

February 23, 2012

**Virginia:**

AT A REGULAR SCHEDULED MEETING of the Nelson County Board of Supervisors at 7:00 p.m. in the Board of Supervisors room located on the second floor of the Nelson County Courthouse in Lovingson, Virginia.

Present: Allen M. Hale, East District Supervisor  
Constance Brennan, Central District Supervisor  
Thomas H. Bruguire, Jr. West District Supervisor - Vice Chair  
Larry D. Saunders, South District Supervisor  
Thomas D. Harvey, North District Supervisor -Chair  
Stephen A. Carter, County Administrator  
Candice W. McGarry, Administrative Assistant/Deputy Clerk  
Debra K. McCann, Director of Finance and Human Resources  
Phillip D. Payne, IV, County Attorney  
Fred Boger, Director of Planning and Zoning  
Tim Padalino, Planner

Absent: None

**I. Call to Order**

Mr. Harvey called the meeting to order at 7:00 pm, with all Supervisors present to establish a quorum.

- A. Moment of Silence
- B. Pledge of Allegiance – Ms. Brennan led the Pledge of Allegiance

**II. Public Comments**

Mr. Harvey opened the floor for public comments and the following persons were recognized:

1. Edith Napier Wardlaw, Arrington VA and Millennium Group Representative

Ms. Wardlaw stated that on behalf of the Millennium Group and the Nelson Heritage Center, she was asking for the transfer of the Heritage Center. She noted that it was a community center and was used in the same manner as the others in the County. She added that she was asking for them not to be charged for the water from the well on the community center property.

2. Clay Stewart, Arrington VA

Mr. Stewart spoke to the impact to citizens from the IBEC exit from serving the County. He asked that the County keep Stewart Computer Services informed so he could inform the public of coming events and service provision. He noted that he had twenty-six (26) relay projects that were ongoing and he could not switch gears or direction without planning. He asked that the Board and staff keep him in the loop on the use of High Top tower so he could begin to serve those to the North.

**III. Proclamation – P2012-01 The Big Read 2012 (Jefferson Madison Regional Library)**

This item was considered following item V. A

Ms. Mary Coy was present to accept the proclamation and she noted that she was the Nelson County Trustee to the Jefferson Madison Regional Library and she thanked the Board for recognizing that the library was for reading books and not just for using computers.

Mr. Hale moved to approve Proclamation **P2012-01**, Proclaiming March 2012 The Big Read, Honoring the Novel Bless Me Ultima by Rudolfo Anaya. Ms. Brennan seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion and the following proclamation was adopted:

**PROCLAMATION P2012-01  
NELSON COUNTY BOARD OF SUPERVISORS  
PROCLAIMING MARCH 2012 THE BIG READ, HONORING THE NOVEL BLESS ME,  
ULTIMA BY RUDOLFO ANAYA**

**WHEREAS**, The Big Read is designed to restore reading to the center of American culture and provides our citizens with the opportunity to read and discuss a single book within our community; and

**WHEREAS**, the Jefferson-Madison Regional Library invites all book lovers to participate in The Big Read that will be held throughout March 2012. The Library's goal is to encourage all residents of Central Virginia to read and discuss Bless Me, Ultima by Rudolfo Anaya; and

**WHEREAS**, Bless Me, Ultima is about pride and assimilation, faith and doubt. There is something magical and mystical about Anaya's coming-of-age story in post-World War II New Mexico. The novel presents a world where everyday life is still full of dreams, legends, prayers, and folkways; and

**WHEREAS**, The Big Read is an initiative of the National Endowment for the Arts in partnership with the Institute of Museum and Library Services, and Arts Midwest; and is supported by the Art and Jane Hess Fund of the Library Endowment;

**NOW, THEREFORE BE IT RESOLVED**, that the Nelson County Board of Supervisors do hereby proclaim The Big Read during March 2012 and encourage all residents to read Bless Me, Ultima during this time.

**IV. Public Hearings and Presentations**

**A. Presentation – Stormwater Management Regulations (Planning and Zoning Department)  
(R2012-16)**

Mr. Carter noted that County Staff, Mr. Boger and Mr. Padalino were present along with Alysson Sappington from TJSWCD to discuss new storm water management regulations. He noted that the Board would hear a report to be presented by Tim Padalino. He added that staff needed the Board to make a decision on who would be responsible for administration of the storm water program.

