

March 11, 2014

Virginia:

AT A REGULAR MEETING of the Nelson County Board of Supervisors at 2:00 p.m. in the General District Courtroom located on the third floor of the Nelson County Courthouse.

Present: Allen M. Hale, East District Supervisor
Thomas H. Bruguiera, Jr. West District Supervisor
Constance Brennan, Central District Supervisor - Chair
Larry D. Saunders, South District Supervisor – Vice Chair
Thomas D. Harvey, North District Supervisor
Stephen A. Carter, County Administrator
Candice W. McGarry, Administrative Assistant/Deputy Clerk
Debra K. McCann, Director of Finance and Human Resources
Tim Padalino, Director of Planning and Zoning
Susan Rorrer, Director of Information Systems

Absent: None

I. Call to Order

Ms. Brennan called the meeting to order at 2:00 pm, with all Supervisors present to establish a quorum.

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

II. Consent Agenda

Ms. McCann distributed an amended budget amendment that included additional funding for the Sheriff's department from Asset Forfeiture funds.

Mr. Harvey moved to approve the Consent Agenda and Mr. Saunders seconded the motion.

Mr. Bruguiera asked for clarification regarding what the tobacco free campus encompassed and Supervisors agreed that it applied to the entire Courthouse campus; however patrons could smoke in their cars. Mr. Hale noted that while he sympathized with smokers; he felt that the Board should do everything to discourage the use of tobacco and reduce its effect on the public.

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

- A. Resolution – **R2014-14** FY13-14 Budget Amendment

**RESOLUTION R2014-14
NELSON COUNTY BOARD OF SUPERVISORS**

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**AMENDMENT OF FISCAL YEAR 2013-2014 BUDGET
NELSON COUNTY, VA
March 11, 2014**

BE IT RESOLVED by the Board of Supervisors of Nelson County that the Fiscal Year 2013-2014 Budget be hereby amended as follows:

I. Appropriation of Funds (General Fund)

<u>Amount</u>	<u>Revenue Account (-)</u>	<u>Expenditure Account (+)</u>
\$ 3,716.00	3-100-009999-0001	4-100-022010-5419
\$ 1,500.00	3-100-009999-0001	4-100-031020-5419
<u>\$ 5,216.00</u>		

II. Transfer of Funds (General Fund)

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
\$ 3,120.00	4-100-999000-9905	4-100-031020-7055
\$ 13,998.00	4-100-999000-9905	4-100-043040-5409
\$ 49,895.00	4-100-999000-9905	4-100-043040-7005
<u>\$ 67,013.00</u>		

B. Resolution – R2014-15 Minutes for Approval

**RESOLUTION R2014-15
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF MEETING MINUTES
(February 4, 2014 & February 5, 2014)**

RESOLVED, by the Nelson County Board of Supervisors that the minutes of said Board's meetings conducted on **February 4, 2014 & February 5, 2014** be and hereby are approved and authorized for entry into the official record of the Board of Supervisors meetings.

C. Resolution – R2014-16 Tobacco Free Campus

**RESOLUTION R2014-16
NELSON COUNTY BOARD OF SUPERVISORS
TOBACCO FREE CAMPUS**

WHEREAS, pursuant to Virginia Code §15.2-1800 and general law, the Board of Supervisors operates the Court facilities and grounds in concert with the Circuit Court Judge and has the authority to prohibit the use of tobacco products in these areas, and

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WHEREAS, at the regular Board of Supervisors meeting on February 11, 2014, staff was directed to provide the Board with a resolution for consideration to make the Nelson County Courthouse Complex a tobacco free campus, and

WHEREAS, tobacco is a recognized carcinogen in humans and the County of Nelson is committed to protecting the health of individuals by minimizing the harmful effects of tobacco use among County employees and eliminating secondhand smoke exposure for employees and the public in and on the grounds controlled by the County;

NOW THEREFORE BE IT RESOLVED, that the Nelson County Board of Supervisors does hereby declare the Nelson County Courthouse Complex a tobacco free campus.

D. Resolution – **R2014-17** 2014-2015 Local Government Challenge Grant

**RESOLUTION R2014-17
NELSON COUNTY BOARD OF SUPERVISORS
2014-2015 LOCAL GOVERNMENT CHALLENGE GRANT**

BE IT RESOLVED, By the Nelson County Board of Supervisors that the County Administrator is hereby authorized to execute and submit an application for 2014-2015 Local Government Challenge Grant funding to the Virginia Commission of the Arts.

BE IT FURTHER RESOLVED, said application is to include a local match of \$5,000.00 to be confirmed upon formal adoption of Nelson County's Fiscal Year 2014-2015 Budget by the Board of Supervisors.

III. Public Comments and Presentations

A. Public Comments

1. Living Word Christian Fellowship, Todd Peck Pastor

Todd Peck, Pastor of Living Word Fellowship noted that his congregation currently meets at the old CVEC building at Front Street in Lovingston. He noted their desire to purchase property on the corner of Route 29 and Route 56 west as they were growing and wanted to expand and build multipurpose facilities to meet and gather in. He added that they wanted to do it in such a way to benefit the county and community. He noted that they provided assistance to those in the county and provided monthly outreach as well as had children's ministries etc. He noted that they were under a contract extension for the property and were addressing contingencies.

Mr. Peck noted that their conclusion was that due to VDOT requirements, they would be required to construct turning lanes into the property and this would be cost prohibitive at over \$100,000. He noted that they then conducted other studies and were proposing a speed reduction in the area to meet sight distance requirements. He added that these studies showed that they would not have to put in turn lanes because of a speed impact study that

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showed that the average speed was 58 mph which would put them outside of the bounds of turn lanes. He added that if they could get a speed reduction eastbound to 35mph that would put them into the situation of not having to construct turn lanes and would also alleviate safety issues in the area. Mr. Peck then advised that they had taken a poll of folks on Cabell Mtn. Lane and most were in favor of a speed reduction. He then noted that he was asking the Board for its support to submit a speed reduction request so that they could be within VDOT guidelines and could purchase the property.

Mr. Carter then advised the Board that it was submitted by him to VDOT so that Mr. Austin would be able to speak to it that day.

Mr. Austin confirmed that he had received copies of the report and he noted that commercial properties had minimum entrance and exit requirements and that these were based on speed limits. He added that the speed limit on Route 56 east was 55 mph and to legally reduce the speed, they would have to conduct a speed study and it appeared from their information that it would not meet the criteria for a speed reduction. He added that it appeared this would not be met, however a final study had not been done. Mr. Austin noted that the speed limit requested must be justified and they typically did not just do speed studies for operating limits. He added that the Board could request that VDOT review it and the traffic division would look at it.

Mr. Austin then noted that the information gathered would be similar to the current speed study; but following federal and state guidelines.

Mr. Bruguiere reiterated that it was cost prohibitive to put in turn lanes and that people needed to slow down at that intersection. Mr. Austin noted that the Board could ask that the speed study be done; however it was likely that the data would come in the same and a speed reduction would not be recommended. He added that the time frame for review would be about ninety (90) days.

Mr. Harvey noted that he has seen this done elsewhere in the state and he thought it was warranted there. Mr. Austin clarified that they did not normally do speed reductions because of entrances; however this could fall under safety reasons as well approaching the intersection.

Mr. Harvey then asked Mr. Massie Saunders, consultant to the church, to describe the relationship of the proposed entrance to Cabell Mtn. Road. Mr. Saunders noted that it was just east of it and that if one went east or west from that location, the sight distance went down. He noted that if the posted speed limit could be at 45mph, there was the possibility to relocate the entrance to remove 100 ft of the sight distance requirement. He noted that they could look at this if it could potentially go there.

Mr. Harvey noted that traffic going west needed to be able see to turn in and when pulling out, they needed to see over the curve. Mr. Saunders noted that this was at the peak, so they could see there.

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Mr. Bruguere noted that he thought it was a safety issue especially coming from Cabell Mtn. road.

Mr. Peck then confirmed that they would purchase the entire parcel and Mr. Hale noted that the Board had requested other speed reductions without success even for safety reasons and that he was advising them that he was not overly confident it would go through.

Mr. Peck then noted that they were not expecting special consideration but would like to know so that they would know how to proceed. He added that he appreciated any efforts of the Board on this matter.

Mr. Austin then suggested that the Board ask for a speed study for a specific section. Mr. Hale added that the Board could pass a resolution expressing concern over the safety issues and asking VDOT to look at this with the intent to reduce the speed limit in this area.

Mr. Saunders then noted that the intersection sight distance from Cabell Mtn. Lane could be a factor and information from the Virginia State Police for that section of road could be part of the request as it would provide additional supporting information. Mr. Saunders then noted that he had surveyed the area for an entrance based on sight distance and stopping distance criteria from VDOT, then looked at traffic counts and speed percentiles.

Mr. Bruguere then noted the high level of trucks going through there also and that he thought the Board should request a speed study to ask for a speed reduction to 35mph.

Mr. Carter noted that if VDOT did the more comprehensive study, it would save the church more money.

Mr. Hale then noted that the Board has already identified this area as a safety concern. Ms. Brennan then asked if the accident data would be looked at as well within the speed study and Mr. Austin noted they would use previous studies to see if any change has occurred.

It was noted that there were many near misses at the intersection of Route 56 west and Cabell Mtn. Lane and it was noted that these were not taken into consideration.

Mr. Hale then moved to request that VDOT conduct a speed study from the intersection of Route 29 and 56 west to Kohr Bros. Packing shed and Mr. Bruguere seconded the motion.

Mr. Harvey suggested extending the study route down to Roseland Road. Mr. Hale amended his motion to extend the study route down to Roseland Road, the Route 655 intersection and Mr. Bruguere seconded the amended motion.

There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

2. Scott Leak, Congressman Hurts Office

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Mr. Leak noted that the Congressman had visited the NCHS FFA program and was impressed with the sharp students there.

He then noted the invitation to the local appreciation luncheon that had been extended to the Board and He noted that he would like RSVPs for those that had not been provided. He noted that the locations were Ash Lawn and Lynchburg.

Mr. Hale then noted he would like to RSVP for the Ash Lawn location.

B. Presentation- 151.org Business Group

Mr. George Hodson, General Manager of Veritas Vineyard and Chairman of the 151 group addressed the Board and noted that the 151 group was a group comprised of businesses along the Route 151 corridor. He noted that these were mostly wineries, breweries, and distilleries. Mr. Hodson then noted that their goal was to increase traffic along the corridor while preserving the reason why they all opened businesses in Nelson County. He added that they were endeavoring to become more active in interacting with the community and would like to address the gaps in the relationship between agribusiness and the corridor. He noted that they had discussed the potential to look at a strategic plan specifically for the Rockfish Valley since they were seeing businesses becoming busier and seeing more wanting to come in. Mr. Hodson noted that they would like to narrow the scope of interest and had engaged the public with a letter and the feedback received was that long time residents would like to see some planning going on. He added that an overwhelming support of the need for planning had been expressed. Mr. Hodson then indicated that the group was trying to be sure to stay true to Nelson County along the Rockfish Valley and he would be presenting a letter signed by residents of the area supporting the effort.

