

June 23, 2011

**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 in the Nelson County Courthouse.

Present:

Constance Brennan, Central District Supervisor  
Thomas H. Bruguere, Jr. West District Supervisor - Vice Chair  
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

Absent: Allen M. Hale, East District Supervisor

**I. Call to Order**

Mr. Johnson called the meeting to order at 7:07 PM, with four (4) Supervisors being present to establish a quorum and Mr. Hale being absent.

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

**II. Public Hearings**

**A. VDOT FY12-17 Secondary Six Year Plan and FY12 Secondary Road Construction (R2011-49)**

Mr. Randy Hamilton of VDOT presented the plan and noted that Virginia Code Section 33.1-73.1 requires that the Board and VDOT formulate a six (6) year improvement plan on an annual basis. He noted that the public hearing was being conducted for FY 2012 -2017 and the purpose was to receive comment on the Nelson County SSYP and on the Secondary Road Construction Budget for FY12. He clarified that the Six Year Plan was not a construction plan.

Mr. Hamilton noted briefly that the first sheet showed the Telefee Revenues expected to be received in each year noting that in FY12, \$59,457 would be received and then \$56,014 thereafter. He then reviewed the categories and projects listed on the subsequent pages. He noted that on page 2, the first four items were budgeted for and included rural additions and that the bottom of page 2 and all of page 3 listed the priority road projects. He added that Pigeon Hill Road would be fully funded this July and S. Powells Island Road would be fully funded next July.

Mr. Hamilton then invited the public to comment and he opened the VDOT public hearing. There being no persons wishing to be recognized, the VDOT public hearing was closed.

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Mr. Johnson then opened the Board's public hearing and there being no persons wishing to be recognized, the Board's public hearing was closed.

Mr. Bruguere noted that the first Rural Rustic Road listed was Pigeon Hill Rd and that he thought that there were a couple of others, Carter Hill and Donahue Lane, that were ahead of this. Mr. Hamilton noted that he used last year's plan at the work session and that he was looking at Donahue Lane now. He noted that this could be added by resolution of the Board at a later time.

Mr. Bruguere suggested that VDOT ride around in each District and Mr. Hamilton noted he would set this up in August/September.

Ms. Brennan clarified that the plan indicated that there was no other funds for Rural Rustic Roads and that Telefees were the only funds coming into the county now.

Ms. Brennan then inquired as to the status of the River Rd. project and Mr. Hamilton reported that they would be adding a turn lane and would be advertising this in December 2012 per the plan.

Mr. Harvey noted that he would like to add Lodebar Estates Road, just the little stretch going into it. He noted the State Route to be either SR 612 or 613. Mr. Hamilton noted that he would look into this one and that it may be a maintenance issue and he would talk to Mr. Austin about it.

Mr. Johnson reiterated his concern of the previously noted areas regarding speed and he advised VDOT to keep an eye on Cedar Creek Rd, which was wash-boarding.

Mr. Hamilton noted that he would report back on traffic operations and the concerns forwarded from the County. He noted that fifty (50) was the minimum traffic count for Rural Rustic consideration.

Ms. Brennan inquired as to why Irish Rd. did not have a date on it and Mr. Hamilton noted that it was a continuation of the previous plan and that River Rd. had funding available first.

Ms. Brennan noted to Mr. Hamilton that there had been another fatality on Rt. 6 and Mr. Johnson noted that Colleen at the Dairy Isle is going to be an issue, noting there had been another wreck there over the weekend. Mr. Bruguere commented that it was on Rt. 655 that cuts through beside the Dairy Isle and he noted that some landowners wanted the road closed but this had not gone anywhere. Mr. Harvey stated that the problem was also people coming out from CVEC and California Sidecar onto Route 29 and Mr. Johnson agreed noting that a lot of people were pulling out in that area creating a lot of traffic at once.