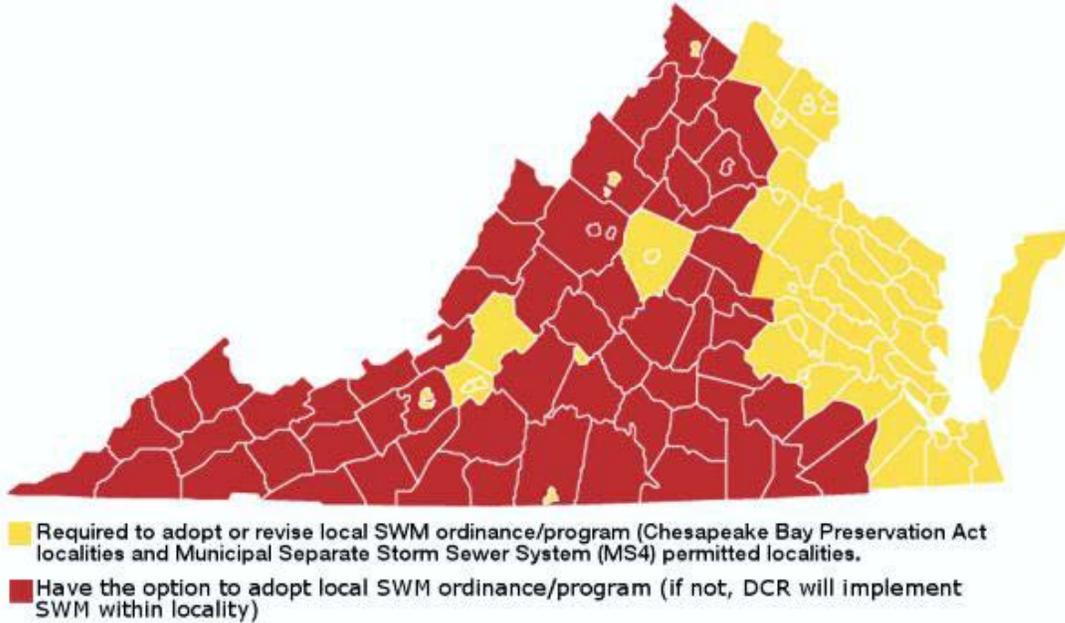
Mr. Tim Padalino then presented the following PowerPoint presentation:

Mr. Padalino noted that the presentation would address the following information:

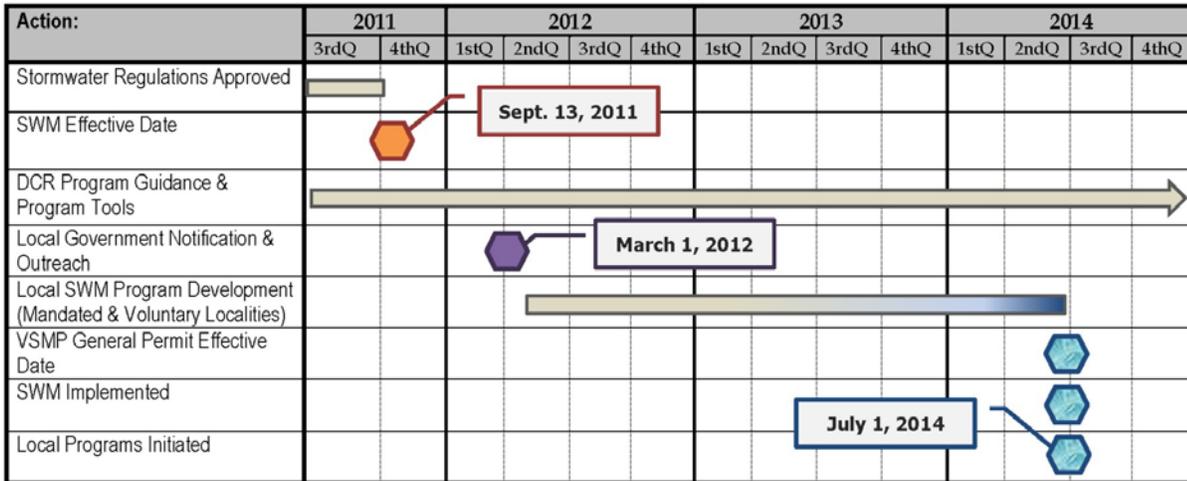
- Overview
- Introduction
- Project Timeline
- Summary of New Regulations
- Options for Nelson County
- Recommended Next Steps
- Q & A

Introduction:

- The Virginia Department of Conservation and Recreation (DCR) has created new statewide regulations relating to storm water management.
- Virginia Administrative Code: 4VAC50-60-10
  - Formerly: water quantity
  - Now: water quantity + water quality
- These new regulations went into affect September 13, 2011.
- DCR currently administers this Stormwater Management Program (SWM).
- However, that arrangement is temporary.
  - DCR’s administration of this new permitting process will soon be changing.
- Currently, localities have two options:
  - adopt and administer a local SWM program
    - effective July 01, 2014
    - Coordinate with Erosion & Sediment Control program OR
  - defer program administration to DCR beyond July 01, 2014
- Nelson Co. must notify DCR by March 1, 2012
  - deadline for being eligible to receive \$ from DCR
- *One more important thing...*
- The General Assembly is now advancing legislation [([HB 1065](#)) and ([SB 407](#))] that includes a mandate for each locality throughout the Commonwealth to establish and administer a Virginia Stormwater Management Program (VSMP) beginning July 1<sup>st</sup> 2014. ***If this legislation is signed into law, Nelson County must establish the capacity to implement, administer, and enforce a Virginia Stormwater Management Program (VSMP) effective July 1<sup>st</sup> 2014.***
- Even if the legislation passes and local VSMP administration is mandated, the “early adopter” financial incentives will still be available for participating localities.
  - Our contact at DCR indicated that approximately \$5M will be available statewide
  - (only for ‘early adopter’ / non-MS4 localities)
- This option is only for “non-MS4” localities.