It was then noted that transportation studies had been done along the corridor. Mr. Harvey added that the biggest impact on the Rockfish Valley has been their organization and not necessarily in a positive way. He noted that the Blue Mountain Brewery BMB expansion and the Silverback Distillery have had a negative impact. He noted that the Nellysford impacts have been the same and was also not always positive noting that the Bold Rock Cidery was not playing by the rules and this was common practice among the organization members.

Mr. Hodson noted that there was growth and things were happening; however they had operated within the letter of the law but perhaps not the intent of the law. He noted that he agreed with Mr. Harvey's point and that they were concerned with making sure that their impact was a positive one and the study would specifically address expansion. He added that the group wanted to get in front of this issue before more businesses took advantage of the path that has been laid; wanting to put some oversight to it.

Mr. Hale then noted that the reality was that there would be increased traffic on Rt. 151 and a continued interest in business development because of the traffic there. He noted he was concerned about how successful a study would be; however he supported coming up with specific zoning efforts that would shape this in a positive way. Mr. Bruguere added that he

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thought that seeing site plans prior to construction would be helpful for the Board in giving feedback to businesses.

Mr. Carter then noted that in past years, the Board had expressed concern that staff was a bottleneck to the process. Mr. Bruguere noted that he would like to know more about what was going on and Mr. Carter noted that if the plans complied with the ordinance then it complied.

Ms. Brennan noted that much of the information was proprietary and the Board could not find out about the plans until they had been made public. She noted that there was a lot of interest from residents on what was happening along Route 151 and she thought it was a good idea to do a real inventory of the property there. She added she would like to see a corridor overlay that would allow suggestions to be made.

Mr. Hodson noted that the group would like to rely on the County to do the study. He noted that they had worked with Tim Padalino and Maureen Kelley previously and they were then nominated to work with the group. Mr. Hodson added that they relied upon the community being happy with them and they did not want their presence to be an overwhelming frustration. He noted that they wanted to have community support and to continue to get employees from Nelson County. He offered that they would take on the study if necessary.

Mr. Hale suggested that the study might be something that the Planning District Commission (PDC) could take on. Mr. Harvey suggested taking an inventory of the studies that had already been done on that area and Mr. Hale noted that the PDC had the tools and personnel to look at land use on either side of a route. Mr. Harvey noted he did not think proper planning could be done without full ownership of the land as there was property rights involved. Mr. Hale then noted that they were just referring to identification of properties and Mr. Harvey added he would like to see an inventory done of developable land along the corridor. He added that he thought there were natural prohibitions to growth present and that there was actually very little developable land there.

Ms. Brennan then supposed that the PDC would have to be paid to do this and Mr. Carter noted that staff could work with them on it.

Mr. Hale noted that they could identify where along 151 commercial entrances were possible and that would tell them a lot.

Mr. Carter suggested that staff could draw up a scope of work and then would consult with the PDC on working with County staff and the Planning Commission. He noted that ultimately any changes to the Zoning Ordinance would come through the Planning Commission to the Board.

Mr. Hodson noted that he also heard mention of hotels and more wineries and cideries coming in. Mr. Harvey noted that there was not enough public water and sewer along the route to support a hotel etc.

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In conclusion, Mr. Hodson noted that the group wanted to make sure that new businesses were doing things the right way that reflected well on the existing businesses and were well supported by the community.

C. VDOT Report

1. 2015-2020 Secondary Six Year Plan (SSYP) Authorization for Public Hearing (**R2014-18**)

Mr. Don Austin was present to report and the Board noted the following concerns:

Mr. Hale and Mr. Saunders had no VDOT concerns.

Mr. Bruguere noted that Firehouse Road in Piney River was slated to be moved and rebuilt and the land had been donated for right of ways and nothing had happened. He noted that the road was highly deteriorated now. Mr. Austin noted he would check on this and would consult with Gary Baldwin, the Fire Chief there.

Mr. Harvey inquired as to the hold up on the implementation of the blinking lights on Rt. 6. Mr. Austin supposed they must be having a contractor come back to do the electrical connections but he would check on this.

Ms. Brennan noted that there had been an accident at the Route 29 intersection on the northbound lane where the median crossed at Buck Creek and River Road. Mr. Austin noted that he has asked VDOT to review the signage again there.

2015-2020 Secondary Six Year Plan (SSYP):

Mr. Austin noted that he has had no additional requests on unpaved roads and he would proceed with putting the plan together so that the Board could set the priority listing and have its hearing in May.

Mr. Austin then advised the Board that the funding had changed since they began discussion on this and not as much money was being brought in as originally thought. He added that the total funds predicted were not as high as last year and regular unpaved and construction money was not going to come in.

Mr. Austin added that the previous year unpaved road funds were for a threshold of over 200 cars and it was now changed back to 50 cars. He noted that there was \$12,000 earmarked for this year and now it was \$135,000. He then noted that there was increased funding in subsequent years and VDOT could start doing more of the rural rustics. He added that the funds would have to be used on unpaved roads.

Mr. Harvey then noted that Mr. Austin had provided a list that had them doing the higher vehicle count sections first. He added that Lodebar was the first priority.

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Mr. Austin noted he would send Mr. Carter the list for distribution to the Board and they would plan to hold the public hearing in May and that he would send the speed study forward when the request for it came from Mr. Carter.

Mr. Bruguere then inquired as to what happened with trench widening and Mr. Austin noted that this could be programmed into the SSYP using the Telefees; however these funds would not go too far. He added that unpaved road funds could not be used for this. Mr. Austin then advised that VDOT would look at this when paving a road to see if they could squeeze it in. Mr. Austin then noted that Revenue Sharing funds were another avenue for special projects.

In response to questions, Mr. Austin noted that Tan Yard Road was about ½ mile off of Route 151 at the most.

In conclusion, Mr. Austin would provide Mr. Carter with a SSYP priority list and then in April the Board would schedule the public hearing in May. Therefore, consideration of resolution **R2014-18** was deferred.

IV. New Business/ Unfinished Business

A. Proposed Ordinance O2014-01 to enact Chapter 4, Article II, Division IV, Nelson County Unsafe Buildings and Structures

Mr. Carter noted that Mr. Payne was present at the Board's request to answer questions regarding the proposed Ordinance.

Mr. Saunders asked Mr. Payne to confirm that the provisions of the proposed ordinance were already in effect through the State Code for unsafe buildings; however the proposed ordinance provided for a way for the County to be paid for carrying out the ordinance.

Mr. Payne noted that the proposed ordinance provided an expedited way to recover money for the demolition process. He added that the State Code and Uniform Statewide Building Code (USBC) already provided the authority for the Building Official to make the determination and require demolition of unsafe buildings. He added that the building had to be unsafe and not an aesthetic issue. He confirmed that the proposed ordinance allowed for the recovery of costs through tax lien etc.

Mr. Bruguere then inquired whether or not it would be discrimination for a property to be deemed unsafe and then for a similar property in the middle of a field to not be identified.

Mr. Payne noted that he thought the distinction there was that there had to be a danger to the public. It was noted there were not enough County staff to search out violations and it was usually an obvious case.

Mr. Carter noted that should the ordinance be adopted, the Board could receive calls regarding implementation of the ordinance; however this could be done with or without it.

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Mr. Payne noted that the Board could take action on public nuisances that were hazardous in themselves and they could be secured from public access. He reiterated that the Building Official already had the power to do what the Ordinance says; however the added piece was that the County could recover the cost of doing so. Mr. Payne then noted that the landowner could appeal the ruling of the Building Official to the Building Code Appeal Board and then to Circuit Court.

Ms. Brennan then confirmed that the authority was already in place; however the ordinance provided the opportunity to make it easier to recover the costs.

Mr. Bruguere then inquired about the letter sent to the owners of the Findlay Mountain Road and Route 56 east property. Mr. Carter advised that that the two sons of the elderly owner were addressing it and had requested deferral until the end of June so that one of the local fire departments could burn it down. He added that the owners were amenable to getting it done cost effectively. He noted that burning it down would be a training session and there were hoops to go through. Mr. Harvey advised that they would need to know where any overhead power lines were before doing it.

Mr. Carter then advised that the Board had already conducted the public hearing on the proposed ordinance at the last meeting.

Mr. Saunders then moved to approve **Ordinance O2014-03**, Enactment of Chapter 4, Article II, Division IV, Nelson County Unsafe Buildings and Structures and Mr. Bruguere seconded the motion.

Mr. Harvey then reiterated that the County could already do this; however the ordinance would allow for cost recovery so that it would not be a burden on all taxpayers. Mr. Hale then countered that adopting the ordinance would add one more paper to the Code book that would not be utilized.

There being no further discussion, Supervisors voted (4-1) by roll call vote to approve the motion with Mr. Hale voting No and the following ordinance was adopted:

ORDINANCE O2014-03
NELSON COUNTY BOARD OF SUPERVISORS
ENACTMENT OF CHAPTER 4, ARTICLE II, DIVISION IV
NELSON COUNTY UNSAFE BUILDINGS AND STRUCTURES

Sec. 4-57. Short title; authority.

a. This article may be known and cited as the "Nelson County Unsafe Buildings and Structures Ordinance."

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b. This article has been enacted pursuant to Code of Virginia §15.2-906 (1950, as amended), and shall be administered consistent with the provisions of the Uniform Statewide Building Code and regulations promulgated thereunder applicable to or adopted by Nelson County.

Sec. 5-58. Definitions.

Building shall mean any structure used or intended for supporting or sheltering any use or occupancy.

Building official shall mean the person so designated by the Nelson County Board of Supervisors to serve as the code official for administration and enforcement of the provisions of the Virginia Uniform Statewide Building Code, or his designee.

County shall mean Nelson County, Virginia.

Owner shall mean any person having a legal or equitable interest of record.

Person shall mean any individual, firm, partnership, cooperative, corporation, association, estate, trust, trustee in bankruptcy, receiver, club, society, or other group or combination acting as a unit.

Structure shall mean that which is built or constructed.

Sec. 4-59. Order to remove, repair, or secure.

The building official may order any owner of property in the county to remove, repair, or secure any building, wall, or other structure which he determines might endanger the public health or safety of other residents of the county.

a. The order shall be contained in a notice issued by the building official to the owner and to the lien holder. The notice shall be in writing and shall identify the condition of the building, wall, or other structure that constitute a danger to the public health or safety, specify the measures that must be taken to eliminate the danger, and state a reasonable time within which the measures must be taken.

b. The notice shall be mailed by certified or registered mail, return receipt requested and be sent to the last known address of the property owner. The notice shall also be published once a week for two successive weeks in a newspaper having general circulation in the county.

c. For purposes of the section, "repair" includes maintenance work to the exterior of a building to prevent deterioration of the building, wall, or structure, or adjacent buildings.

Sec. 4-60. Authority of building official to remove, repair, or secure.