Following discussion, Mr. Harvey then moved to approve resolution R2011-49, Six Year Road Plan and Construction Priority List and Ms. Brennan seconded the motion. There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following resolution was adopted:

**RESOLUTION R2011-49  
NELSON COUNTY BOARD OF SUPERVISORS  
SIX-YEAR ROAD PLAN  
AND CONSTRUCTION PRIORITY LIST**

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**WHEREAS**, Sections 33.1-23 and 33.1-23.4 of the 1950 Code of Virginia, as amended, provides the opportunity for each county to work with the Virginia Department of Transportation in developing a Secondary Six-Year Road Plan, and

**WHEREAS**, this Board had previously agreed to assist in the preparation of this Plan, in accordance with the Virginia Department of Transportation policies and procedures, and participated in a public hearing on the proposed Plan (2011/12 through 2016/17) as well as the Construction Priority List (2011/12) on June 23, 2011 after duly advertised so that all citizens of the County had the opportunity to participate in said hearing and to make comments and recommendations concerning the proposed Plan and Priority List, and

**WHEREAS**, Randy Hamilton, Virginia Department of Transportation, appeared before the Board and recommended approval of the Six-Year Plan for Secondary Roads (2011/12 through 2016/17) and the Construction Priority List (2011/12) for Nelson County,

**NOW, THEREFORE, BE IT RESOLVED** that since said Plan appears to be in the best interests of the Secondary Road System in Nelson County and of the citizens residing on the Secondary System, said Secondary Six-Year Plan (2011/12 through 2016/17) and Construction Priority List (2011/12) are hereby approved, as amended at the public hearing.

### **III. Consent Agenda**

Mr. Johnson noted that staff had made a small change in the wording to the resolution in item C. R2011-52, Authorization to Escrow Funds – CDBG Broadband Grant which noted that the funds would be restricted within the General Fund rather than the funds would be returned to the General Fund. Mr. Carter stated that the intent was to use the \$200,000 for the project but that one of the obligations of the County was to create jobs. He noted that the construction of the backbone may count for job creation and that these should be created quickly per staff discussion and it should not be a problem to fulfill the requirement.

Ms. Brennan then suggested there be more discussion on item B. R2011-51 County Attorney Compensation and would like to remove it from the consent agenda. Members agreed by consensus and then considered the remaining items.

Mr. Bruguere moved to approve the consent agenda removing item B and Mr. Harvey seconded the motion. There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following resolutions were adopted:

#### **A. Resolution – R2011-50 Blue Ridge Tunnel Project Easement(s) Acceptance**

**RESOLUTION R2011-50  
NELSON COUNTY BOARD OF SUPERVISORS  
AUTHORIZATION OF COUNTY ADMINISTRATOR TO ACCEPT GRANTS AND  
CONVEYANCE OF EASEMENTS AND REAL PROPERTY ASSOCIATED WITH THE BLUE  
RIDGE TUNNEL PROJECT**

**BE IT RESOLVED** by the Nelson County Board of Supervisors that the Board hereby directs Stephen A. Carter, County Administrator to accept on behalf of the County all grants and conveyances of easements and real property associated with the acquisition, improvement and development of the Blue Ridge Tunnel.

**B. Resolution – R2011-52 Authorization to Escrow Funds – CDBG Broadband Grant**

**RESOLUTION R2011-52  
NELSON COUNTY BOARD OF SUPERVISORS  
AUTHORIZATION TO ESCROW FUNDS AS REQUIRED FOR CDBG-LIG BROADBAND  
PROJECT GRANT**

**BE IT RESOLVED** by the Nelson County Board of Supervisors that the Board hereby directs Stephen A. Carter, County Administrator to hold in escrow \$110,000.00 as security in guaranteeing the creation of eleven jobs resulting from the investment of \$200,000.00 in Community Development Block Grant-Local Innovation Grant funds for the Broadband Infrastructure Project.

**BE IT FURTHER RESOLVED**, that upon satisfactory compliance with the CDBG-LIG Grant obligation to create eleven jobs, the balance of said escrowed funds would no longer be restricted.