Project Timeline:



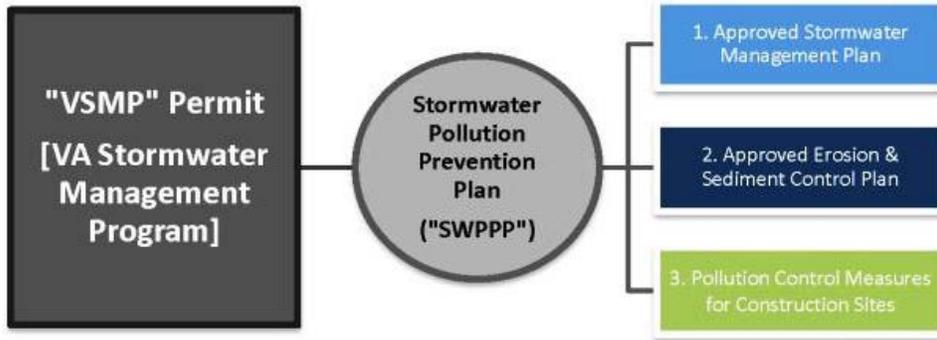
**Timeline: VA DCR's Stormwater Management (SWM) Regulations & Virginia Stormwater Management Program (VSMP)**

Summary of Regulations:

- For all development sites with land disturbance area greater than 1 acre:
  - [September 13, 2011 – June 30, 2014]
    - Locally-approved E&S Plan
    - DCR-approved SWM Plan
    - DCR-administered On-site Pollution Control Inspections
  - [Effective July 1, 2014]

- VSMP permit is required
- Consolidated permitting process

### Overview of VSMP Permitting Process



- DCR is requiring new fees as part of the VSMP permitting process.
  - DCR also requires that 28% of SWM fees be sent to DCR.
  - The remaining 72% of revenue created through SWM fees is retained by the locality.
  - This does not affect the E&S fees; localities will continue to retain all revenue from those fees.

| VSMP Permitting Fees: New Projects            |                   |               |                     |
|---|-------------------|---------------|---------------------|
| Size of Construction Activities               | Cost per Activity | Local Portion | State (DCR) Portion |
| Common Plan, <1 Acre                          | \$290             | 72%           | 28%                 |
| One to Five Acres                             | \$2,700           | 72%           | 28%                 |
| Five to Ten Acres                             | \$3,400           | 72%           | 28%                 |
| Ten to Fifty Acres                            | \$4,500           | 72%           | 28%                 |
| Fifty to 100 Acres                            | \$6,100           | 72%           | 28%                 |
| Greater than 100 Acres                        | \$9,600           | 72%           | 28%                 |
| VSMP Annual Maintenance Fees: Active Projects |                   |               |                     |
| Size of Construction Activities               | Cost per Activity | Local Portion | State (DCR) Portion |
| Common Plan, <1 Acre                          | \$50              | 100%          | 0%                  |
| One to Five Acres                             | \$400             | 100%          | 0%                  |
| Five to Ten Acres                             | \$500             | 100%          | 0%                  |
| Ten to Fifty Acres                            | \$650             | 100%          | 0%                  |
| Fifty to 100 Acres                            | \$900             | 100%          | 0%                  |
| Greater than 100 Acres                        | \$1,400           | 100%          | 0%                  |
| VSMP Plan Modification Fees: Active Projects  |                   |               |                     |
| Size of Construction Activities               | Cost per Activity | Local Portion | State (DCR) Portion |
| Five to Ten Acres                             | \$250             | 100%          | 0%                  |
| Ten to Fifty Acres                            | \$300             | 100%          | 0%                  |

*Notes: Under this fee schedule, development projects with an area of land disturbance less than 1 acre are exempt from acquiring a VSMP permit – unless they are part of a common plan or subdivision. All development projects less than 1 acre in size but greater than 10,000 square feet in size will still need to be compliant with the Erosion & Sediment Control Ordinance.*

Options for Nelson County:

- Because the General Assembly will almost certainly mandate that these new regulations be administered locally, two options exist:
  - (1) Implement and administer the VSMP locally
    - use county staff only
  - (2) Implement and administer the VSMP locally
    - enter contract with third party for technical program assistance
    - (likely Thomas Jefferson Soil & Water Conserv. District)

| <b>Option 1.) Implement and administer the VSMP locally using county staff only.</b>   |   |
|--|---|
| Pros   | Cons  |
| <ul style="list-style-type: none"> <li>• Retain maximum control over the timing aspects of the local development process, allowing for a more business-friendly, flexible, and responsive permitting process.</li> <li>• Increase simplicity and efficiency of the development process by integrating new SWM program with existing E&amp;S program.</li> <li>• Retain 72% of revenue generated through the SWM permitting process, helping to offset the cost of the overall VSMP administration.</li> <li>• Stormwater management ordinance can be modified to reflect the geographic and economic conditions specific to Nelson County. This would help to ensure that local issues are prioritized (such as groundwater protection and recharge).</li> </ul> | <ul style="list-style-type: none"> <li>▪ County is solely and entirely responsible for the human and financial resources required to effectively administer this new program.                             <ul style="list-style-type: none"> <li>• New certification or “advanced training” may be required for existing staff.</li> <li>• Additional staff may be required to adequately administer permitting process, maintenance inspections, and enforcement.</li> </ul> </li> <li>▪ County may initially receive “negative pushback” or criticism from local developers, landowners, or prospective clients due to this state-mandated regulatory program.</li> </ul> |

