

November 13, 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, in Lovingston Virginia.

Present: Constance Brennan, Central District Supervisor - Chair
Allen M. Hale, East District Supervisor
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
Andrew Crane, Information Systems Technician
Baylor Fooks, Broadband Network Operator

Absent: Afternoon Session – Thomas H. Bruguire, Jr. West District Supervisor

I. Call to Order

Ms. Brennan called the meeting to order at 2:07 PM, with four (4) Supervisors present to establish a quorum and Mr. Bruguire being absent.

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

II. Consent Agenda

Mr. Hale noted a correction to the October 14, 2014 minutes on page 51 regarding the Sturt Property Plan. He noted that the Nature Foundation at Wintergreen not the Nature Conservancy was conducting the flora and fauna assessment. Ms. McGarry noted she would confirm this via the meeting recording and adjust the minutes appropriately. Mr. Hale then noted he would like to remove item D from the Consent Agenda. Mr. Harvey then added that he would like to discuss item E and suggested that both items be removed.

Ms. Brennan then confirmed that there were two structures to be demolished in Shipman and staff noted that there were multiple structures there.

Mr. Hale then moved to approve the Consent Agenda items A-C and Mr. Harvey seconded the motion. There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following resolutions were adopted:

- A. Resolution – **R2014-76** Minutes for Approval

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**RESOLUTION R2014-76
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF MEETING MINUTES
(October 14, 2014 & October 30, 2014)**

RESOLVED, by the Nelson County Board of Supervisors that the minutes of said Board's meetings conducted on **October 14, 2014 & October 30, 2014** be and hereby are approved and authorized for entry into the official record of the Board of Supervisors meetings.

B. Resolution – **R2014-77** COR Refunds

**RESOLUTION R2014-77
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF COMMISSIONER OF REVENUE REFUNDS**

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

<u>Amount</u>	<u>Category</u>	<u>Payee</u>
\$146.57	2014 PP Tax & Vehicle License Fee	Charlene V. Campbell P.O. Box 75 Piney River, VA 22964
\$79.86	2014 PP Tax	Sherry M. Harrison 475 Toytown Rd Amherst, VA 24521
\$137.83	RE Tax	Larry Toms & Vickie Batten 3211 Village Drive Waynesboro, VA 22980
\$1,567.68	2014 PP Tax & Vehicle License Fee	Foster Fuels, Inc. P.O. Box 190 Brookneal, VA 24528
\$207.92	2013/2014 PP Tax & Vehicle License Fee and Penalty & Interest	Linda C. Hochheim and Lawrence Hochheim 1123 Rolling Hill Road Pamplin, VA 23958

C. Resolution – **R2014-78** FY15 Budget Amendment

RESOLUTION R2014-78			
NELSON COUNTY BOARD OF SUPERVISORS			
AMENDMENT OF FISCAL YEAR 2014-2015 BUDGET			
NELSON COUNTY, VA			
November 13, 2014			
BE IT RESOLVED by the Board of Supervisors of Nelson County that the Fiscal Year 2014-2015 Budget be hereby amended as follows:			
I.	Appropriation of Funds (General Fund)		
	<u>Amount</u>	<u>Revenue Account (-)</u>	<u>Expenditure Account (+)</u>
	\$ 5,000.00	3-100-002404-0001	4-100-031020-5419
	\$ 44,021.00	3-100-009999-0001	4-100-031020-5420
	\$ 49,021.00		

D. Resolution – **R2014-79** Approval of Job Description- Registrar

Mr. Hale noted his understanding was that the Registrar was hired by the Electoral Board and they were responsible for her work. Mr. Carter explained that the Code of Virginia says that the Registrar is a County Employee; however the State sets the salary which may be supplemented with local funds. Mr. Harvey likened this to being similar to the Director of Social Services position and Mr. Carter noted it was similar in that the position reported to another Board other than the Board of Supervisors; however they worked for a local agency.

Mr. Carter then explained that the County was governed by the Fair Labor Standards Act (FLSA) and these rules established the status of nonexempt (earn Overtime at time and a half) or exempt (not compensated for hours worked over 40 hours per week). He added that the Registrar position was classified as exempt per these regulations. He then gave examples of other exempt employees within the County classification system.

Mr. Harvey noted that he thought this issue to be similar to what the County went through with the Sheriff’s Department employees. Ms. McCann reported that she had spoken with the State Board of Elections to get a determination from them on the status of the position and they would not provide this because they said that it was a local position. Mr. Carter reiterated that the status depended on how it was established by the FLSA.

Ms. Brennan then inquired as to how it was decided whether to give pay or compensatory time for overtime hours and Mr. Carter noted this was budgetarily driven. Mr. Harvey added that generally, exempt employees were paid more in salary.

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Mr. Hale then clarified that exempt employees could not utilize compensatory time, which Mr. Carter confirmed. He reiterated that Federal law provided for these rules.

Ms. Brennan then inquired as to whether or not the Registrar had been exempt until now and Mr. Carter advised that it had just come to their attention and staff was now looking at it.

Mr. Hale then clarified that the Registrar has not been paid Overtime; however was earning compensatory time. Mr. Carter noted that she was reporting the compensatory time. Mr. Hale then inquired as to whether or not her salary was negotiated by the Electoral Board during the hiring process and Ms. McCann noted that the salary for the position was dictated by the state and was supplemented by the County.

Mr. Hale then questioned how staff had come up with the job description and Ms. McCann noted that the duties had come from the Code of Virginia. He then questioned whether or not the percentage of time spent on the duties had also come from the State Code and he supposed that the Electoral Board and or Registrar would be better suited for making this determination.

Mr. Saunders inquired as to there being a grace period before the job description went into effect so that the Registrar would not lose what she thought she was going to get. Ms. Brennan added that she thought there was a fairness issue to consider because the Registrar had a different situation in which all of her extra time was worked in a certain time period; during elections.

Mr. Harvey then suggested that there should have been better communication with the Registrar about the issue and Ms. McCann noted that the job description was based on State and Federal law and she had tried to discuss this with her. She added that they were not aware of this being an issue the previous year and when staff saw overtime being submitted, it was questioned.

Mr. Carter further explained that all other positions were classified within the job classification system and staff was bringing this one in once it was determined that it should be included. He added that the Registrar did not like being established as exempt. He noted that all employees had received their job description when they were established around eight (8) years prior, positions had been added and descriptions were developed, and the determination of exempt or nonexempt for each position was established. He noted that this determination was disclosed during the hiring process for positions.

Mr. Saunders suggested that one individual should not have been pointed out and perhaps staff should have sent all employees a reminder regarding their job descriptions and exempt or non-exempt status.

Mr. Carter noted that all employees were given a copy of their job description when hired and that this was not meant to single her out, but rather to address the issue when she had submitted a time sheet showing compensation time being accrued.

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Mr. Hale noted he did not understand why an exempt employee would do a time sheet. Mr. Carter advised that while his position was exempt, he still kept a time sheet in case there were ever any questions regarding the time he worked or took off. He added that it was not uncommon for many of the exempt employees to work well over forty (40) hours per week in order to perform their jobs.

Ms. Brennan then noted that in the past, the Registrar had taken compensation time off; with Mr. Carter noting it was unbeknownst to him. She noted that she did think it was an exempt job and acknowledged that a lot of employees worked more than forty (40) hours per week. She added that she did not think the process was good and staff should have involved the Registrar in the discussion sooner.

Mr. Hale added that he thought the job description should be done by the Electoral Board and Mr. Carter reiterated that the State Code dictated the duties of the Registrar.

Ms. Brennan then suggested that this consideration be deferred and the job description sent to the Electoral Board for review and then brought back.

Mr. Harvey then asked if the Registrar was hired under a different job description and Mr. Carter noted that the duties were established in the State Code and was what was followed.

Mr. Hale suggested that the Registrar should have been approached at such time that action was determined to be needed and this discussed with her and she could have been asked to work up her job description.

Mr. Carter then noted that the Registrar has time on the books and did not like the exempt determination. He added that this was a routine matter and she was just upset. Ms. Brennan agreed again that the position should be classified as exempt. She then again suggested that the matter be deferred until December and the Board agreed by consensus to do so and no action was taken.

E. Resolution – **R2014-80** Authorization for Administrative Planning & Zoning Review and Approvals

Mr. Carter explained that within the last forty-five (45) days the Director of Planning & Zoning had asked that a request for a new position be brought to the Board. He suggested that this be considered in the budget discussions and then suggested that Mr. Massie be given approvals to help with the workload. He noted Mr. Massie's former experience as the Director of Planning and Zoning in Amherst and that he was fully capable of doing the work. He added that the approval would enable him to make routine zoning decisions with the oversight of Mr. Padalino. He added that he was already doing enforcement and was giving Mr. Padalino general guidance.

Ms. Brennan noted she had spoken with Mr. Padalino who was very enthusiastic and appreciative of this consideration. It was then confirmed that Mr. Padalino was still the Zoning Administrator.

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The Board then questioned whether or not Mr. Massie's pay would be adjusted and Mr. Carter noted that Mr. Massie had suggested that he be paid more; however he advised him that this would be considered in spring during budget deliberations.

Mr. Hale noted he was not sure this needed to be done by resolution and rather could be done administratively; however he moved to approve resolution **R2014-80**, Authorization for Planning & Zoning Administrative Reviews and approvals, giving Mr. Massie the authority to perform plat reviews and approvals as well as administrative zoning permit approvals. Mr. Saunders seconded the motion and there being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following resolution was adopted:

Mr. Carter then advised that the Zoning Ordinance was changed recently that gave only the Planning and Zoning Director this authority and the "or designee" had been removed.

RESOLUTION R2014-80
NELSON COUNTY BOARD OF SUPERVISORS
AUTHORIZATION FOR PLANNING & ZONING ADMINISTRATIVE REVIEWS
AND APPROVALS

WHEREAS, Part-time planner, Mr. Grant Massie was previously employed for many years as the Amherst County Director of Planning and Zoning; and

WHEREAS, Mr. Massie has the qualifications and experience to perform plat review and approvals, as well as other routine administrative tasks; and

WHEREAS, having two employees authorized to perform routine administrative tasks such as conducting plat reviews and approvals and administrative zoning permit approvals, improves the efficiency of service delivery of the office of Planning and Zoning and therefore is in the best interest of the citizens of Nelson County;

NOW THEREFORE BE IT RESOLVED, by the Nelson County Board of Supervisors that Mr. Grant Massie, in his capacity as Part-time Planner, is hereby authorized to perform plat reviews and approvals as well as administrative zoning permit approvals on behalf of the Nelson County Planning and Zoning Department.