Upon the issuance by the building official of an order to remove, repair, or secure any building, wall, or any other structure which might endanger the public health or safety of

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other residents of the county, the County Administrator, through the county's agents or employees, is authorized to remove, repair, or secure any building, wall or any other structure, if:

- a. Notice has been provided to the owner of the property and the lienholder as provided in Section 4-59;
- b. At least 30 days have passed since the later of either the return of the receipt or newspaper publication, as provided in section 4-59(b,) except that the county may take action to prevent unauthorized access to the building within seven days of such notice if the structure is deemed to pose a significant threat to public safety and such fact is stated in the notice; and,
- c. The owner and the lien holder of the property have failed to remove, repair, or secure the building, wall, or other structure within the time period specified in the notice.

Sec. 4-61. Recovery of costs if the county removes, repairs, or secures; lien.

- a. If the county removes, repairs, or secures a building, wall or other structure pursuant to Section 4-59, the cost or expenses thereof shall be chargeable to and paid by the owner of the property.
- b. Every charge authorized by this section may be collected by the county as taxes are collected.
- c. Every charge authorized by this section with which the owner of the property has been assessed and which remains unpaid shall constitute a lien against the property. The lien shall rank on a parity with liens for unpaid local taxes and shall be enforceable in the same manner as provided in Virginia Code §§ 58.1-3940 *et seq.* and 58.1-3965 *et seq.*

Sec. 4-62. Written consent.

Notwithstanding the foregoing, with the written consent of the property owner, the county may, through its agents or employees, demolish or remove a derelict nonresidential building or structure provided that such building or structure is neither located within or determined to be a contributing property within a state or local historic district nor individually designated in the Virginia Landmarks Register. The property owner's written consent shall identify whether the property is subject to a first lien evidenced by a recorded deed of trust or mortgage and, if so, shall document the property owner's best reasonable efforts to obtain the consent of the first lienholder or the first lienholder's authorized agent. The costs of such demolition or removal shall constitute a lien against such property. In the event the consent of the first lienholder or the first lienholder's authorized agent is obtained, such lien shall rank on a parity with liens for unpaid local taxes and be enforceable in the same manner as provided in Section 4-61. In the event the consent of the first lienholder or the first

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lienholder's authorized agent is not obtained, such lien shall be subordinate to that first lien but shall otherwise be subject to Section 4-61.

Sec. 4-63. Civil penalty.

If the owner of the property should fail to remove, repair, or secure the building, wall, or other structure within the time period specified in the notice the owner shall be liable for, in addition to any other cost and expense, a civil penalty of \$1,000.00.

Sec. 4-64. Remedies of this article not exclusive.

The remedies authorized by this article shall not be exclusive of any other remedy provided by law, including any remedy to abate, raze, or remove an unsafe structure or equipment as provided in the building code, or any remedy to abate, raze, or remove a building, wall, or structure that constitutes a public nuisance as provided in Virginia Code §§ 15.2-900, 15.2-1115, and 48-1 *et seq.*

State Law Reference: *Va. Code* §15.2-906

B. Status of Local Stormwater Management Program

Mr. Carter noted to the Board that an immediate decision was not necessary; however there was legislation awaiting the Governor's signature that would allow localities to opt out of administering the local storm water management program. He noted that staff has provided the comments regarding the pros and cons of opting out of this from the Soil and Water Conservation Districts and the consultant's perspective.

Mr. Carter added that the County was positioned now where all documents had been submitted to DEQ for comment in December and feedback had been received. He noted in light of the pending legislation he had asked the consultants to wait for a local decision before making any changes.

Mr. Carter then explained that if done locally, the County would have more control and could always opt out in the future and have DEQ do it. He added that doing it locally involved more local costs for program administration and there would likely be changes that would have to be incorporated into the program.

Ms. Brennan noted that either way, the County could change its mind so they were not locked in going one way or another.

Mr. Padalino agreed that Ms. Sappington's analysis was spot on; however if administered locally, David Thompson would be in charge of it and he may have additional input.

Mr. Carter noted that none of the County staff had been trained and would have to be trained and pass examinations. He noted that Mr. Thompson would prefer to outsource most of the

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work to the TJSWCD. He added that from his perspective it would be another administrative burden and he recommended letting DEQ do it and see how it worked.

Mr. Bruguiere noted that citizens would have to pay full fees to DEQ if they did it and Mr. Carter noted that this would have to be done if it were a local program also. He noted that TJSWCD did E&S plan reviews now and would need more funding for storm water plan review and inspections. He added that he would not recommend reducing local fees below state fees and that he was not sure Mr. Thompson would be comfortable that his office could do without additional staff. Mr. Saunders noted that he thought they could handle this with the building permits being down.

Ms. Brennan noted that her concern was that if DEQ did it, projects might be delayed. Mr. Carter noted that they would have to adhere to the prescribed timelines and they were presently administering the program. He added that if the Board opted out, staff could still get certified.

Mr. Hale then moved that the County let DEQ implement the Virginia storm water management program for Nelson County and Mr. Bruguiere seconded the motion. There being no further discussion, Supervisors voted (4-1) by roll call vote to approve the motion and Mr. Saunders voting No.

C. Gladstone Volunteer Fire and Rescue Services - Ambulance Grant Application

Mr. Carter noted that Mary Katherine Allen had emailed him asking for a letter of support from the Board for the Gladstone Volunteer Fire and Rescue Services (GVFRS) ambulance grant application. He added that it would be for 50% local match of approximately \$87,000.

Mr. Harvey suggested that the letter needed to say that the Board would fund a matching amount to the state grant funds. He added that the State appropriated funds based on the type of ambulance and if their quote was high, then the County only needed to fund the same thing the state funded. He added that they could draw any additional funds needed from the EMS Council so he suggested that the Board state they would approve a 50% local match and not state an amount.

Mr. Harvey then moved to send GVFRS a letter of support for their grant request from the State and say that they would provide an identical amount to that of the state.

Mr. Hale seconded the motion and clarified that they would provide a 50% match equal to that provided by the state.

There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

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D. Massies Mill Recreation Center Asbestos Abatement and Demolition Project
(**R2014-19**, Authorization to Execute Contract)

Mr. Carter noted that staff was presenting a resolution to award the contract for demolition of the Massies Mill Recreation Center to Jeff Thompson, Builder.

He added that the reason staff was bringing this forward was because the funding for this had not been budgeted and he wanted them to be comfortable with the cost. He added that total costs may be more because the County would be paying for disposition of the material at the Region 2000 landfill. He added that transportation costs were included in the price; however the County would be paying tipping fees. He noted that the invitation to bid specified that the waste would have to go to the Region 2000 landfill; however clean block etc. could be taken elsewhere per DEQ and this was up to the contractor.

Mr. Saunders clarified that the additional expense would be for the tipping fees but not the transportation.

Mr. Harvey asked if they had specified to remove the concrete floor and Mr. Carter confirmed it did. He also noted that it was too difficult to estimate the tonnage.

Mr. Carter then advised that the work included the removal of a fuel tank because it had been determined that the tank had not leaked. He added that if this turned out to be different, the contractor would have to go through the proper disposal process with the environmental consultant.

Mr. Carter noted that if accepted by the Board, Staff would bring back a budget amendment and the funds would come out of the General Fund. He noted that the asbestos went to a hazmat facility and there were a lot of asbestos related costs in the project.

Mr. Bruguiere then moved to approve Resolution **R2014-19** Resolution Authorizing the Award and Execution of a Contract for the Asbestos Abatement and Demolition of the Massies Mill Recreation Center, Project #2014-MMRC.

Mr. Bruguiere 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 resolution was adopted:

RESOLUTION-R2014-19
NELSON COUNTY BOARD OF SUPERVISORS
RESOLUTION AUTHORIZING THE AWARD AND EXECUTION OF A
CONTRACT FOR THE ASBESTOS ABATEMENT AND DEMOLITION OF THE
MASSIES MILL RECREATION CENTER, PROJECT #2014-MMRC

WHEREAS, sealed bids for project #2014-MMRC, Massies Mill Recreation Center Building Demolition, were received on February 27, 2014; and

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WHEREAS, Jeff Thompson Builder was the lowest responsive and responsible bidder out of six bidders at a bid of \$74,400.00;

NOW BE IT RESOLVED, by the Nelson County Board of Supervisors, the County Administrator, Stephen A. Carter, be and is hereby authorized to award and execute a contract on behalf of Nelson County with Jeff Thompson Builder, Afton Virginia in the amount of \$74,400.00 for the completion of project #2014-MMRC inclusive of asbestos abatement and building demolition of the Massies Mill Recreation Center and removal and disposal of an on-site underground heating oil storage tank.

Mr. Bruguiere then inquired about getting more dirt brought into the old Health Department site and Mr. Carter noted that the contractor was coming back when the weather dried up and would rework it, seed it, and apply straw to it. It was noted that the slope was specified at 3 to 1.

Mr. Harvey noted that he thought a lot of water drainage was coming from the parking lot now and French drain may need to be installed.

- E. Closed Session Pursuant to Code of Virginia § 2.2-3711 (A)(3): Discussion of the Acquisition of Real Property for a Public Purpose, (A)(5): Discussion of Proposed Existing Business Expansion, (A) (7): Consultation with Legal Counsel on the Leasing of County Property

Mr. Hale 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)(3): Discussion of the Acquisition of Real Property for a Public Purpose, (A)(5): Discussion of Proposed Existing Business Expansion, (A) (7): Consultation with Legal Counsel Regarding the Leasing of County Property.

Mr. Harvey seconded the motion and Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

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

Upon reconvening in open session, Mr. Hale move 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. Bruguiere seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

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F. Work Session – Communications Tower Ordinance

Mr. Payne noted that he would like to add a line to the definition of Class C tower that was strictly from federal language that was not presently included in the draft. He then noted that the red and blue text identified the “mountain scenery” related items that had been added so that if 20-2-7 was removed, all of these could also come out.

Supervisors and staff began by discussing the following:

20-2-7 Minimize the negative economic impact on tourism by protecting pristine mountain scenery.

Supervisors discussed whether or not this text should be removed with Mr. Harvey, Mr. Saunders, and Mr. Bruguere in agreement that it should be removed and conversely Mr. Hale and Ms. Brennan agreeing it should remain.

Mr. Harvey’s reasoning for its removal was that he did not think it was applicable to the County and there was more going on in the County than tourism.

Mr. Padalino then noted that his thought behind adding this was that per their previous discussion, setbacks were not working well and were creating more problems than solutions. He noted that these were requiring tower sitters to go 2 miles off of the Scenic Byways and go more into the mountain areas. He noted that there were several mountains including Crawford's Knob and Humpback Mountain that he would like to see protected.

Mr. Harvey argued that the only access into the Blue Ridge was from the Blue Ridge Parkway and there was no other access off of there to put in subdivisions or towers etc. It was noted that a tower had been proposed to go on the west side of Ennis Mountain where there would be all mountain background behind it.

Supervisors debated whether or not protecting pristine mountain scenery was a universal value in the County. Mr. Hale argued that the way the ordinance was written, the Board could grant exceptions. He added that there were not that many pristine mountain views; however he would be happier to have it in and grant an exception. Ms. Brennan agreed; however she suggested that they have towers be close to the road so they were not as obtrusive when highlighted in the sky.