| <b>Option 2.) Implement and administer the VSMP locally and enter contract with third party (likely Thomas Jefferson Soil &amp; Water Conservation District) for technical program assistance.</b>  |  |
|---|--|
| Pros  | Cons   |
| <ul style="list-style-type: none"> <li>• Utilize TJSWCD’s technical expertise, efficiency of existing trained staff, and local proximity.</li> <li>• Reduce the burden on existing Nelson County staff by having third party handle the plan review process and inspection requirements.</li> <li>• Increase simplicity and efficiency of the permitting process by integrating new SWM program with existing E&amp;S program.</li> <li>• Retain maximum control over the timing aspects of the local development process, allowing for a more business-friendly permitting process.</li> <li>• Retain a portion of the revenue (72% minus any contract costs for third party assistance) generated through the SWM program, helping to offset the cost of the county’s inspection and enforcement costs.</li> <li>• Stormwater management ordinance can be modified to reflect the geographic and economic conditions specific to Nelson County. This would help to ensure that local issues are prioritized (such as groundwater protection and recharge).</li> </ul> | <ul style="list-style-type: none"> <li>▪ County would remain responsible for certain parts of the VSMP process (such as overall program administration and enforcement), requiring new costs for staff time and staff expenses.                             <ul style="list-style-type: none"> <li>▪ New certification or “advanced training” may be required for existing staff.</li> <li>▪ Additional part-time or full-time staff may be required to adequately administer the inspection and enforcement processes.</li> </ul> </li> </ul> |

Recommended Next Steps:

- Nelson County should notify DCR (by March 1, 2012) of its intention to comply with the new VSMP regulations as an ‘early adopter’ of local program administration.
  - This would make Nelson County eligible to receive the financial incentives from DCR.
  - This would be a non-binding notification.
- Create a Stormwater Management (SWM) Ordinance for Nelson County, to be locally adopted and administered effective July 1, 2014.
  - DCR will provide localities with a model ordinance.
  - SWM Ordinance can/should be coordinated with E&S Ordinance, to simplify the permitting process and program administration.
- Achieve local program authorization before July 01, 2014.
  - Submit the new SWM Ordinance, along with an explanation of how the VSMP will be locally administered, to the Virginia Soil and Water Conservation Board.
- Begin negotiations with staff at the Thomas Jefferson Soil and Water Conservation District (TJSWCD) to formally provide third-party technical assistance towards implementing Nelson County’s new “Virginia Stormwater Management Program” (VSMP).
  - TJSWCD already assists Nelson County with E&S Control.
  - Any arrangements would be effective July 1, 2014.

Mr. Carter noted that two (2) bills have been approved by the General Assembly that would mandate that localities administer the local program and were waiting for the Governor’s signature and may have already been signed.

Mr. Padalino confirmed that DCR was mandating regulations and that water quality would be regulated by requiring certain installations of BMPs that were being developed by Virginia Tech. He added that these would be based on the infrastructure put into place.

It was noted that these regulations did not affect the courthouse project because anything in process before September 2011 should be grandfathered.

Ms. Alysson Sappington added that there are current storm water regulations but these were revised primarily moving the administration of it to counties. She noted that now DCR administers the program, but primarily does the inspections; therefore if the plan wasn't done or properly implemented they would inspect the project and require remediation.

Members inquired as to the financial impact to developers over and above an E&S plan and it was noted that it depended upon the project. Staff discussed that they would already be doing a storm water plan if they were disturbing over an acre for anything (commercial or residential) however the technical specifications did change. It was noted that the regulations allowed for open space to be included as a storm water management practice so more rural areas would see less costs as compared to someone in an urban environment. Ms. Sappington noted that the concern was that this would drive development out of more dense places into rural places. It was also noted that these regulations did not apply to logging or forestry operations or any other agricultural operation.

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Ms. Sappington then noted that there had not been much movement into rural areas yet, but that the regulations were not effective until 2014. She noted that the Pollution Prevention Plan was in effect currently but the technical specifications were changing. She explained that this included an E&S plan, the storm water plan, and pollution prevention measures. She added that these have always been required to be available for inspection and that developers will be trained on the new regulations.

Mr. Saunders noted that more regulations drove people away and were driving contractors out of business. Mr. Harvey noted that they had spent \$50,000 at the Afton Medical Center on this.

Mr. Carter explained that the County was in the process of converting the detention pond into a bio-retention pond at the lower end of the parking lot and would be required to maintain these practices.

Mr. Boger reported that his office had two (2) storm water plans on file for Bold Rock Cidery and AEP.

Ms. Brennan noted that VDOT would have to follow these regulations also.

Mr. Carter then noted that he recommended that the Board authorize staff to advise DCR that the County would locally administer the program and would take all actions necessary to do so. He noted that the TJSWCD would be the County's technical advisor and the County would do the administration and inspection work. He added that the intent of the incentive funding was to help smaller localities with the start up costs to get the program going. He added that there were no matching funds required for the grant funds and it depended on the General Assembly providing the funding for this. He further added that he was not sure of how much of the \$5 million allocated to Virginia that Nelson County would get.

Mr. Hale then moved to adopt **R2012-16** to notify DCR of the County's intent to locally administer the program and Ms. Brennan seconded the motion. It was clarified that all the resolution was saying was that the program would be locally administered and the details would be brought back to be worked out later.