III. Public Comments and Presentations

A. Public Comments

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

B. VDOT Report

Mr. Austin was not present to report and no VDOT issues were discussed

C. Presentation – Architectural Partners, Courthouse Project Status

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Mr. Carter noted that the committee had met with Mr. Vernon and it was decided that Mr. Carter would report back to the Board on the cost estimation and status of the project.

He noted that the cost estimator firm in DC had completed their work and the estimate came back at \$8.8 Million which excluded a 10% construction contingency and 9% of project costs for AE Services; which meant the potential costs went to approximately \$9.5 Million.

He added that the committee met with Mr. Vernon and instructed him to consult with general contractors to see what they thought the project costs would be. Mr. Carter then noted the financing sheet that had been distributed showing terms of fifteen (15) and twenty (20) years. He added that the debt that would be coming off the books had an annual cost of \$332,000 and the committee had advised Mr. Vernon to work within that amount in revising the project.

Mr. Saunders added that within the cost estimate, three items added up to half of the \$8.8 Million, so they asked Architectural Partners to consult with other subcontractors to see if these were good numbers.

Mr. Carter then added that the annual amount for debt service of \$332,000 should be the all-in cost and include the financing costs which could be a couple hundred thousand.

Mr. Saunders then reported that while the committee really liked the design that Mr. Vernon had come up with and that he had done what was asked of him, it was discussed whether or not all of it needed to be done right now. He added that the committee briefly discussed building a new building which might be cheaper.

Mr. Hale added that he thought that the considerations which initiated the project and were the primary objectives, were to restore the Circuit Courtroom and fix associated problems and to expand the space of the Circuit Court Clerk. He noted that he thought it was important to continue to adhere to these goals unless there was a change in the Board's sentiment on this. He added that they should focus on the highest priorities and see what could happen after that.

Mr. Harvey noted that the Judge had indicated that expanding the Clerk's space was a priority.

Mr. Hale reiterated that Mr. Vernon had come up with a dream plan which was well conceived; however it was too costly so they were looking at it again. He added that the Commissioner of Revenue could be moved to another location and then the whole space had potential to be suitable to meet the Clerk's needs. He noted that after that, the rest would have to be considered.

Mr. Saunders suggested that they could just do the Clerk's Office first and then consider the Circuit Courtroom. Mr. Hale agreed and noted that there were features of the historic Courtroom that were worth preserving. He noted that Mr. Vernon could provide standalone figures for each of these.

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Mr. Saunders suggested that costs could be cut some more by having staff do most of the renovation work as they did in the new School Board space.

Mr. Harvey then noted that the Board may be taking a risk with a new judge coming in after Judge Gamble that may want a whole new building built.

Mr. Carter noted that this would be further reviewed at the committee level and brought back to the full Board. He added that keeping the preferred separation in the courtroom could make things complicated. Mr. Saunders and Mr. Hale both noted that the plans were great but were just too expensive.

Ms. Rorrer in attendance suggested that the Board keep in mind that a priority for the Judge was moving the HVAC unit outside of the courtroom. This was acknowledged as such by Mr. Saunders and Mr. Hale.

Mr. Hale then reported that Mr. Vernon would come back to the committee prior to the December Board meeting and then would report to the Board at that meeting. Mr. Carter advised that he would have Mr. Vernon stay within the range of annual debt service payment coming off in 2016 (\$332,000) and would advise him to work on taking care of the Circuit Courtroom and Clerk.

IV. New Business/ Unfinished Business (As May Be Presented)

Introduced: Broadband Public Hearing Questions

Mr. Carter noted that time permitting, staff would like to run through the public hearing information to be presented and take the Board's questions. He added that staff could go through the PowerPoint and return on investment analysis that had been developed.

Mr. Hale suggested that they wait until the public hearing for the presentation and Members agreed.

Ms. Brennan then asked if an effort had been made to expand in another way to include low-to-moderate income citizens and Mr. Carter noted that staff had focused on routes in the Route 151 corridor in order to meet the grant requirements of job creation and to facilitate the ability to advance the network further in unserved areas in the future. He reported that to date over the original thirty-one (31) miles of fiber network, 75% of the growth in the network had been in the Route 151 corridor and 25% of the growth was split between Route 29 and Route 6. He added that more than half of the fiber was in the Route 29 corridor. Mr. Carter then noted that 83 businesses had been surveyed with 80 responses received which spoke favorably to this strategy.

Mr. Carter then noted that broadband services had been deployed to some businesses in Lovingson aside from County offices, such as: Tiger Fuel, Nelson Food Market, and Mas Labor.

Ms. Brennan then asked if the network was being marketed to them and Mr. Carter noted that marketing services was the ISPs' responsibility; however they did advise citizens of their options. Ms. Brennan then asked if anyone besides Blue Ridge Internetworks could serve Lovingson and Ms. Rorrer noted that as of now that was the case; however Nelson Cable had recently signed a Service Provider agreement and would be in position soon to provide services on the network. Mr. Carter then reiterated that the network was an open access network.

V. Reports, Appointments, Directives, and Correspondence

A. Reports

1. County Administrator's Report

1. Courthouse Project Phase II: The project committee met on 11-7 with Architectural Partners (Mr. Jim Vernon) to discuss the cost estimate completed by TCT Cost Consultants (Washington, DC), which was previously emailed to the Board following receipt from AP, and to discuss, due to the significance of the cost estimate, what next steps the project should take. The outcomes of the meeting included: a) direction to AP to secure a cost estimate from a general contractor for comparison to the TCT estimate, b) AP to work to downsize the project scope to a cost range of \$3.62 to \$4.375 million (based upon sole use of the RRES annual debt payment amount, \$332,287.50 that will be available in FY18 and based on 15 and 20 year project repayment schedules), c) AP will not report to the BOS on 11-13 but will meet again with the Committee to report its findings and then meet with the BOS at the 12-9 regular session).

2. Broadband: County staff are working to complete and submit the \$200,000 grant application to VA-DHCD on 11-15. The first of two project public hearings was conducted on 11-6. The second public hearing will be conducted at the 11-13 BOS meeting, including approval consideration by the Board of a resolution endorsing the submittal of the grant application. The grant application requires a 50% cash (\$100,000) match. The 11-13 agenda includes information on the project, which consists of three expansion areas (along Rt. 151 north and south and Rt. 6 west towards Afton Mt.). The presentation of this subject and conduct of the public hearing will include an update of the ROI (Return on Investment) projection, which is considered critically important to demonstrate the potential for success of the overall network the project can have. Another significantly important consideration is a commitment by the Board to all three project expansion areas and consideration of an additional \$37-\$40 thousand to provide full funding for the estimated cost of the project \$307,000 and an additional 10% construction contingency of \$30-\$33,000.

3. BR Tunnel and BR Railway Trail Projects: **A) BRRT** – Final retainage is pending payment to Keith Barber Construction due to additional informational requirements to be submitted to VDOT to provide for project close out. **B) BRT** – Construction of Phase 1 is in progress (following issuance by DEQ on 10-31 of the project's Storm water Permit). It is anticipated that significant progress will now be made by the project's general contractor, Fielder's Choice Enterprises. Receipt from VDOT is pending for the contract addendum providing funding for Phase 2's completion (Bulkhead Removal). Once, the addendum is

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received, this phase will proceed to construction bidding as quickly as possible. An application for Phase 3 funding (\$1.5 million for Tunnel restoration and western trail and parking area construction) was submitted to VDOT on 10-31. The appraisal for acquisition of trail and parking area easements from ROLC was received on 11-7 and will be submitted to DCR for confirmation on 11-10. Tours of the Tunnel with approximately 60 VDOT engineers was conducted on 10-29 and on 11-5 with the Lynchburg and Culpeper Commonwealth Transportation Board members, Lynchburg District Administrator and staff and County representatives (including Ms. Ann Malleck of the Albemarle County BOS).

- A) Mr. Carter noted that once the BRRT grant closed out any remaining funds could be rolled over to the Tunnel project.
- B) Mr. Carter reported that the County would have to negotiate the \$8,000 that FCE is claiming due to the delay in DEQ VSMP permitting and they couldn't work. He noted that the County would not know the decision on the Phase 3 funding until next May or June.

Ms. Brennan inquired as to what would be accomplished in Phase I and Mr. Carter noted that they would clear and grub the trail area all the way to the tunnel and build the trail to the tunnel. He noted that the County would have to get a contract addendum from VDOT for Phase II and would have this bid out to remove the bulkheads and do the tunnel restoration.

Mr. Hale noted that he thought they needed to schedule meetings in advance in terms of negotiation on the project delay because there were two outstanding change orders that had not yet been put on the table.

Mr. Saunders inquired if FCE had given a breakdown of the costs for the \$8,000 and Mr. Carter noted that they had given a dollar amount per day for the Superintendent etc. He added that there had been some back and forth about what they could have been doing and Mr. Detmer of Woolpert had suggested that a decision on this be made towards the end of the project. He noted that FCE may ask for overhead costs if this were considered later versus now. Mr. Saunders noted he did not think the County would be paying all of this and it needed to be looked at with Woolpert.

Mr. Hale then explained that the two (2) change orders had to do with the post and peg fence at Tyler's and the height of the permanent fence being extended to 8ft. He added that the deed from CSX still specified 6 ft. and Mr. Carter reiterated that a condition of approvals from CSX required increasing the fence height.

Mr. Hale noted that another aspect of Phase I was there was an add alternate for the east portal and parapet. He noted that questions had been raised about this and these needed to be answered by Woolpert. He added that he would like to get this done in Phase I versus Phase II. Mr. Carter noted that he had sent these questions to Woolpert.

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Mr. Hale then noted that Phase II was removing the bulkheads, restoring the tunnel, and building the trail within the tunnel. Mr. Carter indicated he was not sure it encompassed all of that but he would check. He added that they needed the opportunity to know exactly what would be done in Phase II before bidding it out.