Mr. Payne then noted that the problem with the setbacks was that they put the towers out where they were more seen and one would rather see them on the road than on the mountain behind their house. He noted this was a change in the pattern of thinking. Mr. Hale noted that by changing (reducing) the setbacks, they had largely met the needs of the cell tower companies.

Mr. Padalino noted that the applicant still had the ability to request being on a mountain if it met design standards set forth in the ordinance. He added that he had consulted with tower siting specialists and they thought the new language was more appropriate and practical than

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just slapping a setback change on it. Supervisors agreed that standards of location were needed; however some of the wording may need to be changed. Mr. Hale indicated he was concerned with areas east of Route 29, such as: Pilot Mountain, Bald Mountain, and Willoughby Mountain. Mr. Padalino noted that these include ones that were associated with Scenic Byways.

Following discussion, Supervisors agreed by consensus to remove this definition completely.

20-2-10 Promote and facilitate the availability of wireless telecommunication services to Nelson County citizens, businesses, and visitors, in support of advancing educational goals, attaining and maintaining a strong rural economy, and providing law enforcement and emergency services.

Mr. Payne and Mr. Padalino noted that this had been added in response to public comment that positive language be included.

Supervisors agreed by consensus to leave this language in.

20-4 Definitions

Class C Communication Tower: Any communication tower located in a Residential, R-1; Residential, R-2; or Residential Planned Community, (RPC) District; or any communication tower in any district that is greater than one hundred (100) feet in tower height, to a maximum allowed height of 130 feet; or any communication tower within three hundred (300) feet of an occupied dwelling, provided however, if the owners of all such occupied dwellings affirm in writing to the applicant that they have no objection to the proposed tower, then this final clause shall not, standing alone, cause the proposed communication tower to proceed as a Class C communication tower application.

Mr. Payne recommended an addition to the end of the definition of “A communication tower greater than 100 ft in height is a telecommunication facility for purposes of state law”. He noted that this class triggered the public notification process.

Supervisors agreed by consensus to add this language.

Final Approving Authority: The Nelson County Planning and Zoning Director or the Board of Supervisors, as designated in this Article.

Staff noted that the Planning Commission’s job was to determine if a tower application met the intent of the Comprehensive Plan.

Mountain Ridge: A ridge with an elevation of one-thousand (1,000) feet or higher above mean sea level and an elevation three hundred (300) feet or more above the elevation of an adjacent valley floor.

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Mr. Harvey suggested looking at the heights of specific mountains that they were trying to protect and incorporate this here.

Following brief discussion, Supervisors then agreed by consensus to keep the language as presented.

Substantial increase in the size of a previously approved Communication Tower:

Mr. Payne noted that this language was a National Protocol and no changes were made.

Undeveloped mountain slope, ridge: A mountain which has an appearance that is essentially void of man-made elements, such as built structures or infrastructure, and which retains a natural, pristine appearance.

This language was removed due to its association with the removal of 20-2-7 *Minimize the negative economic impact on tourism by protecting pristine mountain scenery.*

Viewshed (1) National Park System: An unobstructed sight or the range of one's sight while traveling, visiting, driving or otherwise, using the natural or man-made resources of the Blue Ridge Parkway (BRP) or Appalachian National Scenic Trail (AT). For the purposes of this ordinance, the viewshed distance is a minimum of one (1) air mile from the outermost boundary line of the National Park System unit, and shall include the forested mountain slopes extending down from the crest of the Blue Ridge to the surrounding valleys below.

The added language of “*and shall include the forested mountain slopes extending down from the crest of the Blue Ridge to the surrounding valleys below*” was not kept due to its association with the removal of 20-2-7 *Minimize the negative economic impact on tourism by protecting pristine mountain scenery.*

C. Mountain Scenery Protection Requirements.

All proposed new tower sites shall be subject to the following standards for location, which are intended to protect and preserve the natural beauty of Nelson County's undeveloped mountain scenery:

- 1. No new tower site shall be located on undeveloped mountain slopes or ridges which are immediately visible from the Blue Ridge Parkway, the Appalachian National Scenic Trail, or a Virginia Scenic Byway, or on undeveloped mountain slopes or ridges which contain publicly-owned recreation or conservation resources (including but not limited to National Forest or National Park Service resources).*
- 2. An exception to this prohibition of new tower sites on undeveloped mountain slopes or ridges may be granted by the Board of Supervisors if the following criteria are met:*
 - a) Mountain Scenery Design Standards:*
 - 1. Maximum tower height may be no more than fifteen (15) feet*

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above Existing Vegetative Canopy height.

2. Tower does not create a “silhouette” effect from National Forest or National Park resources, or from Virginia Scenic Byways.

3. All equipment is flush-mounted.

4. Tower is painted brown (or some other acceptable neutral color).

5. Lease area and all ground equipment are totally concealed, using site-specific materials and utilizing site-specific native plants for landscape screening.

6. Tower site is served by existing access road (which may be improved).

b) Public notification and public hearing: all proposed tower projects subject to “Mountain Scenery Protection Requirements” are processed according to the Class C procedures.

The entirety of the added language was not kept due to its association with the removal of 20-2-7 *Minimize the negative economic impact on tourism by protecting pristine mountain scenery.*

Mr. Harvey added that he did not think this language was necessary as putting towers at these locations was cost prohibitive.

20-13 Application and Procedure for Approval of a Class C Communication Tower Permit

D. Balloon Test. For any proposed tower requiring a Class C Communication Tower Permit, a balloon test shall be conducted as follows:

Mr. Harvey asked for clarification on the need for this and Mr. Padalino noted that he thought these to be valuable. Mr. Harvey noted that he thought that the neighbors were the ones who needed to see the balloon test, not just staff and the Planning Commission. He added that he thought that anyone within visibility of the balloon test should be notified and maybe they should require a general public notice. Mr. Padalino agreed and suggested that at a minimum the district Supervisor should be notified.

Following discussion, Supervisors agreed by consensus to add language so that the tower applicant was required to publish a public notice in a paper of general circulation at least seven (7) days prior to the balloon test. Mr. Padalino noted that these were often rescheduled due to weather.

20-17 Tower Permit Amendments, Temporary Towers

B. Temporary Tower Permit Applications

1. Policy. The Planning and Zoning Director may administratively review and approve eligible permit applications for a Temporary Tower, as defined. The Planning and Zoning Director may require a performance bond in an amount determined by the Planning and

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Zoning Director as sufficient to effect removal. The applicant shall comply with the applicable provisions of Section 20-8, Building Permits and Section 20-9, Standards for Location: Mountain Scenery Protection.

Supervisors briefly discussed this which in turn sparked more discussion regarding the addition of 20-9 C Mountain Scenery Protection Requirements.

Mr. Payne advised that the Board had the general authority to modify certain restrictions and tower height was one of them.

Mr. Hale noted that he thought that Section 20-9 C should be kept because the Board could always make an exception. Ms. Brennan noted that she thought it was important to retain this language as she was afraid of the unknown and what could happen.

Mr. Harvey, Mr. Saunders, and Mr. Bruguere were not dissuaded from removing this language.

Mr. Hale acquiesced and noted that the Board still had the definition of 20-2-6 (20-2-6 *Restrict the location of communication towers that adversely impact the natural beauty of the mountains in Nelson County*) to fall back on which gave the Board the discretion to determine if a tower would have an adverse impact to the natural beauty of mountains.

Mr. Payne then referred the Board to page 14 to 20-13, Class C F- 2 which says the Board can consider design elements that would limit visual obtrusiveness. He also noted that in consideration of Class C towers, the applicant must prove that they cannot collocate etc.; so therefore they still have to clear the hurdles of E and F as follows:

20-13 Application and Procedure for Approval of a Class C Communication Tower Permit

E. Alternative Site(s): No new Class C Communication Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Supervisors that:

- 1. No commercially reasonable co-location alternatives fulfill the applicant's desired coverage, or*
- 2. The applicant's proposed antenna would cause electromagnetic interference with the antenna on existing towers or structures, or the antenna on the existing tower or structure would cause interference with the applicant's proposed antenna, or*
- 3. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.*

F. Factors considered in granting a Class C Communication Tower permit: The following factors shall be used in determining whether to issue a Class C Communication Tower Permit:

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1. Height of the proposed tower or pole and proximity of the tower or pole to residential structures and residential district boundaries;
2. Nature of the uses on adjacent and nearby properties, surrounding topography, surrounding tree coverage and foliage, design of the tower or pole, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
3. Proposed ingress and egress;
4. Applicant's co-location policy;
5. Consistency with the Comprehensive Plan and the purposes set forth in Section 20-2;
6. Proximity to commercial or private airports and heliports; and,
7. The results of the balloon test and subsequent photo simulations for compliance with the purposes as set forth in Section 20-2.

G. The Board of Supervisors may impose as conditions for approval such requirements and conditions as are necessary to satisfy or remedy the foregoing factors.

Supervisors agreed by consensus that definition 20-2-6 protected the natural beauty of the County and again agreed that 20-9-C would be removed.

Staff then advised that the language referring to *and Section 20-9, Standards for Location* could remain given that this still applied; however the additional language of *and Mountain Scenery Protection* would be removed.

20-18 Application Fee Schedule

Class B Communication Towers: An application fee of \$1,000.00.

Class C Communication Towers: An application fee of \$2,000.00.

Tower permit amendment: An application fee of \$100.00.

Temporary tower: An application fee of \$500.00.

Staff noted that towers that were 40 feet and under could fit in these definitions depending on the zoning district and these fees would apply in those cases.

Having gone through the draft presented and the public hearing having been held on February 11, 2014, Mr. Hale moved to adopt **Ordinance O2014-01**, the Repeal of Sections 20-1 Through 20-19 of Article 20 of Appendix A, Zoning, of the Code of Nelson County Virginia, and The Enactment of Replacement Sections 20-1 Through 20-22 as adjusted during the meeting as follows:

1. The removal of 20-2-7 and renumbering of this section accordingly,
2. The addition of 20-2-10 as renumbered,
3. The additional language as recommended by Mr. Payne to the definition of Class C Communication Tower,
4. The removal of the proposed definition of Undeveloped mountain slope, ridge,
5. The removal of the additional language added to the definition of Viewshed (1),

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6. The removal of proposed Section 20-9 C. Mountain Scenery Protection Requirements,
7. The addition of language to Section 20-1 3D that requires a balloon test to be advertised in a paper of general circulation within the County at least seven (7) days prior to such test.
8. The addition of language referring to Section 20-9, Standards for Location in Section 20-17 B Temporary Tower Permit Applications subsection 1. Policy

Mr. Bruguiere seconded the motion and Mr. Saunders indicated that he was not comfortable with voting on something that had not been seen in final draft and Ms. Brennan agreed.

Mr. Hale then inquired if there were applications pending based on the decisions made by the Board that day. Mr. Padalino noted that there were some applications pending and he clarified that any applications in process would be grandfathered under the old ordinance.

