-43a is amended as follows:

4-1-43a **Wildlife Rehabilitation Center; and**

August 9, 2011

That this Ordinance shall become effective upon its passage.

III. Other Business (As May Be Presented)

There was no other business considered by the Board.

IV. Public Comments

Mr. Johnson opened the floor for public comments, there were no persons wishing to be recognized, and the public comments session was closed.

V. Adjournment

At 7:40 pm, Mr. Bruguere moved to adjourn the meeting. There was no second recorded and Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.