Mr. Saunders suggested that the County should negotiate the parapet wall and the \$8,000 with FCE.

Mr. Hale then noted that he was not willing to pay Woolpert for the Phase III easement plats. Mr. Carter reported that he had spoken with ROLC about getting these easements done by the end of the year or the County would lose DCR monies for land acquisition. He noted that ROLC's concern to date was getting the property back if the BRT was ever abandoned. He added that the DCR funds must be used by the deadlines or would be lost.

4. Joint Meeting with Nelson County School Board and Administration: The joint session will be conducted during the evening session on 11-13. The specific item of consideration/discussion is the Civil Rights Compliance Review of the School Division conducted by the VA Department of Education's Office of Federal Program Monitoring. Information pertinent to this subject is included within the 11-13 agenda package for the Board's review. The session may, of course, also include discussion of other subjects of importance to both boards but discussion of the OCR report is deemed to be necessary.

5. Lovingson Health Care Center: A meeting with Region Ten to discuss the agency's interest in the facility is pending. Otherwise, no progress has been made on this subject.

Mr. Carter noted that Region Ten reiterated their interest in operating an Assisted Living Facility and would do some financial feasibility study to see if could be done.

6. Radio Project: Final approval(s) necessary to complete the project has been received from the FCC. Cutover to the new radio system is scheduled for 12-10. (See Info Systems report for more information.

7. Rockfish Valley Area Plan: An initial community meeting on the RVAP was conducted by the Director of Planning and Zoning (T. Padalino) on 10-28 at Rockfish River Elementary School. Approximately 80+/- persons attended the meeting, which provided an overview of what Phase 1 of the project will seek to accomplish. The project is in progress.

8. 2014 Lockn Festival: County staff plan to schedule (date/time pending) another discussion meeting with the Festival sponsors to facilitate planning for the 2015 Festival. The Comm. Of Revenue has submitted a brief report denoting receipts to date of \$60,963.14 in combined revenues (lodging, meals, and business license taxes) with an amount of \$16,266.18, to date, uncollected. The Commissioner's report did not include information on local option sales tax revenues resulting from the 2014 Festival.

Mr. Carter noted he would be speaking to Mr. Frey in preparation for next year's festival.

Mr. Saunders noted that LOCKN was serious about staying and was in the process of getting permanent utilities to the site. He added they were working on water and electricity and would get easements from VDOT. He noted they were also working with the Service Authority on it and may put in 4 inch lines.

9. Roseland/Ferguson's Store PER: The final PER is pending receipt from Draper Aden Associates. Staff sent a communication to DAA on 11-8 requesting completion and submission of the final report to the County by the week of 11-10.

10. Rockfish Valley Rural Historic District: In process through VA-DHR.

11. Staff Reports: Provided in the 11-13 meeting Agenda.

2. Board Reports

Mr. Harvey reported that he would be meeting with Culpeper VDOT on getting permission to close off the Afton Overlook to do some clearing work. He added that he was hoping not to cut the largest trees, but rather to trim them back; however anything under four (4) inches would be removed.

Mr. Hale reported that the County continued to get more support from VDOT and the Legislature on the Tunnel project and it was looking promising.

Mr. Hale reported that the TJPDC had struggled with losing money from the reserve every month. He noted that the new Executive Director was doing well but had adopted a revised budget showing a small deficit for this fiscal year and he was hopeful that would not be the case next fiscal year. He added that the Director was conservative and expenses had been reduced by not filling vacant positions resulting in fewer staff there.

Mr. Hale reported that he attended the TJPDC Legislative Forum where State finances and the economy in Virginia was discussed.

Mr. Saunders reported he attended the Courthouse committee meetings and the TJPDC Mayors and Chairs meeting in Ms. Brennan's place.

Ms. Brennan reported she attended a meeting with Region Ten on the Lovingston Health Care Center and noted she would try to find other opportunities.

Ms. Brennan reported she attended the TJPDC Legislative Forum, and the Blue Ridge Tunnel tour.

Ms. Brennan reported that she attended the Wintergreen Valley Station Dedication; noting that the Station was dedicated to Frank Ott who was a dedicated volunteer there.

Ms. Brennan reported that she attended a GIS Town Hall meeting on mapping.

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Ms. Brennan reported that she had been moved from the JABA Ethics Committee to the JABA Business Development Committee; whose mission was to raise money to pay for JABA service provision.

B. Appointments

Ms. McGarry noted that a revised sheet had been distributed to the Board with the only change being that Ms. Mary Kathryn Allen, South District Planning Commissioner had indicated her interest in serving on the BZA. It was noted that the Board would be making a recommendation to the Circuit Court and Ms. McGarry noted that the seat expiring was the one held by an active Planning Commissioner and that all of the Planning Commissioners had been polled and the only one indicating interest was Ms. Allen. Mr. Saunders noted that he knew it was not a requirement; however he would like to see a South District representative on the BZA so he asked Ms. Allen if she would do it.

Mr. Harvey suggested that this be deferred until the evening session when the full Board would be present and members agreed by consensus to defer its consideration.

C. Correspondence

1. Rappahannock County BOS, re: Celebrate Shenandoah

Mr. Carter noted that the County had received a letter from Rappahannock County who was developing a plan to celebrate the Shenandoah National Park and was requesting a \$500 contribution.

Ms. Brennan noted she would like to know what the contribution would go towards and Mr. Carter supposed that it would most likely be used for incidental costs associated with getting the celebration organized.

Ms. Brennan then asked who the referenced appointees were from Nelson and Mr. Carter noted he was not sure.

Mr. Hale noted he would rather contribute to the National Park Trust since they did projects.

There being no further discussion, the item was tabled and no action was taken.

2. VDOT, Virginia Byway Designation - U.S. Route 60 "Midland Trail"

Mr. Carter noted that VDOT was notifying the County that the Virginia Byway Designation of US Route 60, the "Midland Trail" had been recommended by DCR for approval and that

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they were requesting a response from the County on conducting a public hearing on the matter. He added that he did not think a local public hearing on this was necessary.

Ms. Brennan suggested the Board defer to Mr. Saunders since it was in his district.

Mr. Carter was then advised to respond to VDOT that the County would not request a public hearing.

3. Nelson County Emergency Services Council – Medical Oxygen Plan

Mr. Carter noted that the Emergency Services Council was requesting to participate with the Augusta Health Hospital in the provision of Medical Oxygen. He noted that in order to participate, the County would need to purchase containers that would be owned by the hospital. He noted that the letter stated that the Council had endorsed the plan unanimously.

He added that the Council was asking for \$5,800 for this program and the savings would be about \$7,000 per year; however the Hospital would own the containers. Mr. Saunders noted that it was like a container exchange.

Mr. Carter noted that if the Board wanted to do this, it could be brought back as a budget appropriation or they could approve it then.

Mr. Harvey inquired as to whether or not the funds for this would be provided to the Emergency Services Council. Ms. McCann noted that the County could have Wintergreen bill the County as part of the paid EMS program and Mr. Carter advised that staff would work out the details.

There being no further discussion, the Board agreed by consensus to approve the funding request.

D. Directives

Mr. Harvey had no directives.

Mr. Hale directed staff to continue to cc him on emails with Woolpert.

Mr. Saunders noted that he will be having a Town Hall meeting at TRES from 7-9 PM on December 4th. He added he would also have one in Gladstone at some point.

Ms. Brennan inquired as to any figures being sent down by the State on the reduction in aid to localities and Mr. Carter noted none having been received yet.

Ms. Brennan directed staff to provide revenue recovery numbers next meeting.

Ms. Brennan inquired about meeting with Delegate Bell and Mr. Carter noted there had been no follow up yet and he asked what the Board wanted to do. Mr. Hale suggested that the

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Board go visit Legislators in their home office which was recommended by Legislators at VACO. He added that they recommended this be done before the start of General Assembly sessions. He added that this would be more productive than trying to schedule three of them at one time here. Mr. Carter noted that at VACO and the Legislative Forum, Legislators said they would work with everyone but not much would be done because they all had to get reelected. This item was then tabled; however Ms. Brennan offered to meet with Delegate Bell in Mr. Carter's office.

Ms. Brennan directed staff to check into getting a boat ramp at the Nelson Wayside.

Ms. Brennan inquired about LOCKN sales tax from last year and Mr. Carter noted he would check on this.

Ms. Brennan inquired about Festy revenues and Mr. Carter reported that to date the Commissioner of Revenue had not engaged them in tax collections other than maybe a business license and possibly sales tax. He reported that he encouraged her to follow up for next year and she did confirm that the camping there would be lodging; however she had not collected any local taxes.

Mr. Saunders supposed that after reading the email from DMV, there was not much that could be done about getting a DMV in the County. He added that perhaps he could speak to the Delegates about this.

Mr. Hale then suggested he and Mr. Saunders go see Matt Farris one day and Mr. Saunders noted he would call and set this up.

VI. Adjourn and Reconvene for Evening Session

At 3:50 PM, Mr. Harvey moved to adjourn until 7:00 PM and Mr. Hale seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.

EVENING SESSION

7:00 P.M. – NELSON COUNTY COURTHOUSE

I. Call to Order

Ms. Brennan called the meeting to order at 7:03 PM, with all Supervisors present to establish a quorum.

II. Public Comments

1. Sarah Holman, Nelson Cable - Nellysford

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Ms. Holman's comments were relative to the first public hearing listed on the agenda; however Ms. Brennan obliged her and allowed her to provide her input as follows:

Ms. Holman spoke in opposition to the grant proposal siting changes to the proposal since its advertisement and the County's filing of the application following the September 30, 2014 deadline. She added that she did not think that the Board of Supervisors or the County Administrator had acted in a transparent manner in the process and she disagreed with bringing high speed internet services into an area that in her opinion was already heavily served.

2. Clay Stewart, SCS Broadband - Arrington

Mr. Stewart noted that he has requested the status of his use of the tower at High Top from the County and has received no response. He added that he needed the tower to serve the Massie's Mill area. He then requested to know what was causing the delay in response.