**IV. New/Unfinished Business**

A. Broadband Infrastructure Project

Mr. Carter distributed updated information from ICON on scenarios and maintenance costs of aerial and underground fiber installations as follows:

<b>Scenario # 2A =Expanded Base</b>	<b>Scenario # 3A = Case III</b>	<b>Scenario #5A = All Fiber Installed UG</b>
<p>This scenario expanded the underground to approximately 45% and decreased the aerial to approximately 55%. The underground remains buried at 36". This scenario reflects the decrease in Make Ready Construction due to decreasing the number of CVEC poles affected.</p> <p><i>2A is recommended as the third consideration.</i></p>	<p>This scenario has all of HWY 29 underground which changes the aerial to 30% and the underground to 70%. The underground remains buried at 36" depth but is all 2 1/2" conduit. This scenario reflects a further decrease in the Make Ready Construction due to decreasing the number of affected CVEC poles further.</p> <p><i>3A is recommended as the second consideration</i></p>	<p>This scenario has included all of the fiber in 2-1/2 inch conduit. It is the most expensive case, but most of the expense over Case III is based on the uncertainty of UG construction along the river and much older road beds.</p> <p><i>5A is recommended if funding is feasible</i></p>

Comparison of Changes to Project Deployment			2A Expanded UG	3A Case III All UG HWY 29	5A Requested Alternate All UG
Fiber Count			144 ct	144 ct	144 ct
Conduit Size			1-1/4	2-1/2"	2-1/2"
OSP Materials	Fiber, Conduit, Pole Hardware		\$ 298,695	\$ 359,033	\$ 383,991
Outside Plant Labor	UG and Aerial		\$ 645,580	\$ 811,784	\$ 988,233
Make-Ready Construction			\$ 120,146	\$ 89,333	\$ -
Engineering, Admin			\$ 525,000	\$ 525,000	\$ 600,000
Towers			\$ 500,000	\$ 500,000	\$ 500,000
Electronics and turn-up			\$ 225,000	\$ 225,000	\$ 225,000
Contingency at 10%	Rock, Unknowns, etc.		\$257,157	\$278,906	\$475,981 <b>15% contingency</b>
<b>Total Cost by Scenario</b>			<b>\$2,571,578</b>	<b>\$2,789,056</b>	<b>\$3,173,205</b>
Budget	\$2,283,308				
CDBG	\$200,000	Budget with CDBG	\$2,483,308	\$2,483,308	\$2,483,308
<b>Total Change</b>	<b>\$2,483,308</b>	<b>Delta Budget Total Dollars (Contingency Included)</b>	<b>\$88,270</b>	<b>\$305,748</b>	<b>\$689,897</b>
<b>Rankings by Subcommittee for BOS</b>			<b>3rd</b>	<b>2nd</b>	<b>1st</b>

Mr. Carter noted the priorities listed were a result of conferring with the subcommittee. He noted the first priority was deploying the fiber completely underground if it could be funded. He noted that in this scenario, the pros outweighed the cons. He then reported that Ms. McCann thought that the General Fund revenues may be about a half million dollars more than projected. He added that this scenario would still be underfunded, but it could be supplemented by the Capital Fund.

Mr. Carter noted that a consideration for the Board was whether or not the project was important enough to set aside these funds in order to put it all underground. He added that the risk was whether or not the 15% contingency amount would be spent. He noted that ICON was being conservative at this point due to the uncertainty about hitting rock in burying the fiber since it would have to be buried 36" deep.

Mr. Carter stated that going underground provided the ability to expand or lease conduit space that could be attractive to other providers and be a source of income. He added that the subcommittee and ICON thought it was feasible that it would generate revenue, especially along Rt. 29. He stated that he thought that lease fees were annual and may be for the whole cable but that he had not had time to ask these questions. He noted that a concern was that the aerial scenario required ongoing costs to add fiber which were unknown. Additionally, if CVEC changed its electric line routing, the County could have to pay to change its route. He noted that the lifespan of underground fiber was about 15 years longer. He added that the anticipated fee per pole was \$21 for 300 poles, after the first five years.

Mr. Johnson inquired as whether or not the lateral points were already being planned for the underground option and Mr. Carter supposed that these have been planned along the route.

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Mr. Carter then reported that the subcommittee members who were in attendance were unanimous in suggesting that if the Board could sustain the cost or the risk of the costs, that underground fiber installation was preferred.