After brief discussion, Mr. Hale stated that his original motion stood as made and there being no further discussion, Supervisors voted (3-2) by roll call to approve the motion, with Mr. Saunders and Ms. Brennan voting No and the following Ordinance was adopted:

**ORDINANCE O2014-01
NELSON COUNTY BOARD OF SUPERVISORS
THE REPEAL OF SECTIONS 20-1 THROUGH 20-19 OF ARTICLE 20 OF
APPENDIX A, ZONING, OF THE CODE OF NELSON COUNTY VIRGINIA, AND
THE ENACTMENT OF REPLACEMENT SECTIONS 20-1 THROUGH 20-22 AS
FOLLOWS:**

ARTICLE 20. COMMUNICATION TOWER ORDINANCE
--

20-1 *Title.*

This section shall be known as the Communications Tower Ordinance of Nelson County, Virginia.

20-2 *Purpose.*

The purpose of this article is to establish a clear guideline for siting all types of communication towers in Nelson County so as to:

20-2-1 Protect the health, safety, and general welfare of residents and visitors in Nelson County.

20-2-2 Avoid potential damage to adjacent properties from Communication Tower failure including but not limited to excessive wind or ice, and falling ice or debris.

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- 20-2-3 Minimize potential hazards from Communication Towers to private aircraft, low-flying law enforcement and medical aircraft, and helicopters.
- 20-2-4 Maximize the use of existing Communication Towers to reduce the collective number of towers required in Nelson County for all varieties, types, and forms of wireless service.
- 20-2-5 Regulate the placement, appearance, and construction of all varieties, forms, and types of Communications Towers.
- 20-2-6 Restrict the location of communication towers that adversely impact the natural beauty of the mountains in Nelson County.
- 20-2-7 Protect the view from the Blue Ridge Parkway, Appalachian National Scenic Trail, and along designated Virginia Scenic Byways.
- 20-2-8 Protect the University of Virginia's observatory on Fan Mountain from light pollution.
- 20-2-9 Promote and facilitate the availability of wireless telecommunication services to Nelson County citizens, businesses, and visitors, in support of advancing educational goals, attaining and maintaining a strong rural economy, and providing law enforcement and emergency services.

20-3 *Jurisdiction.*

This ordinance shall apply to all areas of unincorporated Nelson County.

20-4 *Definitions.*

For the purposes of this Article 20, the following definitions are provided:

ANSI: American National Standards Institute

Antenna: Any apparatus or device used for the purpose of collecting or transmitting electromagnetic waves, including, but not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whip antennas. Antennas for receiving broadcast signals only for non-commercial use and antennas for licensed amateur radio operators and citizens band operators are excluded from this definition.

Antenna array: An orderly arrangement of antennas mounted at the same height on a tower or other structure and intended to transmit a signal providing coverage over a specific area.

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Base station: The wireless service provider's specific equipment used to transmit and receive radio signals within and including cabinets, shelters, pedestals or similar enclosures generally used to contain electronic equipment for said purpose.

Class A Personal Wireless Services: As defined in Section 20-6 of this Article.

Class B Communication Tower: A communication tower which is equal to or greater than forty (40) feet in tower height and which is less than or equal to one hundred (100) feet in tower height located in a Conservation District, C-1; Agricultural District, A-1; Service Enterprise District, SE-1; Business, B-1; Business, B-2; Industrial, M-1; or Industrial, M-2 zoning districts.

Class C Communication Tower: Any communication tower located in a Residential, R-1; Residential, R-2; or Residential Planned Community, (RPC) District; or any communication tower in any district that is greater than one hundred (100) feet in tower height, to a maximum allowed height of 130 feet; or any communication tower within three hundred (300) feet of an occupied dwelling, provided however, if the owners of all such occupied dwellings affirm in writing to the applicant that they have no objection to the proposed tower, then this final clause shall not, standing alone, cause the proposed communication tower to proceed as a Class C communication tower application. A communication tower greater than one hundred (100) feet in tower height is a telecommunications facility for purposes of state law.

Co-location: The practice of installing and operating multiple wireless carriers, service providers, and/or radio common carrier licensees on the same antenna support structure or attached wireless communication facility using different and separate antennas, feed lines, and radio frequency generating equipment.

Complete Application: Is an application that has been filed in the correct form in the proper office accompanied by the appropriate fee and all information required by this Article.

EIA: Electronic Industries Association.

Existing Vegetative Canopy: The existing vegetative plants, trees, or shrubs at the site-specific location of the proposed communication tower site that will provide natural camouflage, concealment, or otherwise hide the communication tower after its construction.

Existing structure: A lawfully constructed or established structure, but excluding (i) existing Communication Towers and (ii) flagpoles.

Feed lines: Cables used as the interconnecting media between the transmission/receiving base station and the antenna.

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Final Approving Authority: The Nelson County Planning and Zoning Director or the Board of Supervisors, as designated in this Article.

Least Visually Obtrusive Profile: The design of a wireless communication facility intended to present a visual profile that is the minimum necessary for the facility to function properly.

Mountain Ridge: A ridge with an elevation of one-thousand (1,000) feet or higher above mean sea level and an elevation three hundred (300) feet or more above the elevation of an adjacent valley floor.

Personal Wireless Services: Commercial mobile services, unlicensed wireless services, common wireless exchange access services, and unlicensed wireless broadband internet access.

Structure: Anything constructed or erected, the use of which required permanent location on the ground, or attachment to something having a permanent location on the ground. Fences are excluded from this definition.

Substantial increase in the size of a previously approved Communication Tower:

- (i) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- (ii) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- (iii) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- (iv) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the

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leased or owned property surrounding the tower and any access or utility easements currently related to the site.

Telecommunication tower, communication tower: Any tower or structure, natural or man-made, existing or erected, used to support one or more antennas, including self-supporting lattice towers, guyed towers, or monopoles. This term includes radio and television transmission towers, broadband towers, microwave towers, common carrier towers, wireless telephone towers, alternative tower structures and the like.

Temporary Tower: A telecommunication tower, not exceeding one hundred (100) feet in height, erected for a duration not to exceed thirty (30) days, located in a Conservation District, C-1; Agricultural District, A-1; Service Enterprise District, SE-1; Business, B-1; Business, B-2; Industrial, M-1; or Industrial, M-2 zoning district. The duration of a temporary tower may be extended by the Planning and Zoning Director for an additional thirty days if necessary to facilitate the intended use of the tower.

Tower Height: The vertical distance from the finished grade to the uppermost point of a communication tower including any antenna, beacon, light, lightning rod, or other fixtures attached to the communication tower. In the event an antenna is attached to a structure, the height of the structure shall be included in the tower height.

Tower Site: The real property, which an applicant(s) is required to have ownership of, leasehold of, interest in, easement over, or any combination of the aforementioned to locate a communication tower and any auxiliary buildings.

Unlicensed Wireless Service: The offering of telecommunication services using duly authorized devices which do not require individual licenses from the Federal Communications Commission, but does not mean the provision of direct-to-home satellite services. This service is sometimes referred to "License-Exempt". Users of the license-exempt bands do not have exclusive use of the spectrum and are subject to interference.

Viewshed (1) National Park System: An unobstructed sight or the range of one's sight while traveling, visiting, driving or otherwise, using the natural or man-made resources of the Blue Ridge Parkway (BRP) or Appalachian National Scenic Trail (AT). For the purposes of this ordinance, the viewshed distance is a minimum of one (1) air mile from the outermost boundary line of the National Park System unit.

Viewshed (2) Virginia Scenic Byway: An unobstructed sight or the range of one's sight while traveling, visiting, or driving along a highway that has been designated by the State of Virginia as a Scenic Byway.

20-5 *Telecommunication Facility Categories.*

- A. Class A Personal Wireless Services must comply with Section 20-6.
- B. A Class B Communication Tower requires approval by the Planning and Zoning Director and the issuance of a Class B Communication Tower Permit. For such applications, the Planning and Zoning Director shall be the Final Approving Authority.
- C. A Class C Communication Tower requires approval by the Board of Supervisors and the issuance of a Class C Communication Tower Permit. For such applications, the Board of Supervisors shall be the Final Approving Authority.
- D. Qualifying Permit Amendments and Temporary Tower permits require approval by the Planning and Zoning Director.
- E. Any antenna used exclusively for non-profit, non-broadcast, and non-commercial applications including, but not limited to, residential broadcast reception, amateur radio, citizens band radio, and public safety, local government, fire, rescue, police, and non-profit medical radio services is exempt from the requirements of this Article.

20-6 *Class A Personal Wireless Service Facilities.*

- A. Class A personal wireless service facilities (“Class A Facility”) erected in accordance with this Section 20-6 are permitted as a by-right use in all zoning districts except as provided below.
- B. A Class A Personal Wireless Service Facility is a facility that:
 - (i) is located within an existing structure but which may include a self-contained ground equipment shelter not exceeding one hundred fifty (150) square feet that is not within the building, or, a whip antenna that satisfies the design standards below; or
 - (ii) consists of one or more antennas, other than a microwave dish, attached to an existing structure and are flush mounted to the structure, together with associated personal wireless service equipment; or
 - (iii) consists of a single attachment pole attached to an existing structure the total height of which, together with a grounding rod, shall not exceed twenty (20) feet above the top of the structure. An attachment pole may be guyed to increase its stability; or
 - (iv) is located within or camouflaged by an addition to an existing structure; or,

- (v) is the placement of a freestanding monopole forty (40) feet or less in height in the following zoning districts: Conservation C-1, Agricultural A-1, Service Enterprise SE-1, Business B-1, Business B-2, Limited Industrial M-1, and Industrial M-2.

20-6-1 *Design Standards.*

1. *General Design.* The Class A Facility shall be designed, installed, and maintained as follows: (i) guy wires shall not be permitted except with attachment poles; (ii) outdoor lighting for the Facility shall be permitted only during maintenance periods; (iii) any cabinet or shelter not located within the existing structure shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation; (iv) in connection with an existing structure or monopole, a grounding rod, whose height shall not exceed two feet and whose width shall not exceed one inch in diameter at the base and tapering to a point, may be installed at the top of the structure and (v) a whip antenna less than six (6) inches in diameter may exceed the height of the existing structure or monopole.
2. *Antennas and associated equipment, existing structure exterior.* Equipment shall be attached to the exterior of an existing structure only as follows: (i) the total number of arrays of antennas attached to the existing structure shall not exceed three (3), (ii) each antenna shall not exceed one thousand one hundred fifty two (1152) square inches; (iii) each array shall contain no more than three (3) antennas, and (iv) no antenna shall project from the structure beyond the minimum required by the mounting equipment, and in no case shall any point on the face of an antenna project more than twelve (12) inches from the existing structure. These standards shall not apply to antennas and associated equipment that are located entirely within an existing structure.
3. *Antennas and associated equipment, attachment pole.* An attachment pole (i) shall not exceed three inches in diameter; and (ii) the total number of antennas shall not exceed three (3), and each antenna shall not exceed one thousand one hundred fifty two (1152) square inches.
4. *A freestanding monopole forty less than (40) feet in height.*
 - a) shall be constructed of either wood, metal, or concrete;
 - b) shall not exceed a maximum base diameter of thirty (30) inches and a maximum diameter at the top of eighteen (18) inches; and,
 - c) the total number of arrays of antennas attached to the monopole shall not exceed three (3), each antenna shall not exceed one thousand one

hundred fifty two (1152) square inches, and each array shall contain no more than three (3) antennas.