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 R2012-16**  
**NELSON COUNTY BOARD OF SUPERVISORS**  
**NOTIFICATION TO THE DEPARTMENT OF CONSERVATION AND RECREATION OF**  
**THE COUNTY'S INTENT TO LOCALLY ADMINISTER AN AUTHORIZED VIRGINIA**  
**STORMWATER MANAGEMENT PROGRAM EFFECTIVE JULY 01, 2014**

**WHEREAS**, the Virginia Stormwater Management regulations require that an authorized storm water management program be effective July 01, 2014; and

**WHEREAS**, the Virginia Department of Conservation and Recreation (DCR) is currently asking for localities to notify them by March 1, 2012 of their intent to either locally administer an authorized storm water management program or defer administration of the program and permitting process entirely to DCR; and

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**WHEREAS**, it is likely that the Governor will sign into law new legislation comprised of SB 407 (passed 02/01/2012 by a vote of 35-Yes and 4-No) and HB 1065 (passed 02/06/2012 by a vote of 90-Yes and 8-No), which will mandate that all non-MS4 localities in Virginia to administer this VSMP locally, effective July 01, 2014;

**NOW THEREFORE BE IT RESOLVED**, that the Nelson County Board of Supervisors wishes to notify the Virginia Department of Conservation & Recreation (DCR) by March 01, 2012 of the County's intent to locally administer an authorized Virginia Stormwater Management Program (VSMP) effective July 01, 2014 and hereby acknowledges that this activates the County as an 'early adopter' of the VSMP, thus making the County eligible to receive the undisclosed financial incentives offered by DCR to help offset costs associated with preparing to administer this VSMP locally.

**BE IT FURTHER RESOLVED**, that the Board recognizes that the County's expressed intent to administer the VSMP locally is non-binding and said Board reserves the right to reverse its intent of locally administering the VSMP if deemed necessary or appropriate between now and July 01, 2014.

## **V. New/Unfinished Business**

### **A. Refinancing of 2002 Lease Revenue School Bonds (R2012-17)**

Mr. Carter noted that Mr. Roland Kooch and Mr. Paul Jacobson were present and would report on the RFP responses received for the refinancing of the 2002 Lease Revenue School Bonds. He added that Mr. Jacobson would review the legal aspects of proceeding.

Mr. Kooch began by reporting that only one proposal had been received and that was from SunTrust Leasing Corp. an entity of SunTrust Bank.

He reported that they proposed a fixed rate of 2.75% and the same debt structure (same as today) with the ability to prepay at any time with a 1% penalty. He added that they would be able to close within 30 days, prior to March 30, 2012. He did note that they were requiring some other real estate related conditions such as: Flood Plain Certification, Phase I Environmental Report, and possibly a Title Insurance/Survey which were hurdles not typical of a bank loan. He stated that because of these extra requirements, the upfront costs could be slightly higher than originally estimated and suggested they could be \$140,000-\$150,000 versus the original estimate of \$85,000.

He then reported the preliminary and revised estimates of the annual debt service savings due to the refinancing and noted that the County should realize an estimated savings of \$150,000 per year and \$2.4 million in total savings over the life of the loan. He added that the net present value savings of 17.0% for the transaction was much greater than the industry standard of 3% and was net of the transaction costs.

Mr. Kooch then recommended going forward with the transaction and he noted that upon approval, they would notify SunTrust Leasing, the School/EDA Board meetings would be held for approvals, and then the balance of March would be used to complete the Phase I Environmental report, finalize bond documents, and close on the refinancing.

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In response to questions, Mr. Kooch noted that the Phase I Environmental report requirement was very minor and that the leasing arm of banks required this because they had a different credit approval processes. Mr. Carter noted that he would be surprised if any adverse outcomes arose from this and it was more of a hassle upfront but well worth it.

Members discussed that some of these requirements were ridiculous; however proceeding with the transaction would be extremely beneficial. Getting waivers for some of these was discussed; however, Mr. Kooch noted that the credit side of the bank would have issues if they were not done. Mr. Kooch noted that other localities were refinancing when they could and that the County's debt became pre-payable in 2012 and that others have taken advantage of this as rates have declined. He added that many have refinanced their refinancings done a couple of years ago because of the lower rates.

Mr. Paul Jacobson then reviewed the proposed resolution and the associated documents that the Board would be considering. He added that from what he has seen in the last three years, banks were more cautious in lending. He noted that the Phase I environmental report was just a formality and he had done his best to get as much of it waived as possible. He added that it would be well worth it for the savings to be achieved.

Mr. Jacobson noted some minor revisions to the proposed resolution that reflect the comments of the banks' attorney and that the resolution sets forth the history of the 2002 bond issue as well as it noted the SunTrust proposal. He added that both the EDA and the School Board would also need to approve the refinancing. He noted that the lease structure would be the same but there would be only one bond holder which would be SunTrust. He noted that in addition, there was an escrow agreement because this would be an advance refunding and the County would not pay off the original bond until August, so SunTrust would hold these funds until then. In conclusion, he stated that the proposed resolution approved these documents, accepted SunTrust's proposal, and authorized proceeding. He noted that the closing would be in March and would require authorized signatures.

In response to a question regarding arbitrage, Mr. Jacobson noted that this meant you were not supposed to earn more in interest than the rate of borrowing.