Mr. Harvey noted that CVEC should be able to provide insight regarding the presence of rock along Rt. 151 and he noted that he did not think they hit any rock there. Mr. Carter noted that ICON was investing this now that they were made aware that CVEC had buried cable along that portion of the route.

Mr. Carter advised that in discussions so far with Mastec on the construction, they did not anticipate their costs would change to go underground, but it would be a matter of hitting rock and the second ranked company said they would need to go back and relook at the route etc. before they could say. He then reiterated that Mastec was the top rated company to do the fiber installation because they were more responsive, professional, and confident in their costs.

Mr. Johnson cautioned that it was easier to do an aerial connection, but suggested building in lateral connections at normal cross points so that they did not have to come back later to do it. He stated that he thought that a fifty (50) year lifespan for underground fiber was conservative. Mr. Carter noted that was likely but that it was too new and there was no history on the longevity of the fiber; but was their best guess. Mr. Carter related the discussion of going with Active or a point to point situation and Mr. Johnson noted that he wanted to be sure the laterals were built into it now and Mr. Carter noted that he would confirm this.

Mr. Harvey inquired as to whether or not they would need to put laterals in at places closest to the tower and Mr. Johnson explained that laterals could be extended from towers or they could get this by wireless. He added that with fiber, triple play services could be done easily and wireless was less robust.

Mr. Carter noted that staff needed approval from the Board to go with option 5A , all underground and would have to bring back a budget amendment so that the NTIA people would see that the funding was there. He added that the possible funding sources would be the General Fund and possibly the Capital Fund; that has an unobligated balance of about \$1 million. Mr. Johnson reiterated that he wanted to make sure that these costs were including the cost of laterals.

Following discussion, Mr. Harvey moved to approve scenario 5A, including 144 ct fiber installed all underground in 2.5 inch conduit and Ms. Brennan seconded the motion.

Ms. Brennan then confirmed that the County would not have to borrow more money to do this and there was the potential for revenue generation.

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

#### B. Piedmont Workforce Network – Alternate Voting Member

Ms. Brennan noted the letter received asking for alternate voting members to be appointed for the Piedmont Workforce Network; noting that she has not missed many meetings herself but that others have. She noted the frustration of the Board Officers on this and now they would like an alternate

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appointed. She noted that they meet for no longer than an hour every three months and noted that the PWN was a policy board that oversees the budget of the Workforce Council.

After brief discussion regarding who would be the alternate, Ms. Brennan moved to appoint Mr. Hale and Mr. Harvey seconded the motion. There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion.

**V. Other Business (As May Be Presented)**

Other Business was considered after Public Comment.

*1. Introduced: Closed Session:*

Mr. Harvey moved that the Nelson County Board of Supervisors convene in closed session to discuss the following as permitted by Virginia Code Section 2.2-3711 (A) (7), consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Ms. Brennan seconded the motion and there being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion to enter into closed session.

Members conducted the closed session and upon its conclusion, Mr. Harvey moved to reconvene in public session and Ms. Brennan seconded the motion. There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion to reconvene in public session.

Upon reconvening in public session, Mr. Harvey moved that the Nelson County Board of Supervisors certify that in the closed session just concluded, nothing was discussed except the matter or matter(s) specifically identified in the motion to convene in closed session and 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 (4-0) by roll call vote to approve the motion to certify the closed session.

Mr. Harvey then moved to approve resolution R2011-53 Order of Gladstone Rescue Squad to Produce Financial Records and Mr. Bruguere seconded the motion.

Mr. Johnson stated that he thought the Board was being gracious given that they have had thirty (30) days from the first notice on May 24, 2011; noting that this was of a serious nature and this resolution spoke to that. He added that he thought they already could have taken this action but are giving them more time to ensure the security of the Gladstone people.