20-6-2 *Compliance.*

Any existing Class A Facility, not otherwise in compliance with the other provisions of the tower ordinance, shall be brought into compliance with the applicable provisions of this Article 20.

20-7 *Insurance.*

In connection with any application required in this Article, an applicant shall provide at the beginning of the permit application process a current Certificate of Insurance for general liability insurance for a minimum amount of one million dollars (\$1,000,000) per occurrence. Annually, subsequent to approval of an application, evidence that such insurance remains in force shall be provided to the Planning and Zoning Director. Failure to maintain the required minimum insurance shall result in the automatic termination of the permit.

20-8 *Building Permits.*

All plans for communication tower structures and auxiliary structures shall be approved by the Nelson County Building and Inspections Department. The proper building and inspection permit(s) shall be issued before construction begins. No building permit(s) will be issued until a communication tower permit from the Nelson County Planning Department has been issued to the applicant(s).

20-9 *Standards for Location.*

A. National Park System Notification.

No application for a communication tower permit to be located within the viewshed of the Blue Ridge Parkway (BRP) or the Appalachian National Scenic Trail (AT) shall be considered a Complete Application without first notifying the Virginia Department of Historic Resources (DHR), the BRP Superintendent, and/or the AT Superintendent in writing. Such notice shall:

1. be sent by certified mail, return receipt requested;
2. provide the location of the proposed communication tower;
3. describe the proposed communication tower, proposed antennas, and proposed ground equipment, including a copy of the engineered drawings detailing the proposed tower project; and

4. request the Superintendent(s) comment on the proposed communications tower in writing.

Comments received from DHR and/or the Superintendent(s) shall be submitted with the application. In the event DHR and/or the Superintendent(s) do not provide written comments within 60 days of receiving the applicant's notification, a communication tower permit application for review and comment may be submitted with evidence that the notice was sent.

B. Required Minimum Setbacks – Viewsheds (1) and (2).

1. No communication tower shall be located within one hundred-twenty (120) feet of any Virginia Scenic Byway.
2. No communication tower shall be located within one thousand three hundred twenty (1,320) feet of the nearest boundary of the Blue Ridge Parkway or the Appalachian National Scenic Trail.

20-10 *Reserved.*

20-11 *Co-location.*

Applicants for new communication tower permits must agree to allow additional permitted uses of the tower by future applicants, provided: (a) that these future uses do not interfere with use(s) of the tower by its owner(s) or other lessee(s); (b) space is available on the tower for co-location; and (c) tower owner and co-locator agree to lease terms. Design plans of a metal communication tower shall contain provisions to allow additional sections to be added for possible co-location of other providers.

20-12 *Application and Procedure for Approval of a Class B Communication Tower Permit.*

- A. Application Form: A Complete Application form, signed by the property owner(s), the property owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.
- B. Property Description: A recorded plat or recorded boundary survey of the parcel on which the facility will be located, provided that, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Nelson County Circuit Court deed book and page number.
- C. Plans and Drawings: A scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the Planning and Zoning Director, signed and sealed by an appropriate licensed

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professional. The plans and supporting drawings, calculations and documentation shall show:

1. A design plan showing the communication tower, base, and the foundations for all support structures, all proposed auxiliary buildings and other proposed improvements, and the methods by which antennas shall be located on the proposed communication tower. Metal communication towers shall meet all requirements of federal, state, and local government regulations and EIA and ANSI standards. The Nelson County Building Official may request, at the applicant's expense, an independent engineer to confirm the safety of the tower.
2. The utility connections within and to the proposed site.
3. The location and dimensions of all existing and proposed improvements on the parcel, including access roads and structures, that are within one thousand (1,000) feet of the proposed tower site, and the maximum height above ground level of the facility (also identified in height above sea level).
4. The benchmarks and datum used for elevations. The datum shall coincide with the Virginia State Plane Coordinate System, South Zone, North American Datum of 1983 (NAD83), United States Survey Feet North American Vertical Datum of 1988 (NAVD88), and the benchmarks shall be acceptable to the Planning and Zoning Director.
5. Except where the facility would be attached to an existing structure, the topography within three hundred (300) feet of the proposed facility, in contour intervals not to exceed ten (10) feet for all lands within Nelson County and, in contour intervals shown on United States Geological Survey topographic survey maps or the best topographic data available, for lands not within Nelson County.
6. The location of any stream, wetland, as identified by Army Corps of Engineers and/or the Virginia Department of Environmental Quality, and floodplain area within one thousand (1,000) feet of the proposed tower.
7. The height, caliper and species of all trees where the drip line is located within two hundred (120) feet of the facility that are relied upon to establish the existing vegetative canopy and screening of the tower and all trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted.
8. Fall Area: The minimum distance from the tower's base to the property line shall be: (i) wood poles – 100% of tower height; (ii) metal monopole - 110% of tower height; and (iii) lattice tower - 125% of tower height.

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9. All existing and proposed setbacks, parking, fencing, and landscaping.
10. The proposed safety measure(s) at the base of the communication tower for the safety and general welfare of the public.
11. Federal Aviation Administration (FAA) hazard determination report and documentation that the request presents no hazard to any airport.

D. Design Standards:

1. The Final Approving Authority shall approve the color of each metal, wood, or concrete monopole. The antennas, supporting brackets, and all other equipment attached to the tower shall be a color that closely matches that of the tower. The ground equipment, the ground equipment cabinet, and the concrete pad shall be a color that is consistent with the character of the area.
2. Each wood or concrete tower shall be constructed so that all feed lines, wiring, and similar attachments are located within the tower structure or facing the interior of the property away from public view as reasonably determined by the Planning and Zoning Director.
3. The facility shall be designed, constructed and maintained as follows: (a) guy wired towers shall not be permitted, and (b) lightning rod, whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of facility or the structure.
4. Unless waived or modified by the Final Approving Authority, equipment shall be attached to the tower as follows: (i) the total number of arrays of antennas attached to the existing structure shall not exceed three (3), (ii) each antenna shall not exceed one thousand one hundred fifty two (1152) square inches; (iii) each array shall contain no more than three (3) antennas, and (iv) no antenna shall project from the structure beyond the minimum required by the mounting equipment.
5. No slopes associated with the installation of the facility and accessory uses shall be created that are steeper than 2:1 unless proposed retaining walls, revetments, or other stabilization measures are acceptable to the Final Approving Authority.
6. The site shall provide adequate opportunities for screening and the tower shall be sited to have the Least Visually Obtrusive Profile from adjacent parcels and streets, regardless of their distance from the tower. If the tower would be visible from a state designated Scenic River, Scenic Byway, or a National Park or National Forest, regardless of whether the site is adjacent thereto, the facility also shall be sited to minimize its visibility from such River, Scenic Byway, Park, or Forest. If the tower would be located on

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lands subject to or adjacent to a conservation easement or an open space easement, the facility shall be sited so that it is not visible from any resources specifically identified for protection in the deed of easement.

7. Identification sign. A sign measuring six (6) square feet or less, clearly visible, identifying the owner(s) and operator(s) of the communication tower site and a local or toll free emergency phone number for each. The sign shall be posted at the entrance to the proposed communication tower site.
8. Security Fencing. Towers shall be enclosed by security fencing no less than eight (8) feet in height and shall also be equipped with an appropriate anti-climbing device, however, the Final Approving Authority may modify or waive such requirements.
9. Landscaping. The following requirements shall govern the landscaping surrounding the communication tower; however, the Final Approving Authority may modify or waive such requirements.
 - a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the support buildings at any time of year from adjacent property. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the facilities.
 - b) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, the Final Approving Authority may determine that the natural growth around the property perimeter is sufficient buffer.
 - c) Existing trees within one hundred-twenty (120) feet of the tower shall not be removed except as may be authorized to permit construction of the tower and installation of access for vehicles and utilities.
10. Lighting.
 - a) The communication tower shall be unlit unless required by a federal agency.
 - b) A light installed on the outside of the building shall be a manually turned on/off switch for use only when service representatives are present on the site.
 - c) A light installed on an equipment cabinet shall be no more than one (1) foot above the top of the cabinet.

- E. The Final Approving Authority reserves the right to refer this documentation to a telecommunication consultant for verification that the site selected is an appropriate site to provide reasonable communication service to Nelson County and to locate other alternative sites for consideration. The applicant will be responsible for the cost of this review.
- F. The Planning and Zoning Director shall review a Complete Application for compliance with the foregoing requirements, the other provisions of this Article 20, and other applicable law, and upon finding the application to be in compliance, shall issue a Class B Communication Tower permit.

20-13 *Application and Procedure for Approval of a Class C Communication Tower Permit.*

- A. A Class C Communication Tower may be established upon approval of a Class C Communication Tower Permit by the Nelson County Board of Supervisors initiated upon a Complete Application which satisfies the requirements for a Class B Communication Tower Permit and the additional requirements in this subsection.
- B. Upon receipt by the Planning and Zoning Director of a Complete Application, the Planning Commission shall conduct a review of the application to determine whether the proposed communication tower is substantially in accord with the Comprehensive Plan and communicate its determination together with any additional recommendations to the Board of Supervisors. In connection with any such determination, the Planning Commission may, and at the direction of the Board of Supervisors shall, hold a public hearing, after notice as required by Section 15.2-2204 of the Code of Virginia. The Planning and Zoning Director shall mail by first class mail a copy of the public hearing notice to landowners adjacent to the proposed site and may rely upon the tax map and land books for purposes of determining such landowners and their mailing addresses. The Planning Commission's actions shall comply with the requirements of the Federal Telecommunications Act of 1996. Failure of the Planning Commission to act on any such application within 90 days of such submission shall be deemed approval of the application by the Planning Commission unless the Board of Supervisors has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The Board of Supervisors may extend the time required for action by the Planning Commission by no more than 60 additional days. If the Planning Commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the Planning Commission.
- C. The Board of Supervisors shall hold at least one (1) public hearing on the application after notice as required by Section 15.2-2204 of the Code of Virginia, and make its decision on the application within one hundred fifty (150) days from the date the Complete Application was submitted to the Planning and

Zoning Director. This time period may be extended by the Board of Supervisors provided the applicant consents to the extension.

D. Balloon Test. For any proposed tower requiring a Class C Communication Tower Permit, a balloon test shall be conducted as follows:

1. The applicant shall contact the Planning and Zoning Director within ten (10) days after the date the Complete Application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within forty (40) days after the date the Complete Application was submitted, and the applicant shall provide the Planning and Zoning Director with at least seven (7) days prior notice, provided that this deadline may be extended due to inclement weather or by the agreement of the applicant and the agent. The applicant shall cause to be published in a newspaper having general circulation in the county notice of the time and place of the balloon test at least seven days prior to such test.
2. Prior to the balloon test, the location of the access road, the lease area, and the tower site of the proposed tower shall be surveyed and staked or flagged in the field.
3. The test shall consist of raising one or more balloons from the site to a height equal to the proposed tower.
4. Photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and other properties and locations as directed by the Planning and Zoning Director and shall be superimposed to scale onto the photographs. The photographs must be filed with the Planning and Zoning Director before the application can be reviewed by the Planning Commission.