Following these remarks, Mr. Hale moved to approve resolution **R2012-17**, Approval of Refunding of Outstanding Lease Revenue School Bonds, Series 2002, with the revisions as presented by Mr. Jacobson and Mr. Bruguiera seconded the motion. 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 R2012-17**  
**NELSON COUNTY BOARD OF SUPERVISORS**  
**APPROVAL OF REFUNDING OF OUTSTANDING LEASE REVENUE**  
**SCHOOL BONDS, SERIES 2002**

**WHEREAS**, the Board of Supervisors of the County of Nelson, Virginia (**the "Board of Supervisors"**) directed Davenport & Company LLC (**the "Financial Advisor"**) to prepare a Request for Proposals (**the "RFP"**) to obtain financing plans to refund all or a portion of outstanding Lease Revenue Bonds, Series 2002 (**the "Outstanding Bonds"**) issued by the Economic Development Authority of Nelson County, Virginia (**the "Authority"**); and

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**WHEREAS**, the proceeds of the Outstanding Bonds were utilized to (a) finance a portion of the costs of the acquisition, construction and equipping of a new middle school in the County of Nelson, Virginia (**the “County”**) adjacent to Nelson County High School and the acquisition, construction, renovation and equipping of improvements to Nelson County High School and a school bus garage and certain other capital projects for the Nelson County school system (**together, the “School Project”**); (b) fund a debt service reserve fund for the Outstanding Bonds; (c) refund School Project interim financing; and (d) pay certain costs of issuance of the Outstanding Bonds; and

**WHEREAS**, the Financial Advisor has received a response to the RFP that reflects significant savings in debt service to the Authority from refunding all or a portion of the Outstanding Bonds, and, after reviewing the response, the Financial Advisor, in consultation with the County’s Bond Counsel, Sands Anderson PC (**“Bond Counsel”**), has recommended that the Board of Supervisors authorize the County Administrator to select the proposal from SunTrust Equipment Finance & Leasing Corp. (**the “Bank Proposal”**); and

**WHEREAS**, the Board of Supervisors has determined that the Bank Proposal is a beneficial response to the RFP and provides significant savings to the County and the Authority from refunding all or a portion of the Outstanding Bonds and the Board of Supervisors on behalf of the County desires to accept such Bank Proposal and proceed with the refinancing reflected therein; and

**WHEREAS**, the Board of Supervisors requests the Authority to issue, offer and sell its public facility lease revenue refunding bond in an approximate amount of up to \$10,250,000 (**the “Bond”**) to refund all or a portion of the Outstanding Bonds, with the County providing its moral obligation in support of the payment of the Bond; and

**WHEREAS**, the Authority is requested to use the proceeds of the Bond to (a) advance refund all or a portion of the Outstanding Bonds and (b) pay the costs incurred and to be incurred in connection with the refinancing, including costs of issuing the Bond, and is further requested to (a) lease the real estate and building improvements located on certain real estate on which all or a portion of the School Project is located (**the “Leased Property”**) from the Nelson County School Board (**the “School Board”**) and the County pursuant to a ground lease and to lease the Leased Property to the County to accomplish certain purposes of the Virginia Industrial Development Revenue Bond Act (**the “Act”**), (b) secure the Bond by an assignment of its rights under such lease agreements (except the right to receive indemnification, to receive notices and to give consents and to receive its administrative expenses) to SunTrust Equipment Finance & Leasing Corp. (**the “Bank”**), under an assignment agreement between the Authority and the Bank, which is to be acknowledged and consented to by the County and the School Board, all in accordance with a bond purchase agreement among the Bank, the County and the Authority, and (c) enter into an escrow agreement for the investment of proceeds and full redemption of the Outstanding Bonds through an advance refunding; and

**WHEREAS**, there have been presented to this meeting drafts of the following documents (**collectively, the “Documents”**) in connection with the transactions described above, copies of which shall be filed with the records of the Authority:

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- a. a Ground Lease, dated as of March 1, 2012, among the County, the School Board and the Authority conveying or re-conveying to the Authority a leasehold interest in the Leased Property **(the “Ground Lease”)**;
- b. a Lease Agreement, dated as of March 1, 2012, between the Authority and the County conveying or re-conveying a leasehold interest in the Leased Property **(the “Lease Agreement”)**;
- c. a Bond Purchase Agreement, dated as of March 1, 2012, among the Authority, the County and the Bank, pursuant to which the Bond is to be issued **(the “Bond Purchase Agreement”)**;
- d. an Assignment Agreement, dated as of March 1, 2012, between the Authority and the Bank, assigning to the Bank certain of the Authority’s rights under the Lease Agreement and the Ground Lease, which is to be acknowledged and consented to by the County and the School Board **(the “Assignment Agreement”)**; and
- e. an Escrow Agreement, dated as of March 1, 2012 between the Authority and an escrow agent to be selected **(the “Escrow Agent”)**, wherein a portion of the proceeds from the Bond will be used to advance refund the Outstanding Bonds, which is to be acknowledged and approved by the County **(the “Escrow Agreement”)**.

**WHEREAS**, there has also been presented to this meeting a form of the Authority’s Public Facility Lease Revenue Refunding Bond, Series 2012 in an amount of up to \$10,250,000 with an amortization, maturity date and interest rate set forth in the Bank Proposal (which is incorporated herein by this reference), with such changes, including but not limited to changes in the amounts, dates, payment dates and rates as set forth in the attached form of the Bond.