III. Public Hearings and Presentations

A. Public Hearing – DHCD Community Development Block Grant – Local Innovation Grant Project Consideration of proposed Local Innovation Grant Project to install a total of approximately 8.1 miles of fiber optic cable in conduit. Information will be provided on projected beneficiaries, including the number of to low-and-moderate income residents to benefit from the proposed project. Citizens will also be given the opportunity to comment on Nelson County's past use of CDBG funds. **(R2014-81)**

Mr. Carter noted that the DHCD Local Innovation Grant (LIG) was established as an open submission program with certain categories of funding that could be sought by a locality throughout the program year. He noted that staff had begun talking with DHCD staff earlier in the year and they encouraged staff to proceed. He added that after speaking again with them in September, DHCD staff directed the County to send in a letter of interest at that time; which staff had Board of Supervisors authorization to do. He noted that upon receipt of the letter, DHCD staff directed the County to upload the full application into their online submission system. He noted that County staff advised the DHCD staff that the public hearings had not been held and they advised the County that it was fine to just proceed with doing so and the County had met the September 30, 2014 grant submission deadline.

Mr. Carter then advised the Board that any changes made on the County's website regarding the project would have had to have been minor.

Mr. Carter then reported that County staff conducted the first public meeting the previous week and that the Board was not required to participate in that.

Mr. Carter then presented the following PowerPoint that discussed the topics below relative to the grant proposal:

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- Project Funding
- Project Area
- Intended Results
- Project Beneficiaries
- Project Benefit to Low-to-Moderate Income (LMI) Persons
- Displacement
- Network Outcome & Return on Invest

**Proposed Project : Nelson County Proposal for
Local Innovation Grant**

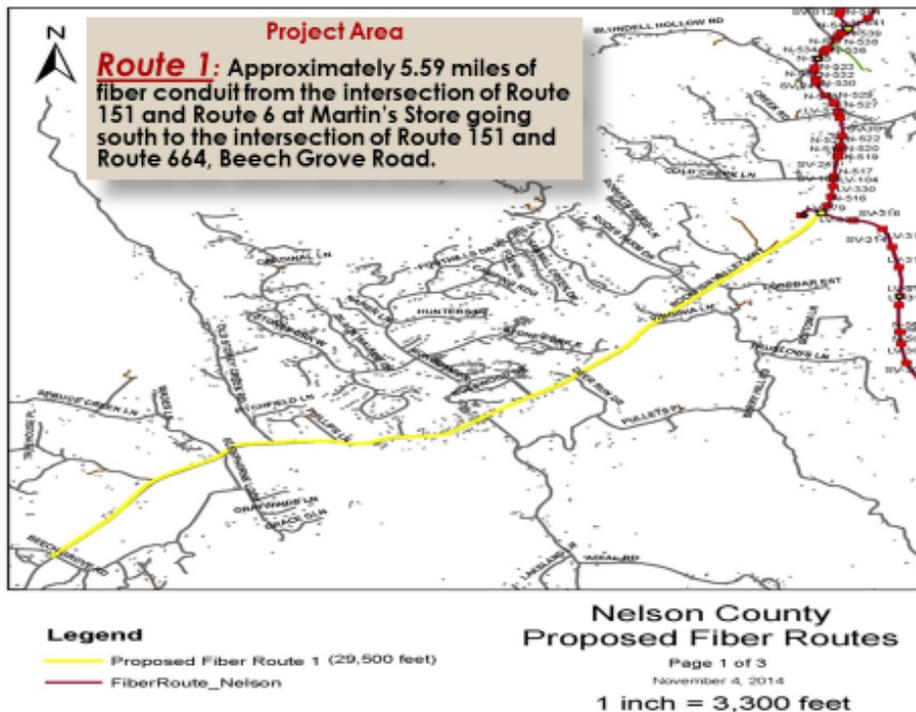
○ **Project Funding:**

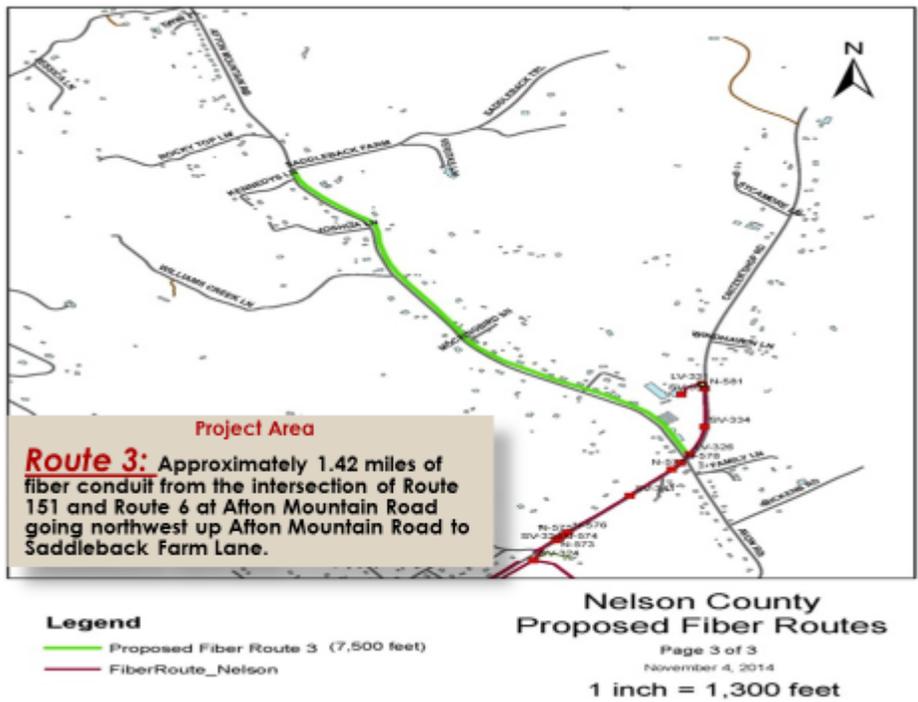
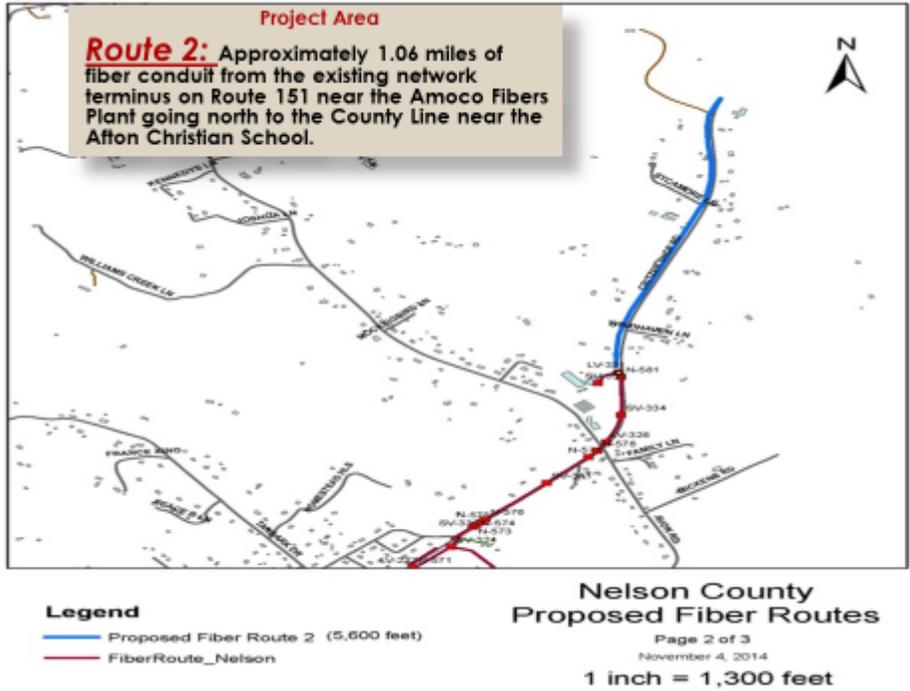
- \$200,000 CDBG-LIG Grant Funds.
- \$100,000 Local Match Funds.

Proposed Project : Nelson County Proposal for Local Innovation Grant

o Project Area:

- o The County proposes to utilize all available funds, for a Telecommunications Project that will construct approximately 8.1 miles of fiber optic cabling in conduit. The intended network consists of three (3) sections as follows (see maps):





**Proposed Project : Nelson County Proposal for
Local Innovation Grant**

o Intended Results:

- o Connect 50% of the 240 (120) Homes and Businesses that are within less than 500 ft. of the fiber.
- o Connect 40% of the 111 (44) Homes and Businesses that are within 1,000 ft. of the fiber.
- o Connect 25% of the other businesses that are within close proximity of the fiber.

**Proposed Project : Nelson County Proposal for
Local Innovation Grant**

o Project Beneficiaries:

- o Approximately eighty-eight (88) businesses and eighty (80) residential structures are the targeted primary beneficiaries.
- o Tourism and home occupation based businesses are the backbone of Nelson County's economy. This fiber infrastructure increases opportunity for these businesses to expand and compete in a global economy which in turn provides for the creation and retention of associated jobs.

Mr. Carter noted that County staff surveyed 88 businesses and got back 83 surveys showing favorable results and that the survey tabulation would be sent in with the application.

**Proposed Project : Nelson County Proposal for
Local Innovation Grant**

o **Project Benefit to Low-to-Moderate Income
(LMI) Persons:**

- o The National Objective to be achieved through the funding is job retention and creation.
- o It is anticipated that the grant funds will enable the creation of and provide the retention of twenty (20) jobs which will be held by or made available to LMI persons.
- o At least 51 percent of the permanent, full time jobs (including permanent, full time equivalent jobs) will be held by or made available to LMI persons.

Mr. Carter noted that LMI thresholds were derived by DHCD and that they had tables based on the number of persons in a household and associated income thresholds. He added that the County would have to certify LMI jobs back to DHCD.

**Proposed Project : Nelson County Proposal for
Local Innovation Grant**

o **Displacement:**

- o There will be no displacement of citizens during or as a result of the project.