E. Alternative Site(s): No new Class C Communication Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Supervisors that:

1. No commercially reasonable co-location alternatives fulfill the applicant's desired coverage, or
2. The applicant's proposed antenna would cause electromagnetic interference with the antenna on existing towers or structures, or the antenna on the existing tower or structure would cause interference with the applicant's proposed antenna, or
3. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

F. Factors considered in granting a Class C Communication Tower permit: The following factors shall be used in determining whether to issue a Class C Communication Tower Permit:

1. Height of the proposed tower or pole and proximity of the tower or pole to residential structures and residential district boundaries;
2. Nature of the uses on adjacent and nearby properties, surrounding topography, surrounding tree coverage and foliage, design of the tower or pole, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
3. Proposed ingress and egress;
4. Applicant's co-location policy;
5. Consistency with the Comprehensive Plan and the purposes set forth in Section 20-2;
6. Proximity to commercial or private airports and heliports; and,
7. The results of the balloon test and subsequent photo simulations for compliance with the purposes as set forth in Section 20-2.

G. The Board of Supervisors may impose as conditions for approval such requirements and conditions as are necessary to satisfy or remedy the foregoing factors.

20-14 *Completion Requirement.*

Unless a longer period of time is authorized in the permit by the Final Approving Authority, construction of Class B and C tower structures shall be completed within one year of the date of issuance of the permit. The completion deadline may be extended for one additional year by the Planning and Zoning Director upon a showing by the applicant of unforeseen circumstances. In the event that the tower structure is not completed within the time specified, then the permit shall be void and any construction completed shall be removed within ninety (90) days.

20-15 *Removal and Reporting.*

- A. The facility shall be disassembled and removed from the site within ninety (90) days of the date its use for wireless communication purposes is discontinued.
- B. The applicant shall a report within thirty (30) days any change in the ownership of the facility. Information to be provided is the new owner(s) name, address, telephone number, e-mail address, and a 24 hour emergency telephone number and contact person to the Planning and Zoning Director.

20-16 *Access to Site.*

Nelson County shall be provided reasonable access to a Communication Tower and other permitted sites for the purpose of ensuring compliance with this ordinance.

20-17 *Tower Permit Amendments, Temporary Towers.*

A. Tower Permit Amendments

1. *Policy.* The Planning and Zoning Director may administratively review and approve eligible applications for amendments or alterations to an approved Communication Tower Permit, if the proposed amendment or alteration would not, in the Director's opinion, substantially affect or deviate from the terms or conditions of the original approved permit. The following types of amendments or alterations are eligible:
 - (a) the replacement or co-location of equipment that does not result in a substantial increase in the size of an existing Communication Tower, as defined; or
 - (ii) the replacement of a wooden monopole with a metal monopole of the same height that does not exceed a maximum base diameter of thirty (30) inches and a maximum diameter at the top of eighteen (18) inches; or
 - (iii) other amendments or alterations to an approved Communication Tower Permit that do not, in the Planning & Zoning Director's opinion, substantially affect the terms or conditions of the original permit, including but not limited to the replacement or alteration of equipment and related ground equipment or other facilities within the lease area.
2. *Procedures.* If an applicant's proposal for a Tower Permit Amendment meets the terms set forth in the Policy, the proposal requires a Complete Application containing the following information:
 - (i) A Complete Application signed by the facility's owner.
 - (ii) Specific information identifying the existing approved tower facility, including:
 - a. Tower name, number, and/or location; and
 - b. Approved Tower Permit number.
 - (iii) The design of the facility, including the specific type of support structure and the design, type, location, size, height, and configuration of all existing and proposed antennas and other

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equipment. The method(s) by which the antennas will be attached to the mounting structure shall be depicted.

- (iv) A scaled plan depicting fall area: The minimum distance from the tower's base to the property line shall be: (i) wood poles – 100% of tower height; (ii) metal monopole – 110% of tower height; and (iii) lattice tower – 125% of tower height.
- (v) Any alterations to the facility's setbacks, parking, fencing, and landscaping, as applicable.
- (vi) The requirements in items (iii) through (v) above may be waived by the Planning and Zoning Director if an appropriate approved plan is already on file with the County.

B. Temporary Tower Permit Applications

1. *Policy.* The Planning and Zoning Director may administratively review and approve eligible permit applications for a Temporary Tower, as defined. The Planning and Zoning Director may require a performance bond in an amount determined by the Planning and Zoning Director as sufficient to effect removal. The applicant shall comply with the applicable provisions of Section 20-8, Building Permits and Section 20-9, Standards for Location.
2. *Procedures.* If an applicant's proposal for a Temporary Tower Permit meets the terms set forth in the Policy, the proposal requires a Complete Application containing the following information:
 - (i) An application, signed by the parcel owner, the parcel owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.
 - (ii) The proposed duration for the Temporary Tower to be in place, including specific dates for placement and removal, not to exceed a maximum total duration of 30 days.
 - (iii) A sketch plan identifying the design of the Temporary Tower facility, including the location of the lease area within the property, the location of the Temporary Tower and other associated temporary equipment within the lease area, and the specific type of support structure, guy wires, and anchor.
 - (iv) A scaled, detailed drawing identifying the height of the Temporary Tower and the design, type, location, size, height, configuration,

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and method of mounting of all antennas and other equipment to be installed on the Temporary Tower.

- (v) A scaled plan depicting fall area. The minimum distance from the base of a Temporary Tower to the property line(s) shall be a minimum of 150% of the Temporary Tower height.
- (vi) All existing and proposed setbacks, parking, fencing, and landscaping.
- (vii) The requirements in items (iii) through (vi) above may be waived by the Planning and Zoning Director if an appropriate approved plan is already on file with the County.

20-18 *Application Fee Schedule.*

Class B Communication Towers:
An application fee of \$1,000.00.

Class C Communication Towers:
An application fee of \$2,000.00.

Tower permit amendment:
An application fee of \$100.00.

Temporary tower:
An application fee of \$500.00.

20-19 *Exemption from Regulations Otherwise Applicable.*

Except as otherwise exempted in this paragraph, each facility shall be subject to all applicable regulations in this chapter.

- A. The Final Approving Authority may authorize a metal communication tower to be located closer in distance than the required fall zone of the tower or other mounting structure to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners, acceptable to the County Attorney, addressing development on the part of the abutting parcel sharing the common lot line that is within the facility's fall zone. If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document. The fall area for a metal monopole and lattice tower may be waived or modified by the Final Approving Authority upon certification by a licensed professional engineer that the tower is designed to collapse within the property lines of the subject property.

- B. Except for towers subject to the location standards for View Shed (1) or View Shed (2) the area and bulk regulations or minimum yard requirements of the zoning district in which the facility will be located shall not apply.
- C. Notwithstanding Zoning Ordinance Article 2, Definitions – Yard, a facility may be located in a required yard.

20-20 *Modification of Certain Regulations.*

- A. The Board of Supervisors may modify the location or height restrictions, or both, upon a determination that (i) the strict application of the ordinance would produce undue hardship or severely limit the provision of telecommunication services; (ii) there are no commercially reasonable alternatives; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.
- B. In authorizing a modification, the Board of Supervisors may impose such conditions regarding the location, character, and features of the communication tower as it may find necessary for compliance with the purposes set forth in Section 20-2.
- C. No such modification shall be authorized except after notice and hearing as required by Section 15.2-2204 of the Code of Virginia.

20-21 *Authority of Planning and Zoning Director.*

- A. In addition to the foregoing provisions, the Planning and Zoning Director shall have all necessary authority on behalf of the governing body to administer and enforce this Communication Tower Ordinance, including written orders to remedy any condition found in violation of this ordinance and the initiation of legal action to insure compliance with the ordinance, including injunction, abatement, or other appropriate action or proceedings.
- B. If it should become necessary for an approved Communication Tower Permit to be changed, the Planning and Zoning Director shall upon an applicant's request either administratively approve an amendment to the permit in accordance with this Article, or, if the proposed change will substantially affect the terms of the original permit, require that a new application be submitted for review and action in accordance with this Article.

20-22 *Appeals.*

- A. A decision of the Planning and Zoning Director may be appealed to the Nelson County Board of Supervisors. An appeal shall be submitted in writing to the office of the Planning and Zoning Director within thirty (30) calendar days after the date of the denial.

- B. A decision of the Board of Supervisors may be appealed to the Nelson County Circuit Court by filing a petition specifying the grounds for the appeal within thirty (30) days after the Board's final decision.
- C. The denial of a permit shall be in writing and supported by substantial evidence contained in a written record.

V. Reports, Appointments, Directives, and Correspondence

A. Reports

- 1. County Administrator's Report

I. Courthouse/Government Center Project: Closeout discussion with Blair Construction on the tunnel connector to be scheduled. Final project retainage is being held pending this subject.

Consideration of Phase 2 (renovation of 1809-19705 structures) requires Board authorization to retain AE services, which can be accomplished in 60-75 days (approximate). Courthouse Committee (Messrs. Harvey and Saunders) to report.

II. Jefferson Building: Relocation of the Commonwealth Attorney's office is completed. Exterior restoration planned for completion by 6-30-14.

III. Health Department Building Demolition: Site restoration is pending.

IV. Massies Mill School Demolition: Schedule for BOS review and approval on 3-11.

V. Lovington Health Care Center: Additional feasibility assessment is in process. Status pending.

Mr. Carter noted that JABA just got the updated feasibility report and would be sending it to Staff.

VI. BR Tunnel and BR Railway Trail Projects: A) **BRRT** – Construction in progress with completion date of 5-15-14. B) **BRT** – Bids received on 3-6-14 ranging from \$1,090,438 to \$1,393,900, exceeding available funding. Resolution is pending.

Mr. Carter noted that the County may end up cancelling the bid process for the BRT and redoing it after some rework of the bid items.

VII. 2014 Gen. Reassessment: Board of Equalization will have additional meetings on March 24, 24 and 31 and April 2 and 3 (meeting with the Assessor on 4-2).

Mr. Carter reported that only about 20 people came to the BOE hearings; however the BOE had questions for the Assessors and some site reviews to conduct.

VIII. FY 14-15 Budget: Staff and BOS to establish date for initial budget work session.

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IX. ACRJA: Staff is representing Nelson County on the Regional Jail Authority's budget, superintendent selection and officer nominating committees.

X. Other: Questions from the Board.

Mr. Carter then reported that there was a meeting on LOCKN scheduled for the following day to have preliminary discussion and another meeting was to follow on the 17th. He added that he has emphasized to Ms Kelley and Dave Frey to make sure that the festival's financial revenues that should flow to the County would be on track. He noted that he would reiterate the importance of getting the 2013 information as well. He added that they were highly cooperative.

Mr. Carter then reported that Ms. Payne had shown staff a summary sheet from the Department of Taxation that had been presented to the Board. He noted that staff had indicated that the County was waiting on them to get the local share of the taxes paid to the state and it appeared that a small amount of lodging taxes were received. Mr. Carter noted that the report was what was paid to the state and did not look like it pertained to the County revenues. He added that he would speak with Dave Frey directly about this and he noted that the Lodging tax shown was just under \$3,000 and was for campers.