**NOW THEREFORE, BE IT RESOLVED BOARD OF SUPERVISORS OF THE COUNTY OF NELSON, VIRGINIA:**

1. The County hereby approves of the undertaking of the refunding of all or a portion of the Outstanding Bonds by the Authority for the benefit of the County and requests the Authority to take such action.
2. All costs and expenses in connection with the advance refunding of all of the Outstanding Bonds and the issuance of the Bond, including the Authority’s expenses, the fees and expenses of the County and the County Attorney, and the fees and expenses of Bond Counsel, the Financial Advisor, the Escrow Agent, Authority counsel and the Bank, for the sale of the Bond, shall be paid from the proceeds therefrom or other funds of the County. If for any reason the Bond is not issued, it is understood that all such expenses shall be paid by the County and that the Authority shall have no responsibility therefor.
3. The County hereby accepts the Bank Proposal and instructs the Financial Advisor, the County Administrator, the County Attorney, Bond Counsel and other County representatives and agents to take all such action as necessary or appropriate to advance refund the Outstanding Bonds based upon the recommendation of the Financial Advisor.

4. The following plan for refunding the Outstanding Bonds is approved. The Authority shall use a portion of the proceeds from the issuance of the Bond to advance refund the Outstanding Bonds by funding an escrow account to be invested by an escrow agent for full redemption of the Outstanding Bonds and shall lease or re-lease the Leased Property to the County for a lease term not less than the term of the Bond at a rent sufficient to pay when due the interest and principal on the Bond. The obligation of the Authority to pay principal and interest on the Bond will be limited to rent payments received from the County under the Lease Agreement. The obligation of the County to pay rent under the Lease Agreement will be subject to the Board of Supervisors of the County making annual appropriations for such purpose. The Board of Supervisors on behalf of the County has adopted this resolution as its moral obligation to the repayment of the Bond. The Bond will be secured by an assignment of rents to the Bank as purchaser of the Bond and any subsequent assignee thereof (**the “Bondholder”**) as the holder thereof. If the Board of Supervisors exercises its right not to appropriate money for rent payments, the Bondholder may, among other things, terminate the lease or otherwise exclude the County and in turn, the School Board from possession of the Leased Property. The issuance of the Bond on the terms of the Bank Proposal and as set forth in the Bond Purchase Agreement is hereby approved.
5. The Board of Supervisors hereby approves the Documents and the form of the Bond in an amount not to exceed \$10,250,000 with amortization, maturity and interest rate as set forth in the Bank Proposal and attached hereto, but with such changes, including but not limited to changes in the amounts, dates, payment dates and rates as may be approved by the officer executing them whose signatures shall be conclusive evidence of his/or her approval of the same.
6. The Chairman or Vice Chairman of the Board of Supervisors, or either of them, and the County Administrator (**each, an “Authorized Representative”**) and Clerk of the Board of Supervisors are each hereby authorized and directed to execute the Documents and such other instruments and documents as are necessary to create and perfect a complete assignment of the rents and profits due or to become due in favor of the Bank, to issue the Bond, to provide such notices and irrevocable instructions regarding redemption of the Outstanding Bonds to any person or party consistent with the intent of this Resolution, to advance refund the Outstanding Bonds and to lease or re-lease the Leased Property, and all such actions are hereby confirmed and ratified.
7. Each Authorized Representative and such other officers of the County as are requested are hereby authorized and directed to execute, deliver and file all certificates and documents and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bond and the execution and delivery of the Documents, including without limitation (a) the execution and delivery of a tax and non-arbitrage certificate setting forth, among other things, the expected use and investment of the proceeds of the Bond to show that such expected use and investment will not violate the provisions of Section 148 of the Code, and regulations thereunder, applicable to “arbitrage bonds,” (b) making any elections that such officers deem desirable regarding any provision requiring rebate to the United States of “arbitrage profits” earned on investment of proceeds of the Bond, if any, (c) providing for the County to pay any such rebate amount, (d) filing Internal Revenue Service Form 8038-G, (e) the issuance of a verification report in relation to advance refunding of the Outstanding Bonds and the execution and delivery of such escrow, investment, defeasance or similar agreements as may be necessary to effectuate the redemption, refunding or defeasance of the Outstanding Bonds and

the issuance of the Bond, (f) procurement and issuance of such title insurance policies as may be necessary for the issuance of the Bond and (g) taking all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bond and the undertaking of the refunding of the Outstanding Bonds.