Network Outcome and Return on Investment

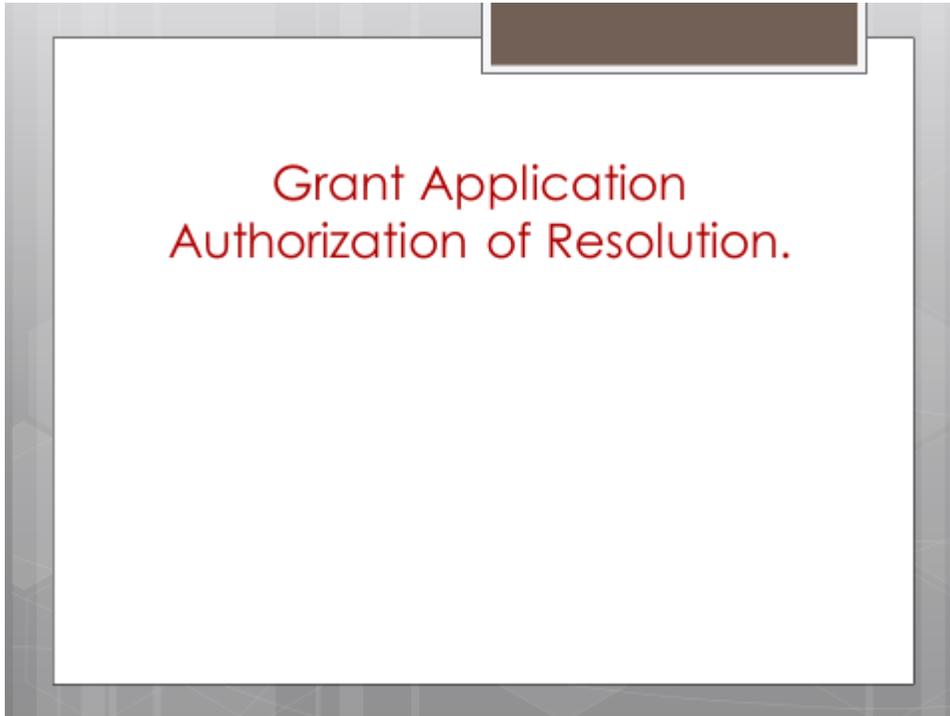
- Construct 8.1 miles of new fiber optic cable.
- Total potential customer base of 356 residences and businesses (within 1000ft of rte.).
- Potential to serve additional customers going beyond 1000ft.

Network Outcome and Return on Investment

- Estimated Project Cost= \$ 306,436
- Positive cash flow of investment on year 3.
- Recovered 103% of investment on year 6.
- Cumulative Net Cash Position of County = \$ 316,104

Mr. Carter noted that staff had done a return on investment (ROI) analysis that had continued to evolve. He added that the cost estimate for the whole project from the current outside plant contractor was \$306,436 and the work would have to be bid out.

Mr. Carter then advised that upon further analysis of the numbers, after four (4) years, there would be a positive cash flow on the County's \$100,000 investment and the County would recover 203% of this in year six (6) or \$216,540. He noted that the key takeaway was that if the County invested \$100,000, it would have recovered that in four (4) years and in year six (6), the County would recover over twice that.



Mr. Carter then noted that on the 5.3 mile fiber segment already installed on Route 151, 75% of the growth in utilization of the network had occurred there. He added that the other 25% had been on the remaining fiber on the Route 6 and Route 29 corridors. He noted that he thought positively the proposal would work.

Mr. Carter then noted that the County did not provide services directly on the network, the County owned it, and the Broadband Authority operated it. He reiterated that it was open access and anyone could use it to serve customers. He noted that Nelson Cable would soon be a service provider on the network and there was no favoritism. Mr. Carter added that staff was endeavoring to meet the Board of Supervisor's objective to expand the network and use excess revenues to expand it into other areas. He noted that at the VACO conference, in the work session about Broadband, the State representatives noted that three (3) things were required to have a successful network: good take rates, revenues, and competition. He added that Nelson County was presented as one (1) of the four (4) examples of broadband success stories.

Mr. Carter then advised that staff had prepared a resolution authorizing the grant application to go forward, that he hoped would be favorably endorsed by the Board following the public hearing.

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Mr. Hale then questioned the numbers on the project fact sheet previously provided as compared to those on the PowerPoint. It was noted by staff that those numbers had been tweaked and have slightly changed from the original sheet as staff has worked towards accurate counts of address points. Mr. Carter advised that there was no doubt that there was a good return on investment. Mr. Hale reiterated his concern with the numbers since they had been changing.

Mr. Carter then advised that this grant was one of the best sources of funding to facilitate this type of project and that there weren't many others out there. He added that he thought the County would be successful; however the DHCD staff had indicated that applications for these funds would become more competitive over time and currently, Nelson County was the only applicant for the 2014 funding.

Mr. Carter confirmed that a \$200,000 grant was the maximum and that he was confident the County would make the funding work again. He added that the project would not have a negative impact on the community now or as it continued to grow.

There being no further questions for staff, Ms. Brennan opened the public hearing and the following persons were recognized:

1. Baylor Fooks, Crozet and Network Operator/ISP

Mr. Fooks spoke in favor of the proposed grant application. He advised the Board that fiber, wireless, and DSL were not the same technologies and that fiber was the fastest of those three. He noted that the other technologies were available when the original project launched and there was demand for more services in the county. He added that the network was an open access network and that other providers were serving the schools, the towers were being used and it had lowered the cost of backhaul. He reiterated that the County was not competing with other corporations but rather multiple companies had used it to get broadband to the County.

Mr. Fooks then noted that the project numbers had changed because in October, the Broadband Authority had asked staff to separate the routes which caused some overlap in address points passed. He added that the return on investment (ROI) numbers changed due to discussion of recovery of the entire estimated costs or just the \$100,000 that the County was investing. Mr. Fooks also noted that he did not believe that the take rates were highly significant because if these were low, the variable costs would also be low and vice versa.

In conclusion, Mr. Fooks noted that the highest demand for services had come from the proposed project areas and also had the highest take rates. He added that they were seeing some of the region's largest employers asking for fiber and they were located along Route 6 and Route 151. He noted that they were asking for fiber because of its reliability and high speeds.

2. Joe Lee McClellan, Nelson Cable - Nellysford

Mr. McClellan spoke in opposition to the proposed grant application. He noted that he would like for Supervisors to look into the take rates that the network presently had and how long it would take to pay off the system that had already been built. He noted that their new lines were fiber to the home.

Mr. McClellan then distributed his comments to the Board and noted them as follows:

- The distance on Route 151 between Route 6 and Route 664, Beach Grove Road is 5.59 miles.
- We have been serving the area between Phillips Lane and Lodebar Estate road for several years where we serve sixty one (61) homes and businesses.
- Our Contractor is scheduled to pull the fiber through our remaining already installed 2 inch conduit next week from Route 613 Rhodes Farm Road to the NCBA vault at Route 6 and we only have about two (2) more miles to reach Route 664, Beech Grove Road.
- There are approximately one hundred two (102) potential Internet customers within close proximity of Route 151 between Route 664 and Route 6. Six (6) of these are businesses have their own Dedicated Internet service: Post Office, bank, Credit Union, medical center, Fisher Auto Parts and ABC Store. This leaves a possible thirty five (35) (102 less 61 and 6) Internet customers, which includes the route between the Levels and Route 664, Beech Grove Road, where we are now working to expand our service.
- In addition to the above, we serve customers adjacent to Route 151 in Lodebar Estates, Roberts Ridge Lane area, Napier Lane, Adial Road and Old Stoney Creek Road and we plan to serve Spruce Creek, the Elk Hill Baptist Church area and Winterhaven.
- Eventually we plan to go up Beech Grove Road to our fiber line at the Wintergreen Gate House to make a "redundant loop" for our system.
- To date our Internet service has created four (4) new jobs, in addition to jobs created by the businesses we serve.
- I oppose the Counties use of my and other taxpayer funds to build fiber routes in areas already served by private enterprise.

3. Clay Stewart, SCS Broadband -Arrington

Mr. Stewart spoke in opposition to the proposed grant application. Mr. Stewart then distributed his comments to the Board and noted them as follows:

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Thank you for the opportunity to speak on the subject of the proposal to request grant money to build out the new fiber extensions on or off RT 151. SCS Broadband opposes this proposal with the following explanations.

The National Broadband Map is part of NTIA's State Broadband Initiative. ISPs are encouraged to participate in order to prevent over-builds into their area with tax payer dollars. This map is located at www.broadbandmap.gov. SCS Broadband has participated in this mapping program for several years. Virginia's mapping review and submission to the federal government is done by the Center of Innovative Technology (CIT) for Virginia ISPs.

SCS Broadband current propagation mapping has greater than 70% coverage from Albemarle to Lynchburg, as well as locations in Appomattox and Buckingham locations. SCS has broadband at 95% coverage at two of the proposed routes for this grant. The third is from the Martins Store, south on 151, which has coverage from the Martins Store tower ... which does have a handicap due to a low location on the tower SCS was forced to use ... AT&T was to take the top of cellular a year ago. The top 20' is still unused, which would have given SCS full coverage to the Bold Rock location on RT 151 and made that broadband stimulus tower profitable and our Broadband mapping at 90% or greater coverage for that area.

The coverage and bandwidth available from SCS Broadband is more than sufficient to mark this territory as served, and is **not** a non-served, or under-served territory in Nelson County. There are locations which do qualify for such a classification as being under served, such as Faber and Gladstone.

Attached are focused maps displaying our actual radio propagation layouts which are derived from a third party, Link Technologies using the product known as TowerCoverage, which are reviewed and posted to NTIA by CIT. These are used to assure that government funding is not used for served areas.

It is also important to note that if our request is over-ridden, and this corridor is built out, the costly Broadband tower located at the Rock Fish Valley Fire and Rescue will have zero value for any wireless broadband carrier. SCS Broadband has interest in this tower for a future build-out, once adoption rates deplete our current towers capacity, but the subsidized routes presented will turn this stimulus tower into an expensive white elephant.

In summary, government Broadband grants specifically are meant to provide broadband access to areas either under-serve or not served by broadband ISPs. Funding overbuilds into any area defeats these purposes. If the limited amount of money that is available is spent on duplicating services, money will not be available to bring service to true not served areas. Moreover, it will make it more difficult for existing providers to operate their businesses in the face of a government subsidized competitor. Thus, rather than encourage the deployment of infrastructure and create sustainable jobs, overbuilding discourages private investment, harms deployment and costs jobs. Particularly in high cost, sparsely populated areas, where existing providers have difficulty covering cost, splitting subscribers while subsidizing a

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new competitor will only make it harder for all carriers to recover broadband investments, putting jobs in jeopardy and leading ultimately to a burden on the consumers.