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

**RESOLUTION R2011-53  
NELSON COUNTY BOARD OF SUPERVISORS  
ORDER OF GLADSTONE RESCUE SQUAD  
TO PRODUCE FINANCIAL RECORDS**

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**WHEREAS**, a demand was made on June 14, 2011 by this Board to the Gladstone Rescue Squad for the delivery of certain papers to the County Administrator; and,

**WHEREAS**, the papers have not been delivered by the date established; and,

**WHEREAS**, this Board may order such papers pursuant to Section 15.2-1409 of the Code of Virginia.

**NOW, THEREFORE, BE IT RESOLVED**, that the Nelson County Board of Supervisors orders Gladstone Rescue Squad to produce in the office of the County Administrator on or before 4:00 p.m., June 30, 2011 all financial records, including but not limited to, checking account registers and statements, ledgers, contribution and income logs, and invoices, and the minutes of Squad meetings, for the period beginning January 1, 2006 through the date of delivery.

**BE IT FURTHER RESOLVED**, that in the event Gladstone Rescue Squad should fail to honor the foregoing order in any respect, then the Board will act to immediately dissolve Gladstone Rescue Squad. The Clerk is directed to mail by certified mail, return receipt requested, a certified copy of this resolution to each the President, Treasurer and Captain of the Gladstone Rescue Squad.

## *2. Introduced: Mountain View Pet Business Issue*

Mr. Johnson reported a problem that he was aware of concerning the County's Animal Control department and Mountain View Pet Kennel. He noted that his understanding was that several dogs were left there who were vicious and that they had called Animal Control and the Sheriff and that the Sheriff had instructed Animal Control to take the dogs. He noted that when the Officer went to notify the owner by placing a notice on their door, it came to light that the owner had been evicted. He added that now they have a business with a problem.

Mr. Carter advised that the Animal Control Officer had related this situation to him in Mr. Uttaro's absence, and the officer had conferred with Mr. Boggs of the Commonwealth's Attorney's Office on how to proceed. He noted that the direction from them was to post the owner's last known residence with a notice that if they did not take custody of the dogs by that Monday, that Animal Control would take custody. He added that heretofore when the fees were being paid, Mountain View was fine and now that there was uncertainty that they would be getting paid there was a problem. He noted that the AC officer gave directions on how to care for the dogs if they were unnerved about it. Mr. Carter then noted that the County has boarded animals there and they did know how to take care of animals; however the main concern for the County was that the AC Officers did not have the legal ability yet to take custody of the dogs.

Mr. Johnson related that the Mountain View workers had trouble getting the dogs back into the pen, but they eventually did get them in.

Mr. Carter stated that he would have Animal Control go pick them up if the Board directed him to, but that he thought that the County was acting appropriately in this situation.

Mr. Payne clarified that the concern was that the animals were dangerous but for that to hold up, they would have to meet the statutory definition. Mr. Johnson asked that the County do follow up in the

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morning to assess the effect of this on the business owner. He added that the owner had been boarding them there and had been coming to feed them etc.; however now he has been evicted from his home and was nowhere to be found.

Following this item, the Board took a short break.

*3. R2011-51 County Attorney Compensation (Removed from Consent Agenda)*

Mr. Carter noted that the Board had discussed bringing back a resolution revising the County Attorney's hourly rate and that the Board would consider any additional compensation once his term had concluded; hence the abbreviated wording of the proposed resolution. Members noted that they would negotiate the final contract through December.

Mr. Harvey then moved to approve resolution R2011-51 County Attorney Compensation and Ms. Brennan seconded the motion. There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following resolution was adopted:

**RESOLUTION R2011-51  
NELSON COUNTY BOARD OF SUPERVISORS  
COUNTY ATTORNEY COMPENSATION**

**BE IT RESOLVED** by the Nelson County Board of Supervisors that effective July 1, 2011, the County Attorney's compensation for services rendered will be \$180 per hour.

**VI. Public Comments**

Public Comment was considered before Other Business. Mr. Johnson opened the floor for public comment and there being no persons wishing to be recognized, the public comment session was closed.

**VII. Adjourn and Continue Until July 7, 2011 for Conduct of the Board's Retreat**

At 8:35 PM, Mr. Harvey moved to continue the meeting until June 30th at 5pm and Ms. Brennan seconded the motion. Members discussed having more conversation on the retreat and staff noted that a script would be sent out. There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the meeting was continued until June 30<sup>th</sup> at 5 pm.