8. The School Project is hereby declared to be essential to the efficient operation of the County, and the Board of Supervisors anticipates that the School Project will continue to be essential to the operation of the County during the term of the Lease Agreement.
9. The Post-Issuance Compliance Procedures for Tax Advantaged Governmental Bonds are approved in substantially the form submitted to this meeting, with such completions, omissions, insertions, changes and revisions as may be approved by the officer executing them in his or her sole and absolute discretion, his execution thereof to constitute conclusive evidence of his approval of any such completions, omissions, insertions, changes and revisions.
10. The Board of Supervisors consents to Sands Anderson PC serving as bond counsel and acting in such capacity as well as Authority counsel in this financing.
11. The County represents and covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bond to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (**the “Code”**) or otherwise cause the interest on the Bond to be includable in gross income for Federal income tax purposes under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require the County for itself or on behalf of the Authority at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds from the sale of the Bond.
12. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and to record such document where appropriate.
13. All other acts of the officers of the County that are in conformity with the purposes and intent of this resolution and in furtherance of the issuance and sale of the Bond, providing security therefor, the leasing of the Leased Property, providing timely notice of redemption of the Outstanding Bonds and the advance refunding of the Outstanding Bonds is hereby approved, ratified and confirmed.
14. The County by acceptance of this financing, to the extent permitted by law, agrees to indemnify, defend and save harmless, to the extent permitted by law, the Authority, its officers, directors, employees and agents from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses in any way connected with the issuance of the Bond or the advance refunding of the Outstanding Bonds.
15. Nothing in this Resolution, the Bond, or the Documents shall constitute a debt or a pledge of the faith and credit of the County, and the Authority shall not be obligated to make any payments under the Bond or the Documents except from payments made by or on behalf of the County

under the Lease Agreement pursuant to annual appropriation thereof in accordance with applicable law.

16. The Board of Supervisors on behalf of the County hereby designates the Bond as eligible for the “small issuer exception” to the rebate requirements of Section 148(f)(2) and (3) of the Code pursuant to Section 148(f)(D)(vii) of the Code, as the Authority is a subordinate entity of the County under Section 148(f)(4)(D) of the Code and the County is a governmental unit with general taxing powers, no bond which is a part of the Bond will be a private activity bond, 95% or more of the net proceeds of the Bond are to be used for local governmental activities of the Authority and the County, and the aggregate face amount of all tax-exempt bonds, excluding private activity bonds to be issued by the County and the Authority during the calendar year 2012 is not reasonably expected to exceed \$5,000,000 increased by the lesser of \$10,000,000 or so much of the additional aggregate face amount of the Bond as is attributable to financing the construction of public school facilities within the meaning of Section 148(f)(D)(vii). The Board of Supervisors on behalf of the County hereby allocates to the Authority a portion of its small issuer size limitation in the amount of the Bond for the calendar year 2012 to the Bond for purposes of Section 148(f)(4)(D) of the Code. Furthermore, the aggregate face amount of the Bond attributable to financing the construction of public school facilities within the meaning of Section 148(f)(D)(vii) of the Code is less than \$15,000,000, the Outstanding Bonds being refunded were treated as meeting the rebate requirements of Section 148(f)(2) and (3) of the Code pursuant to Section 148(f)(4)(D) of the Code, the average maturity date of the Bond is not expected to be later than the average maturity date of the Outstanding Bonds, and the Bond does not have a maturity date which is later than 30 years after the date that the Outstanding Bonds were issued.
17. This resolution shall take effect immediately.

#### **B. Jefferson Building Renovations**

Mr. Carter asked the Board to defer consideration of this item until the next meeting. He reported that Blair met with staff, Mr. Saunders and Mr. Hale and that in addition to proposal #88, the discussion resulted in Blair agreeing to come back with two (2) other options which should be completed by the following day. He noted that he would send these out to the Board and have it on the March 13, 2012 meeting agenda as well as meet with the Board committee on this.

Mr. Carter further explained that the materials to be sent would include Proposal #88 which was turnkey and two options that were much more limited.

Mr. Hale added that the original price seemed high and the sentiment was that they should not necessarily contract with Blair and should possibly seek local contractors to do the work; however they do want them to finish what they started. He noted that this involved anchoring the roof and finishing the connector between it and the new construction. He noted that he felt like they would see about doing this locally but they would see what Wiley Wilson and staff would recommend. Mr. Saunders agreed with Mr. Hale’s comments and noted that David Thompson had made some good points in his comments and that they needed to look at this harder.

## **VI. Other Business (As May Be Presented)**

### *Introduced: Courthouse Project Update*

Mr. Carter noted that the next Courthouse project meeting would be held on March 8<sup>th</sup> and that Blair continues to work on the punch list. He noted that the Jefferson Building and front the front steps were the major things outstanding to be done. He added that the J&D court sound system was being installed and some security things were being done. He noted that finishing the front steps had been delayed due to an issue with the soapstone getting cut and that it should be done in a couple of weeks. He noted that if the Board decided to do a turnkey job on the Jefferson Building, it would take three more months with Blair.

### *Introduced: Law Office Retaining Wall*

Mr. Carter noted that this work had been proposed to be done with Blair and then it got bogged down with VDOT. He noted that one of their subcontractors was a structural engineer, so he was designing a wall system. He then added that the Contractor that was hired from Roanoke was not making any progress and the County had not paid them anything and that the County may look at terminating this contract and that a local engineer looking at the sidewalk had recommended a structural engineer to speak with. He noted that they were trying to do a wall system like the ones done for the courthouse and previously, VDOT had issues with wall encroachment into the right of way and the new plan would not involve this.

### *Introduced: Commonwealth Attorney Space Needs*

Mr. Saunders reported that he had met with Anthony Martin who noted to him that he did not have enough office space and would like more somewhere. Mr. Carter stated that depending on the outcome of the Jefferson Building decisions, he would recommend moving them in there and then relocate the Superintendent and his secretary into the current Commonwealth Attorney's space.

## **VII. Adjournment**

At 8:05 pm, Ms. Brennan moved to adjourn and Mr. Saunders seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.