Any ISP going into an existing served area must, and should be done only with private funds so as not to create an unfair advantage to other ISPs which have invested much time and money from their own pockets.

Over-built and high cost stimulus built towers sit empty or barely used, and high cost back-haul systems to these towers sit dormant. We do not need to repeat this error. SCS Broadband request respectfully two things in this public hearing.... one reject this proposal to request funding served areas of the county ... and two ... devise a formal working relationship with all ISPs for broadband planning, especially with the Nelson County incumbents.

Mr. Stewart concluded by adding that he had invested in Afton as much or more than the grant funds and he provided fast reliable service.

4. John Holman, Nelson Cable - Nellysford

Mr. Holman spoke to Nelson Cable's technology noting that on December 15, 2014 Cisco would install Docsis 3.0 technology which was the same as what XFINITY used. He noted that Nelson Cable had 30 miles of fiber in the Wintergreen area and another mile was to be pulled to connect to the County network.

5. Alan Patrick, Afton and Nelson County Broadband Authority Member

Mr. Patrick spoke in favor of the proposed grant application and noted his comments were from a County resident perspective. He noted that he thought the grant project was a positive opportunity, and the Board of Supervisor's had directed that the network be sustainable and he saw the opportunity for this project to operate and generate revenues. He added that given that the Route 151 corridor had been so successful, the Authority could begin planning additional build outs in other areas. He then noted that operationally, he saw an end in the County subsidy in sight. Mr. Patrick then noted that the objections that had been expressed were based on competition. He added that competition generated better service, lower rates and was a good thing for the community, County residents, and businesses.

6. Rob Rutherford, Shipman

Mr. Rutherford spoke in opposition to the proposed grant application. He noted that he thought competition was good as long as it was fair. He suggested that the County should provide backbone in underserved areas such as Shipman and Faber. He noted these areas were underserved and the County should get something there with the cash instead of using it to match the grant. He added that there were LMIs in the unserved areas and there were a lot of home-based businesses. He concluded by asking the Board to do something that would change the County and help the people in the County instead of competing with other businesses.

5. Carlton Ballowe, Faber

Mr. Ballowe spoke in opposition to the proposed grant application. He noted that he had thought favorably of getting broadband in the County and he agreed with serving underserved and unserved areas. He noted that he thought the County's role was that of a facilitator of broadband and that now he thought the County was making a departure from this to being a competitor. He noted that he thought that the County would provide the broadband infrastructure and then there would be public/private partnerships; however now he thought the County was going into direct competition with local providers. He added that he also thought the County would work with local providers; however it appeared to him that the County was avoiding working with SCS and Nelson Cable on the High Top tower and in the Beech Grove area respectively. He concluded by noting that he was afraid that the more the County got involved in this, it would be like the DMV with terrible service and it would go broke like the Postal Service.

6. Anthony Perry, Arrington

Mr. Perry noted that he ran a vineyard in Amherst County and wanted to expand the business into Nelson; however internet access was lacking in Arrington and Tye River. He noted to the Board that he would appreciate them getting services there and noted it would create jobs.

7. Jace Goodling, Afton

Mr. Goodling spoke in opposition to the proposed grant application noting that he echoed the sentiments of those opposing the County competing with private businesses to provide services. He then noted that the failure was in not making anything more out of what was already here. He added that he thought SCS was trying to serve the county and the County was road-blocking SCS at every turn and was picking and choosing the winners. He encouraged the Board to spread out the internet access areas as the proposed project areas were already served. He added that CDBG grant monies should not be spent to do this, the Board could not trust the numbers, and he encouraged the Board to reconsider it.

8. William Foster, Shipman

Mr. Foster noted that it seemed like there was internet in certain parts of the county but not in Shipman, Wingina, Norwood, and Gladstone. He noted that the Board should look at the County as a whole and everyone should have the same opportunities. He encouraged the Board to try to look at each District and provide them with the same opportunities.

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

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Mr. Bruguere asked Mr. Stewart to explain the coverage area maps that he provided and Mr. Stewart noted that the green areas were where there was 100% coverage and the brownish areas were where the speeds were between 5-10 Mbps. He added if there was no brown or green, then there was no coverage. He reiterated that they came from a radio frequency propagation tool, Lane Technologies.

Mr. Carter then stated that it was important to note that both Mr. Stewart and Mr. McClellan had said it was inappropriate to use federal money to build the network and yet both had submitted grant proposals to get this funding.

Mr. Carter then noted that the completed application had to be submitted by the close of business on November 15th.

Mr. Harvey then noted that a misconception that he had heard several times during the public hearing was that the County had anything to do with the last mile service providers. He noted that the backbone was there and anyone could provide services to anyone they wanted. Mr. Fooks expanded on this and noted that multiple service providers could serve the same customer in the same household and the project did not put the County in direct competition with ISPs.

Ms. Brennan pointed out that in order to use the grant money, the County could not just decide any old place to put the fiber as there were grant requirements to be met. She added that the County would like to put it everywhere and the reason to apply for this funding was to generate revenue in order to build the network out elsewhere.

Mr. Hale then indicated he had been opposed to the proposed project from the beginning as it would put fiber optic cable in an area that was better served than most other areas in the county and it was in competition with private enterprise who did not have the same resources to get this kind of money. He added in his view, this was an unfair competitive advantage for the County. He acknowledged that an objective of the Board was to make the broadband network pay for itself; however he thought that the figures presented in the proposal and what had been accomplished so far were not very persuasive to him.

Mr. Bruguere noted he agreed with Mr. Harvey and noted that it was not the County's intention to be in competition with anyone nor was it. He noted that the network provided access to anyone and could do it cheaper. He added that it was a win/win situation. Mr. Bruguere then noted that Blue Ridge Internetworks (BRI) was not the County rather they were an internet service provider (ISP). He then added that the County had been fortunate to get federal money and if they had not, no one would have fiber and the County would still be in the dark.

Mr. Saunders then noted that he thought the County project provided fiber that anyone had access to. He noted that he believed the project would work and it was a good opportunity to extend the line. He noted that the County could not go in other directions based on the requirements for the use of the funds and he thought this was where it was best spent. He

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acknowledged that the numbers were subject to change and that there were no guarantees on the take rates adding that the numbers were speculated; however he would go with what staff had presented.

Ms. Brennan noted her confusion and stated on the one hand, the grant would provide jobs in the community; however she was confused as to why High Top Tower was not in service and why the Massie's Mill tower was not being used. She added that she did not feel ready to make a decision on the matter until these questions were answered.

Mr. Bruguere then moved to approve resolution **R2014-81** Department of Housing and Community Development (DHCD), Community Development Block Grant (CDBG) Local Innovation Grant Program (LIG) application endorsement.

Mr. Harvey seconded the motion and there being no further discussion, Supervisors voted (3-1-1) by roll call vote to approve the motion with Mr. Hale voting No and Ms. Brennan abstaining from the vote.

**RESOLUTION R2014-81
NELSON COUNTY BOARD OF SUPERVISORS
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD)
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
LOCAL INNOVATION GRANT PROGRAM (LIG) APPLICATION
ENDORSEMENT**

WHEREAS, Nelson County continues to seek grant funding to invest in its broadband infrastructure in order to benefit local businesses and citizens by providing access to high speed broadband internet services; and

WHEREAS, the proposed project is intended to connect approximately 197 businesses and homes within 1,000 feet of the new fiber that will enable their expansion and creation/retention of approximately twenty (20) jobs which will be held by or made available to low-to-moderate income (LMI) persons as defined by DHCD; thus meeting the National Objective of job retention and creation and the requirement that at least 51 percent of the permanent, full time jobs (including permanent, full time equivalent jobs) will be held by or made available to LMI persons as defined by DHCD;

NOW, THEREFORE BE IT RESOLVED that the Nelson County Board of Supervisors hereby endorses the submittal of a Department of Housing and Community Development, Community Development Block Grant, Local Innovation Grant Program application seeking a maximum funding award of approximately \$200,000 and additionally resolves to provide the required 50% local match.

B. Public Hearing - Special Use Permit #2014-007 – St. Mary’s Catholic Church / Reverend Daniel Kelly Consideration of a Special Use Permit application seeking approval to add a new section to the historic Lovington Gap Cemetery pursuant to §4-1-11a of the Zoning Ordinance. The subject property is identified as Tax Map Parcel #58-A-31F, located in Lovington. This is a 16.5-acre parcel zoned Agricultural (A-1), and is owned by Bishop Francis X. Dilorenzo, Bishop of the Catholic Diocese, St. Mary’s Church.

Mr. Padalino presented the following SUP application:

Site Address /Location: Thomas Nelson Highway (west side of highway across from St. Mary’s Catholic Church) / Lovington / East District

Tax Map Parcel: #58-A-29

Parcel Size: approximately 16.5 acres

Zoning: Agricultural (A-1)

Request: Approval of Special Use Permit #2014-007 and associated Minor Site Plan for the proposed expansion of the historic Lovings Gap Cemetery

Completed Application Received On: September 18th

Application Overview

The Department of Planning & Zoning received an application on September 18th from Father Daniel Kelly (St. Mary’s Catholic Church) for Special Use Permit #2014-007. This application seeks approval to construct and operate a Cemetery, adjacent to the existing historic Lovings Gap Cemetery.

Zoning Ordinance Article 2, “Definitions,” defines “Cemetery” as, “A privately or church-owned and/or operated place for burial of the dead where lots may be sold and perpetual care of the grave may be furnished.”

The subject property is located on the west side of Thomas Nelson Highway (Rte. 29), across from St. Mary’s Catholic Church, several hundred feet south of the intersection with Mountain Cove Road. The 16.5-acre property is zoned Agricultural (A-1). *(Please see maps on pages 5 and 6.)*

Summary of Requested Uses & Application Details

This SUP application and Minor Site Plan seek approval for a cemetery containing a total of 240 grave sites (in 15 “sections” containing 16 sites per section). The project would utilize the existing public right-of-way and access road through the subject property. The existing access point on Route 29 will also be used, but it needs to be upgraded. The Virginia Department of Transportation (VDOT) has approved the construction plan design for the commercial entrance to serve this property. With VDOT approval for the entrance plan, the applicant will need to acquire a VDOT Land Use Permit prior to beginning construction on the entrance.