Mr. Saunders then noted that he thought that the County could say that if 2013 was not squared away then 2014 would not happen.

Mr. Carter reiterated that the County needed to have the LOCKN people report. He noted that all vendors were registered under LOCKN and some of them move around and were hard to keep track of. Mr. Harvey noted that the vendors paid their percentage to LOCKN every day; however this was not necessarily their taxes.

In response to questions about beer sales, Mr. Carter noted that most of the beer sold was by Starr Hill and 1% sales tax from that would come back to the county.

Mr. Saunders reiterated that if they cannot fix the 2013 tax issues, then they could stop it for 2014. Mr. Hale noted that staff was putting a lot of time into this and LOCKN needed to pay what was supposed to be paid. Ms. Brennan noted that she did not want to stop the 2014 concert and Mr. Saunders agreed but noted that the County needed to have some leverage with them.

2. Staff Report – Grant Massie, Keep Nelson Beautiful Council

Mr. Massie reported that as the KNB Council had been constituted, there was not a whole lot of continued interest. He noted that this was not to say that the community at large was not interested; however there was only one current member wanting to continue.

He noted that some of the things that KNB had accomplished were being done anyway and these efforts would continue. He noted that VDOT still had the adopt a highway program for

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trash pickup. He added that a group had done a trash up in Nellysford and VDOT liked pickups to be 4 times per year and Earth Day in April would be a pick up day.

Mr. Massie then noted he would do whatever the Board wanted and would continue to facilitate this group if desired. He added that the group did not have to be sanctioned by the Board in order to perform the same functions and he would still assist them. He noted that should the Board want to continue KNB, he would suggest that they meet quarterly instead of monthly.

Mr. Bruguire noted that he thought the Board should let this group go for now and if a group wanted to resume these functions, then they could be referred to Mr. Massie. He added that there was no point in appointing people who had not met and don't want to go any further. It was noted that the group was not established in the code so no formal action was needed.

Mr. Hale then asked Mr. Massie to identify which portions of Highways were adopted currently in the county and that way he could advise interested persons to participate in this program. It was noted that the Adopt a Highway holder had a VDOT permit for this. Mr. Saunders noted that there was some liability associated with the program and one had to be a certain age to do it. Mr. Harvey then advised that the local VDOT sheds had vests and bags to be distributed for this purpose.

Mr. Hale then asked if Mr. Massie could come up with a figure on the costs of glass recycling for two of the busier sites: Rockfish and Shipman in order to compare the return on investment versus the savings of taking it to Sonoco. Mr. Carter then advised that Staff was currently working on this. Mr. Massie then noted that open top cans cost around \$6,000 to \$8,000 each and compactors were more.

In conclusion, the Board agreed by consensus to let KNB go for now and to continue the County's recycling program.

3. Board Reports

Mr. Saunders reported the following:

1. He and Mr. Harvey met with staff and toured the older courthouse additions. He noted that they would like to visit Pittsylvania County and wanted to find out who the architect and builder was there. He noted that they had discussed adding on to the building to give the Circuit Court Clerk some more space.

He added that they wanted to set a time to meet with the new School Superintendent on their use of the old Commonwealth Attorney space and that they had asked Mr. Carter to advertise for an architect on this. Mr. Harvey added that the extension would be on the side of the Clerk's office and entryway. He added that Jean Payne may lose some windows from her office but with the addition, they could stay where they were. He noted that an expert was needed to give an opinion on the feasibility of this. He noted that they also discussed

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moving IT from the basement and how to get from the basement to the courtroom once the tunnel was brought through. He then suggested that the Board agree to move ahead with this.

Mr. Hale then noted that the Board had concluded what was to be done on the Jefferson Building exterior and had decided to hold off; however he thought they could start moving on that now. Mr. Saunders and Mr. Hale noted that they would proceed as discussed.

2. Mr. Saunders noted that he and Ms. Brennan had met with David Parr and they were awaiting some answers back on their questions.

3. Mr. Saunders reported that he had spoken with the FFA class on his property planting trees and that it was a delight to see such a great group of young people. He noted that they planted 3 acres of seedlings for him; however he thought it odd that they had to pay to use the bus to get there.

Mr. Bruguiere reported that he did not attend the EMS Council meeting; however Eddie Embrey had stepped down as President and David Graves had taken his place.

Mr. Bruguiere also reported that there was money available through TJSWCD for those in the upper Rockfish River basin to fix septic tanks for up to 50% of the costs to replace or repair them. He asked staff to see if this was on the website. He also noted that they had a 100 % cost share program for fencing, water access and wells program. He added that they would not cover the costs for power to the wells. He noted that the grant money was classified as income and recipients would get a 1099.

Mr. Hale reported the following:

1. Mr. Hale reported that the PDC had hired a new Director who would start on April 14th. He added that this had not been officially announced yet.

2. Mr. Hale reiterated what Mr. Carter had reported on the bids for the Tunnel. He noted it was disappointing that the bids were so far off from the engineers' estimate. He added that the specifications and drawings had flaws that caused the high bids and they would see what could be done to salvage it.

Mr. Harvey then noted that he understood that the creek that ran down Avon road (Goodwin Creek) was fed from the Tunnel and that if the water was cut off from there, the creek would dry up. Mr. Hale noted that the water would be channeled into a culvert and not cut off with the intention being to control the drainage.

3. Mr. Hale reported that at the NCSA meeting, a change was adopted that affected commercial properties and it was made to comply with VDH regulations.

Ms. Brennan reported the following:

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1. Ms. Brennan reported that the Director of Social Services had been terminated and has filed a grievance.
2. Ms. Brennan reported that Sam Taylor of Senator Warner's Roanoke office came by to introduced himself and see if the County had any federal issues.
3. Ms. Brennan reported that she had a call from a relative of Cecilia Epps who said she would give her a portrait picture.
4. Ms. Brennan reported that she spoke with Diana Driver about helping them with championship rings. She reported that the School Board gave them \$100 for each ring and to cover the whole cost would be another \$1400.

Mr. Harvey then moved to give the Drama Team an additional \$1,500 and Mr. Hale seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Mr. Saunders then noted that he was not being critical; however he noted the difference between the accomplishments of the FFA at a National level and the Drama Team's at a Regional level. It was acknowledged that winning the district and region for FFA was expected and the challenge was at the state and national levels for them. Supervisors agreed that this did not diminish the accomplishments of the Drama Team.

Supervisors then noted their appreciation for the thank you notes received from the students while not having heard a word from the fire and rescue agencies who have been provided with funding for new vehicles.

5. Ms. Brennan then reported that she attended a CIT meeting and things were going well.

B. Appointments

Ms. McGarry noted that the term of the James River ASAP Policy Board member was expiring and the incumbent James E. Hall wished to be reappointed. She noted the seat had been advertised, with no applications having been received.

Mr. Hale then moved to reappoint James E. Hall to the James River ASAP Policy Board and Mr. Bruguiere seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

C. Correspondence

1. General District Court Clerk, Funding Request

Mr. Carter noted the letter from Rosemary North requesting additional funding for more part time help. He added that she was asking for \$2,700 for more Part Time help through the end of the fiscal year. She noted that they had used up state money and that Judge Eggleston had told him he had returned \$25,000 to the County from traffic tickets. He added that more work had been created for them while creating more money for the county.

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Mr. Harvey thought this was a win-win for everyone and moved to approve the request as presented and Mr. Hale seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

D. Directives

Mr. Harvey, Mr. Hale, Mr. Bruguere, and Mr. Saunders had no Directives.

Ms. Brennan had the following directives:

1. Would like a report on Revenue Recovery next meeting.
2. Would like the debt service balance chart as discussed. Mr. Carter noted the listing was compiled however staff needed to add the annual payment amounts.
3. Would like to schedule a joint meeting with the School Board at some point soon.
4. Inquired as to the Board's interest in 2x2s with Wintergreen and the consensus was they were not interested in resuming them right now.
5. Inquired about the County's CIP and Mr. Carter noted this would be considered with the budget.

VI. Adjourn and Reconvene for Evening Session

At 5:50 pm, Mr. Harvey moved to adjourn and reconvene for the evening session and Mr. Hale seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion and the meeting adjourned.

EVENING SESSION

7:00 P.M. – NELSON COUNTY COURTHOUSE

I. Call to Order

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

II. Public Comments

There were no persons wishing to be recognized for public comments.

III. Public Hearings and Presentations

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A. Presentation – Virginia Cooperative Extension, Introduction of New Agents (D. Goerlich)

Mr. Carter introduced Mr. Dan Goerlich, the Central District Director and acting Unit Coordinator in the Nelson County VCE office.

Mr. Goerlich then noted that he would like to introduce two new extension agents: Ms. Carissa Wilson, the new 4H agent and Mr. John Benner, the A&R Extension agent. He added that of the 1/3 local funding for this position, 15% was from Nelson County and 85% was from Amherst.

Ms. Carissa Wilson addressed the Board and noted that she was originally from Alleghany County North Carolina. She noted that she graduated from Virginia Tech with an undergraduate degree in History and she was working on her Master's in Education with a specialty in Social Studies. She added that she was 22 years old and was excited to be in Nelson.

Mr. John Benner addressed the Board and expressed his appreciation for the county funding towards his position. He noted that he worked extensively with the Nelson/Amherst beef producers and the 4H Livestock Club. He noted he was working on a situational analysis and he had interviewed local beef producers in the County. He added that a lot of work that could be done was focused around the 4H Livestock Club. Mr. Benner then noted that the Nelson FFA club was advanced in animal science.

Mr. Benner then reported that two field days had been held with water quality as an agenda item as well as forage utilization and helping to reduce winter feeding costs. Mr. Benner noted that he had a Bachelor of Science degree in Animal Science and Agribusiness from Virginia Tech and was pursuing a Masters Degree online from NC State University.

Mr. Goerlich then noted that Mr. LaChance had conducted a successful fruit school that day at the Nelson Center.

He then noted that he had just planned to make the introductions and was happy to come back to speak to the Board about VCE anytime.

Mr. Goerlich then advised the Board that Virginia Tech had a Community Design Assistance Center that could help the County on the Sturt property through a department of forestry grant. Mr. Carter noted that Craig County had utilized them to develop a master plan for the downtown area.

Mr. Carter noted that he had been on the interview team that selected Ms. Wilson and he was very impressed with her.

Mr. LaChance noted that the County would benefit from Mr. Benner's emphasis on land improvement and the development of higher quality forages and he was looking forward to working with him.

IV. Other Business

A. FY14-15 Budget Work Session Schedule

Mr. Carter noted that Staff wanted to meet the following week sometime on the budget and Supervisors discussed meeting on Wednesday the 19th at 4pm. Mr. Carter noted that staff would provide an overview of the budget and then they would go from there.

V. Adjournment

At 9:00 pm, Mr. Hale moved to adjourn and continue until 4:00 pm on Wednesday, March 19, 2014 and Mr. Harvey seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by voice vote to approve the motion and the meeting adjourned.