Also, per VDOT's written comments after the October 8th Site Plan Review Committee meeting, this project does not require a deceleration lane or turn lane. Mr. Jeff Kessler, P.E., confirmed that, "VDOT is receptive to phasing the commercial entrance construction that will add the optional right turn lane at a later date," in an email dated October 9th. The applicants have stated that they are interested in the possibility of eventually constructing a deceleration lane and turn lane to provide better and safer access to the property for southbound traffic on Route 29. But the applicant has also stated that those upgrades are not being pursued at this time. The applicants have also stated that they do not currently plan to install lighting, landscaping, or signage in conjunction with this project. If a decision is made to erect a sign, the applicant has stated that they will notify the County, obtain approval prior to installation, and follow all local and state regulations regarding sign location and design.

Planning Commission Review and Public Hearing

The Planning Commission conducted a properly-advertised public hearing for this SUP application on October 22nd. After the Planning & Zoning Director provided a brief staff report of the application materials, Mr. Massie Saunders, P.E., of Saunders Surveys, then spoke on behalf of the applicant. He noted that VDOT has been reviewing this project for several months and have not required a deceleration lane or turn lane; and therefore the County should not be requiring or requesting anything related to this matter.

Mr. Saunders also stated that the existing road should not be required to be upgraded, as it currently has some gravel on it and is currently serving multiple parcels beyond the St. Mary's property. Mr. Saunders then stated that he is not aware of any requirements for a cemetery to contain a minimum number of off-street parking spaces; and therefore this project should not be subject to any design specifications or standards associated with most other projects. He added that he is not aware of a single cemetery in Nelson County which has a commercial-style parking lot; and explained that all cemeteries are simply served by a small road that loops through the cemetery, and visitors typically park in the grass with close access to the burial plots.

Madame Chair Proulx then opened the public hearing at 7:14 P.M.

Richard Bulissa: Mr. Bulissa introduced himself as an adjoining property owner, and operator of Orchard House Bed and Breakfast. Mr. Bulissa stated that he thinks the proposed cemetery is a very good use of the property. He then noted that the cemetery property is directly upstream from his property, and further explained that previous logging activity on the St. Mary's property contributed to a culvert on his property being blown out a few years ago during a storm. He noted that the destruction of the culvert now prevents him from crossing Town Creek, which prevents him from accessing five (5) acres of property he owns. Mr. Bulissa then noted that the culvert was originally installed by Virginia Department of Transportation (VDOT), and he is attempting to work with that Department to determine how the culvert should be replaced. He noted that VDOT staff have met with him on the property, but that the situation is unresolved. He then summarized that he does support the proposed cemetery – but would be opposed to any use or development that

results in any additional damage to his property due to increased runoff from the upstream property.

Madame Chair Proulx then closed the public hearing at 7:19 P.M.

Commissioner Russell then made a motion to make a recommendation to the Board of Supervisors for approval of Special Use Permit #2014-007 for St. Mary's Catholic Church cemetery. Commissioner Allen then seconded the motion, with the motion receiving a vote of 5-0. Commissioner Goad abstained because of his affiliation with St. Mary's Catholic Church.

Following the vote, the Planning & Zoning Director responded to Mr. Saunders' comments regarding the project's "required improvements" (such as roads and parking area). Mr. Padalino noted that Mr. Saunders' was in fact correct when he suggested that cemeteries should not be subject to parking requirements. Zoning Ordinance Article 12, Section 7-6 "*Required spaces for specific uses*" does not contain any provision for "*cemetery*" uses, which is interpreted to mean that there are no required parking spaces. Because there is no requirement to improve the proposed parking area, the area on the Minor Site Plan denoted as "cleared area to be used for parking for funerals" will be left undeveloped and no construction or site disturbance will occur in that area. And with no parking lot construction, the total area of disturbance for the project is 0.6-acres, as noted on the Minor Site Plan. That calculation includes the proposed new 10' roads and turnaround area.

As a result, the overall project area is not expected to increase beyond the 1.0-acre threshold that automatically requires a Major Site Plan (pending any BOS approval of this SUP application). Therefore, please note that the Minor Site Plan submitted with this Special Use Permit application is the first and only time the Board of Supervisors have the opportunity to review the design and operation of the proposed use (regarding issues such as traffic and transportation, screening and other details, etc).

Mr. Padalino reported that the application would allow St. Mary's to create 240 additional grave sites at the property. He showed the proposed location on the tax map; noting that the cemetery expansion would use 16.5 acres on the west side of Thomas Nelson Highway and would utilize an existing access road that came into the property.

Mr. Padalino showed photos of the existing cemetery. He noted that VDOT had permitted the engineering and design of a new entrance and that there was 50ft of public right of way going into and through the property. He added that the access road was gravel, the cleared area would be for parking, and there was a ten (10) foot wide loop around the edge and a turnaround.

Mr. Padalino then reported that at the Planning Commission public hearing, concern was expressed about making the turn into the cemetery off of Route 29. He advised that no turn lane was required by VDOT now or in the future and that VDOT was not concerned with this.

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Mr. Padalino reported that the Planning Commission had recommended approval and the neighbor who spoke at the public hearing was in favor of the application but has had storm water runoff issues when the property was previously logged. He noted he was in favor of the proposal but opposed any runoff that would affect his property.

Ms. Brennan invited the applicant to speak and Ms. Gwen Casale, Chair of the St. Mary's Cemetery Committee, noted she was present representing the applicant. She noted that they had worked hard on the project and despite it not being required, they were looking at a low volume turning lane at the entrance for safety reasons.

There being no further comment from the Applicant, Ms. Brennan opened the public hearing. There being no persons wishing to be recognized, the public hearing was closed.

Mr. Harvey then moved to approve **SUP #2014-007** for St. Mary's cemetery and Mr. Hale seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

IV. Joint Meeting with the Nelson County School Board

Ms. Janet Giles, Vice-Chair of the School Board opened the joint meeting on behalf of the School Board with the following members and staff present: Janet Giles, Debbie Harvey, Dave Francis, Kathy Hughes, Dr. Comer, Shannon Irvin, Sandra McKenzie, JoAnne Wagner, Tim Rutherford, and guest Tom Vandever. School Board members, Mr. David Parr and Ms. Jane Mays were absent.

Dr. Comer then thanked the Board for meeting and noted that they wanted to keep things brief and that they were just providing information at this time. He noted that the topic of discussion would be the Office of Civil Rights (OCR) report and its recommendations. Dr. Comer indicated that overall he was very impressed with the County's facilities and that they were top notch. He then deferred to Ms. Sandra McKenzie to explain why they had the OCR review.

Ms. Sandra McKenzie introduced herself noting that she was the Director of Career and Technical Education (CTE) at Nelson County High School (NCHS).

She noted that all school systems were given points for different aspects of their CTE program. She noted that since they offered vocational education, the OCR looked at enrollment, the gender make up and looked at getting non-traditional participants in the programs. She then noted that they had received the largest number of points because it had been twenty-two (22) years since their last visit. She added the OCR then reviewed the top four (4) point earners in the state. Ms. McKenzie then noted that they came for a site visit in 2014 and had a thorough tour of the NCHS facility. She noted that subsequently, the School Division got the report of findings and looked for help with the process. She then noted that Mr. Tom Vandever of Charlottesville volunteered to look at the findings and to develop cost effective means to deal with them.

Mr. Tom Vandever then introduced himself as the Director of Independence Resource Services whose primary objective was to advocate for those with disabilities. He added that a subtask of the organization was to provide technical assistance on ADA and other federal regulations. He confirmed that the school division had asked for their review of the findings and help with the easiest way to fix it.

Ms. Shannon Irving then noted that there were sixteen (16) findings related to ADA access for students or community members and most had dollars associated with them.

Ms. Irvin then reviewed the following findings and resolutions where applicable. She noted that they had done the things that they could do within the budget; however the items in red were things they needed assistance with.

Access for Students with Disabilities Issues:

Finding 1. The lower level parking lot at NCHS has 302 total parking spaces, but only two of these spaces are designated as accessible. Additionally, these two designated spaces contain signage that can be blocked by vehicles parked in them. The designated accessible route from these spaces to the main entrance of the building contains a curb that has not been ramped for accessibility, and a steep incline that is not accessible. **Response: We have contracted to have the curb cut and lines painted and installation of appropriate signage for a total cost of \$5,515.90.**

Finding 2. All interior doors that are not fire rated and have closers attached to them require greater than five pounds of force to operate. **Response: We purchased a measuring tool and have adjusted the pull to less than 5 lb of pressure to open/close all doors.**

Finding 3. The elevator in the high school portion of the building is key-operated, which does not foster independent access to the second floor because use of the key requires twisting of the wrist and fine motor control. **Response: Push button was installed on elevator at a cost of \$1,120.00**

Finding 4. The accessible route to the computer tables in the media center is blocked by a table, and other furniture and accessories block the accessible route to the high stacks along the wall in this space. **Response: Space was rearranged to be accessible.**

Finding 5. Less than 50 percent of the drinking fountains on each level of NCHS are accessible. Additionally, the accessible drinking fountains that have been installed are mounted with their leading edges greater than 27 inches above the floor, thereby causing them to be inaccessible for persons who are blind. **Response: We have received estimate of \$10,900 to purchase the requisite drinking fountains. We are waiting for funding.**

Finding 6. The middle and top runs of the ramp at gymnasium two (old gym), the top run of the ramp at the commons, the ramp in the hallway of the CTE labs, and the ramp at the entry door of the Agriculture lab and classroom have inaccessible running slopes. Additionally, the top run of the ramp in the commons is missing a second handrail, and there is no edge

protection on the ramp at the entry door of Agriculture. **Response:** We have determined that the ramp at the old gym is indeed in compliance after taking more accurate measurements. We believe that the ramp at the Commons Area can be made compliant by grinding out the high spots of the tile and replacing the existing tile with treads designed to minimize slipping. Estimated cost of the work to this ramp would be around \$4,000. The ramp in the Ag Shop we believe can be made compliant by adding a cement slab and turning the ramp into the classroom. Estimated cost for this work would be \$2,250. The ramp in the CTE wing requires more attention. We anticipate having to procure a long metal ramp to extend down ½ of the hallway at a slope deemed to be appropriate for Handicap access. The cost of this ramp has not yet been determined.

Finding 7. There is no accessible seating in gymnasium two. **Response:** We have a quote to replace the bleachers in the old gym at a cost of \$49,430 or to retrofit the existing bleachers at a cost of \$26,870.

Finding 8. Clutter in the hallways and walkways of the team room areas behind gymnasium two makes the route within these spaces inaccessible. In the team rooms there are no rear grab bars in the accessible toilet compartments; the pipes are unwrapped at the sinks; mirrors are mounted too high; the shower areas are not accessible, and the benches in the locker room portions of these spaces have no back support. **Response:** We have cleared the clutter in the hallways and walkways and installed the grab bars and purchased the wrap for the pipes. A new full length mirror was installed to meet the compliance standard. We will have to determine whether it is feasible to turn the coach's office into a handicap accessible shower. This would require removing a wall to gain adequate space for the shower unit. Anticipated cost of this project would be around \$5,000. We are in search of appropriate benches for the environment. We anticipate the cost to be around \$2,000.

Finding 9. In the alternate locker room spaces for males and females at NCHS designated as accessible, there is no designation signage at the entry doors, nor is there directional signage posted indicating the location of these spaces. Also, there are inaccessible thresholds at the transfer type shower compartments within these spaces. In the alternate accessible locker room space for males, there is no toilet paper dispenser in the accessible toilet compartment, and the shower sprayer is not mounted to promote accessibility. In the alternate accessible locker room space for females, the paper towel dispenser is mounted too high, and the shower sprayer is not mounted to the adjustable rod. **Response:** We have moved and/or installed new dispensers for paper towels and toilet paper. We have installed Shower Sprayers at a cost of \$392.43 and thresholds at showers for a cost of \$370. We will need to purchase directional signage at an anticipated cost of \$250 once we decide upon the appropriate wording.

Finding 10. All doors in the CTE wing have door opening mechanisms (knobs) that require twisting of the wrist to operate. There are no fully accessible restrooms on this wing, within the labs or on the hallways. The industrial sinks in the CTE labs that are used as lavatories do not have adequate knee clearance for forward accessibility. Additionally, the paper towel dispensers at these sinks are mounted too high or have inaccessible dispensing controls. **Response:** We have replaced the doorknobs in the CTE wing with lever action handles at a

cost of \$25,328.50. We will need assistance in retrofitting the existing restrooms/sinks in the CTE area to be handicap accessible. Estimated cost of this project TBD. Towel Dispensers will be relocated once new sinks are installed.

Finding 11. In the Automotive Technology lab the alignment service equipment is in a 4 ½ foot deep pit that is only accessible by stairs. Additionally, the pit is not properly gated or marked to prevent visually impaired or blind persons from falling into this space. **Response:** We believe that the best instructional approach to solve this problem would be to fill in the automotive pit and purchase new handicap accessible automotive repair equipment that would allow someone in a wheelchair access to the work area. Anticipated cost of this work and equipment TBD

Finding 12. The ramp at the greenhouse, the aisles within this space, and the threshold at the doorway to transition into the second half of this space are all inaccessible. Additionally, there are knobs at all greenhouse doors. **Response:** A thorough study of this issue needs to take place to determine if modifications to the existing structure are feasible. Cost estimate to consider replacement of structure with Handicap Accessible Greenhouse is TBD.

Finding 13. The sink in the kitchen space of Family and Consumer Sciences (FACS) does not have adequate knee clearance for forward accessibility, and its associated counter is too high. **Response:** We have contracted to have the countertops replaced and a handicap accessible sink installed at a cost of \$2,750.00 The work is in progress.

Finding 14. There is no signage posted at auditorium one (new auditorium) indicating the availability of an assistive listening system; there are only five assistive listening receivers available for a facility with the capacity to hold 623 people; and the ticket booth at this auditorium is too high to be accessible. **Response:** We have purchased the required Assistive Listening Devices with the appropriate signage at a cost of \$2,681.

Finding 15. In the cafeteria, the a-la-carte baskets placed on the top of the refrigerator unit on the serving line places the items offered out of accessible reach. **Response:** we have rearranged our offerings so that handicapped individuals may self-serve items in the same manner as non-handicapped individuals.

Finding 16. There are nine toilet stalls in the accessible female restroom near auditorium one (new auditorium) and cafeteria, one of which is a standard accessible stall; however, there is no ambulatory stall in this space. **Response:** We have made an ambulatory space in this area at a cost of \$120.

Comparable Facilities Issues:

Finding 1. Nelson County H.S. has two dedicated team rooms, both of which were altered in 2001 and are currently used for male sports teams only. Also, currently there is only

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office space for a male coach in this area. **Response: We will need assistance in this area to determine if the best alternative is to renovate existing space (ie. ALPHA area of NCHS) or to build a new locker room as part of a desired complex building. Cost estimates TBD.**

Mr. Saunders then inquired as to a deadline for correction and Ms. Irvin reported that they had filed a plan with them and they had not responded to say their plan was approved. She added that as part of the review, the OCR understood that the capital items would take time and this was a gray area right now. She noted that they were showing a good faith effort to improve and the other items would become part of a capital improvements plan (CIP). Ms. Brennan inquired as to the total for all of the known costs and Ms. Irvin noted she did not have this information with her; however the big ticket items were the unknown items.

Mr. Bruguiere inquired as to whether or not there had been any ADA complaints and it was noted that a parent had complained about parking. It was then explained that a person with a handicap should not have to rely on anyone else for assistance and should be able to do things themselves.

Ms. Irvin then noted that new standards went into effect in 2010. Mr. Vandever added that over time, the concept of grandfathering got thrown out and OCR instead said they had ten (10) years to bring programs into compliance. He reiterated that there was no grandfather protection and the compliance was twenty-five (25) years past due. He noted that even if there were no ADA students, there were people in the community that used the school facilities.

Mr. Bruguiere questioned whether or not all of the work such as bringing the automotive pit into compliance would need to be done. Mr. Vandever advised that they had some time to get it done and Mr. Harvey supposed that the automotive equipment was obsolete anyway.

Mr. Saunders suggested that a schedule be drawn up and presented so they wouldn't have to do all of it at once. Ms. Irvin noted that they did do that and went out three (3) years into the future. She added that the next step was to hire an expert to get pricing and plan for it. Ms. Irvin then advised that they and County staff had discussed the Architect working on the courthouse looking at some of these. She noted that conceptually they needed to address some items, like the girls' locker room and the green house. She added that the old Alpha area was previously a locker room and was an option; however it had HVAC/air quality issues.

Dr. Comer then noted that this was a starting point for informational purposes. He added that if they consulted with a Title 9 attorney, they may get a different answer and there may be other options and they needed to explore these. He noted that they had done some things that would look good to the reviewer; however he thought there were other options.

Ms. Debbie Harvey asked if there was an appeals process for the findings and Mr. Vandever noted that they had corrected some incorrect information; however he noted that most of the hard core accessibility issues were correct. He added that Title 9 was not his area of expertise. The question was then posed if the greenhouse or automotive changes were not

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made then would these programs have to be eliminated. Ms. Irvin noted that she expected these items would be included in the CIP, which would show the OCR they had a plan.

Ms. Janet Giles then asked when the administration would hear back from OCR and Ms. Irvin noted she thought they would have already; however they had some staff turnover and she was not sure.

Mr. Dave Francis then asked if they would bring in an architect quickly to look at these things and Ms. Irvin noted that they would be able to give the most cost effective options. Ms. Brennan asked if they would have to do an RFP for those services and Mr. Carter noted that it had been considered that he would ask Architectural Partners to do an evaluation as an addendum to the County's contract. He added that they could use cooperative procurement provisions if they were out there and stated in the RFP.

Mr. Harvey suggested that they find other school divisions that have had this review done in the last five (5) years and see how they handled it. He then asked about the elementary schools and Ms. Irvin noted that the OCR did not check elementary schools because they did not have CTE programs.

Mr. Hale noted that he wanted to address the remaining concerns and noted he thought it was the job for NCSB and staff to set the priorities and time frame to get in compliance. He added that he was not sure about retaining Architectural Partners as he was doubtful that they had expertise in these types of issues.

Mr. Harvey then suggested checking with the state to see if they had anyone in this field that could assist them.

Dr. Comer noted that they would come back with more solid information on this in the near future and he agreed they needed assistance to get things figured out.

Ms. Irvin noted that all training and procedural items had been addressed and that they would include some of this in their CIP with their budget and would estimate associated dollar amounts.

Mr. Bruguere then asked if they addressed different levels of disability and Mr. Vandever noted that bleacher seating was a special category. He added that this issue was about having chair seating next to a companion. He noted that they could remove the bleachers entirely from the old gym as a radical alternative. It was noted that they cannot have a designated area for the handicapped, they had to be able to sit where they want within the gym area.

Mr. Saunders then inquired as to the lights on the football field and Dr. Comer reported that all of the bolts had been replaced and the field and track were back open.

School Board members adjourned their meeting and the Board took a five-minute break prior to moving forward with their agenda.

V. Other Business (As May Be Presented)

Deferred from the Afternoon Session: BZA appointment

Mr. Saunders noted that the Board had deferred consideration of the BZA appointment from the afternoon session until the evening session.

He then nominated Ms. Mary Kathryn Allen for recommendation to the Circuit Court Judge for BZA appointment and Mr. Bruguere seconded the motion.

Mr. Hale noted that the other applicant (the incumbent) had considerable experience and he thought there should be consistency in applying zoning laws on the BZA. He added that he thought that Linda Russell was competent in doing that. Mr. Saunders did not disagree, however he noted that there was no one on the BZA representing the south district and he thought there should be.

There being no further discussion, Supervisors voted (3-2) by roll call vote to approve the motion with Mr. Hale and Ms. Brennan voting No.

Mr. Bruguere suggested that the Board look at term limits for these seats and Mr. Harvey noted that people were not highly interested in being on these committees.

VI. Adjournment

AT 9:30 PM, Mr. Hale moved to adjourn and Mr. Harvey seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.